



**NOTICE OF OPEN MEETING**  
**APRIL BOARD OF TRUSTEES**  
NBU Board Room, 263 Main Plaza, New Braunfels, Texas 78130  
April 25, 2024, at 1:00 PM  
[www.nbutexas.com](http://www.nbutexas.com)

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## AGENDA

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE AND INVOCATION

Board Trustee John Harrell

### NBU CORE VALUE: Safety

David Hubbard, Chief Administrative Officer

### PUBLIC COMMENT

### ITEMS FROM THE CHAIR

1. Any Items Permitted Under Section 551.0415 of the Texas Government Code

### ITEMS FROM STAFF

1. CEO's Update
  - a. New Braunfels Utilities ("NBU") Employees Attend the Texas Water Conference and Participate in the Meter Madness Competition and One Water Panel
  - b. NBU Employee Invited to Participate in the University of Iowa's Energy Executive Course
  - c. CEO Roadshow: Reliance Residential Realtors
  - d. New Braunfels City Council Approves Ordinance for Annexation and Zoning of Property for Future NBU Headquarters Site
  - e. Presentation to New Braunfels City Council for Five -Year Water Conservation Plan
  - f. Headwaters at the Comal Earth Day Event on April 20, 2024
  - g. Communication Rollout Plan for Summer Base Electric Generation Rate Effective June 1, 2024, and Previously Approved Rate Increase Effective August 1, 2024
  - h. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code
2. Financial Update and Report
3. NBU Community Advisory Panel Update Regarding the Integrated Resource Plan Process
4. Quarterly Capital Improvement Plan Update

## CONSENT ITEMS FOR ACTION

- [1.](#) Approve Minutes of the NBU Regular Board Meeting of March 28, 2024
- [2.](#) Approve the Change Order Log from February 15, 2024, through March 15, 2024
- [3.](#) Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through March 15, 2024
- [4.](#) Approve the Electric Line of Business Alternative Procurements from February 15, 2024, through March 15, 2024
- [5.](#) Approve the Appointment of Elizabeth Bowerman as a Community Member of the Headwaters at the Comal Board of Directors
- [6.](#) Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Skyblue Utilities, Inc. for the Construction of the Infrastructure Replacement Package 1 Project
- [7.](#) Authorize Resolution #2024 -183 Approving (i) The Conveyance of 1.209 Acres Being Lot 1, Block 36, Veramendi Est No. 1 Subdivision From Veramendi PE-Brisbane, LLC To New Braunfels Utilities, together With The Elevated Storage Tank Located Thereon and an Access Easement For Ingress and Egress; (ii) Execution of Any and All Related Documents Associated with Closing the Transaction; and (iii) Other Matters In Connection Therewith
- [8.](#) Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Merrick & Company for the Design of the Solms Pump Station and Ground Storage Tank Project
- [9.](#) Authorize CEO or His Designee to Negotiate and Execute a Cooperative Services Agreement with Gartner, Inc. for Financial Maturity Assessment
- [10.](#) Authorize CEO or His Designee to Negotiate and Execute a Cooperative Agreement with Gartner, Inc. for IT Research and Advisory Subscription Services
- [11.](#) Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with B Comm Constructors L.L.C. for Fiber Optic Outside Plant Maintenance and Emergency Services
- [12.](#) Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Paloma Blanca Enterprises, Inc., for Construction, Maintenance, and Site Work of All Right-of-Ways for New Braunfels Utilities
- [13.](#) Authorize CEO or His Designee to Negotiate and Execute an Electric Service Agreement Between Veramendi Development Company, LLC and NBU Concerning the Construction of an Underground Electric Feeder to Supply Electric Service to NBU Customers
- [14.](#) Authorize CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Public Relations Advertising Company doing business as Vladimir Jones for a Three-Year Strategic Communication and Marketing Plan



## **ACTION ITEMS**

1. Reject All Proposals Submitted for the Purchase and Development of the Real Property and Improvements Located at 263 Main Plaza In Connection with RFQ# 02601 and RFP# 02601-2 and Authorize the CEO or His Designee to Terminate the Memorandum of Understanding Dated February 25, 2022, Between NBU and Seals Family Properties, LLC, Regarding the Same
2. Discuss and Consider Resolution #2024-184 Approving (i) the Transfer of Approximately 1.126 Acres of Real Property Located at 263 Main Plaza, New Braunfels, Texas (the “Main Plaza Property”), to the City of New Braunfels; (ii) the Lease of the Main Plaza Property from the City of New Braunfels to New Braunfels Utilities; (iii) Execution of Any and All Documents Necessary to Convey and Lease the Main Plaza Property; and (iv) Other Matters in Connection Therewith

## **PRESENTATION ITEMS**

1. Presentation and Discussion of a Three-Year Strategic Communication and Marketing Plan from Public Relations Advertising Company doing business as Vladimir Jones
2. Presentation on the Guadalupe-Blanco River Authority’s Drought Contingency Plan for Wholesale Customers and its Impact on NBU
3. Presentation on the Revised Water Engineering Design Standards Effective June 2024

## **EXECUTIVE SESSION**

The Board of Trustees may recess into Executive Session for any purpose permitted by the Texas Open Meetings Act, including but not limited to:

1. Deliberations Regarding Security Devices or Security Audits  
(Section 551.089 – Texas Government Code)
  - a. Discussion Regarding Network Security Information
  - b. Discussion Regarding Security Assessments or Deployments Relating to Information Resources Technology

The Board of Trustees, upon reconvening in Open Session, will discuss and consider any action, if necessary, regarding closed session items.


**RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE**

**ADJOURN**

If you require assistance in participating at a public meeting due to a disability as defined under the Americans with Disabilities Act, reasonable assistance, adaptations, or accommodations will be provided upon request. Please contact the Board Relations Coordinator at least three (3) days prior to the scheduled meeting date at (830) 629-8400 or the NBU Main Office at 263 Main Plaza, New Braunfels, Texas, for additional information.

### **CERTIFICATE OF POSTING**

I, Ryan Kelso, Secretary to the Board of Trustees, do hereby certify that this Notice of Meeting was posted at the City of New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas, and New Braunfels Utilities Main Office, 263 Main Plaza, New Braunfels, Texas, on the **19th day of April 2024**, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

  
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Ryan Kelso, Chief Executive Officer  
Secretary to the Board of Trustees



Electric gross margin, which is total operating revenues minus purchased power, resulted in the amount of \$6,339,000 for the month of March and \$42,233,000 YTD. These amounts were \$2,204,000 greater and \$2,618,000 greater than the budgeted amount of \$4,135,000 Month-to-Date (“MTD”) and \$39,615,000 YTD. Other operating expenses were less than budget by \$293,000. These items resulted in the Electric Line of Business reporting net operating income of \$3,743,000, which was \$2,496,000 greater than the budgeted amount of \$1,247,000. Net non-operating items provided a favorable variance from budget of \$298,000. Services income was greater than budget by \$239,000. The Electric Line of Business reported March 2024 CNPAC of \$3,724,000 and YTD CNPAC of \$20,173,000. These amounts were \$3,034,000 greater and \$9,209,000 greater than their respective March 2024 MTD and March 2024 YTD budget amounts.

### **Water**

The Water Line of Business reported total operating revenues of \$2,852,000, a \$203,000 decrease, or 7%, from the March budgeted amount of \$3,055,000. In March, water gallons sold of 293,796,000 was less than the budgeted amount of 292,918,000 (an 878,000-gallon variance from budget, or 0%). NBU’s net realized price per 1,000 gallons sold in March was \$9.40, which was less than the budgeted amount of \$10.24. Operating expenses for March were \$3,469,000, which was \$368,000 less than the budgeted amount of \$3,837,000. The net effect of less revenues and lesser operating expenses than budgeted resulted in the Water’s net operating income of (\$617,000), which was greater than budget. Net non-operating items provided a favorable variance of \$138,000 from budget. Impact fees of \$1,769,000 were greater than budget by \$753,000, and services income was greater than budget by \$125,000. The Water Line of Business reported March 2024 CNPAC of \$994,000 and YTD CNPAC of \$8,598,000. These amounts were \$1,183,000 greater than and \$7,291,000 greater than their respective March 2024 MTD and March 2024 YTD budget amounts.

### **Wastewater**

The Wastewater Line of Business reported total operating revenues of \$2,971,000, a \$231,000 decrease, or 7%, from the March budgeted amount of \$3,202,000. Total operating expenses of \$2,450,000 were \$222,000 less than the budgeted amount of \$2,672,000. As a result, the Wastewater Line of Business reported net operating income of \$521,000, which was \$9,000 less than the budgeted amount of \$530,000. Net non-operating items provided a favorable variance of \$265,000 from budget. Impact fees were greater than budget by \$422,000, and capital participation fees were less than budget by \$66,000. The Wastewater Line of Business reported March 2024 CNPAC of \$1,079,000 and YTD CNPAC of \$7,348,000. These amounts were \$610,000 greater than and \$3,950,000 greater than their respective March 2024 MTD and March 2024 YTD budget amounts.

## **LINK TO STRATEGIC PLAN**

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### **Financial Excellence**

### **EXHIBITS**

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1. Overview Comparison to Budget and Prior Fiscal Year
2. Financial Statements
3. Capital Expenditure Summary
4. Statistics - Electric (Provided separately due to competitive matters)
5. Statistics - Water
6. Statistics - Wastewater

**NEW BRAUNFELS UTILITIES**  
**OVERVIEW COMPARISON TO BUDGET & PRIOR FISCAL YEAR**  
 For the Period Ending March 31, 2024

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV	Variance Explanation +/-30%
<b>ELECTRIC</b>						
Sales Volume (MWh)	Actual	1,151.4				
	Budget	1,284.0	(132.6)	-10%		
	Prior Year	1,155.6	(4.2)	0%		
Revenues (\$M)	Actual	\$ 137.7				
	Budget	\$ 131.3	\$ 6.5	5%		
	Prior Year	\$ 134.6	\$ 3.1	2%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Pwr)</i>	Actual	\$ 42.2				
	Budget	\$ 39.6	\$ 2.6	7%		
	Prior Year	\$ 34.7	\$ 7.5	22%		
Operating Income (\$M)	Actual	\$ 22.7				
	Budget	\$ 15.4	\$ 7.3	47%		Higher YTD operating revenues. Primarily from residential.
	Prior Year	\$ 15.9	\$ 6.7	42%		
<b>WATER</b>						
Sales Volume (Million Gallons)	Actual	3.0				
	Budget	2.9	0.0	2%		
	Prior Year	2.8	0.2	7%		
Revenues (\$M)	Actual	\$ 27.4				
	Budget	\$ 28.2	\$ (0.8)	-3%		
	Prior Year	\$ 23.1	\$ 4.3	18%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Water)</i>	Actual	\$ 19.3				
	Budget	\$ 20.0	\$ (0.6)	-3%		
	Prior Year	\$ 17.7	\$ 1.6	9%		
Operating Income (\$M)	Actual	\$ (0.1)				
	Budget	\$ (3.4)	\$ 3.4	-98%		Lower YTD operating expenses. Primarily from Transmission & Distribution and Support Services Allocation. Higher YTD operating expenses compared to Prior Year. Primarily from Purchased Water costs.
	Prior Year	\$ 1.2	\$ (1.3)	*		
<b>WASTEWATER</b>						
Revenues (\$M)	Actual	\$ 23.5				
	Budget	\$ 25.9	\$ (2.5)	-10%		
	Prior Year	\$ 21.2	\$ 2.2	11%		
Operating Income (\$M)	Actual	\$ 4.5				
	Budget	\$ 3.9	\$ 0.6	15%		
	Prior Year	\$ 4.4	\$ 0.1	2%		
<b>COMBINED</b>						
Operating Expenses (\$M)**	Actual	\$ 32.6				
	Budget	\$ 41.2	\$ (8.6)	-21%		
	Prior Year	\$ 29.7	\$ 2.9	10%		
Operating Income (\$M)	Actual	\$ 27.0				
	Budget	\$ 15.9	\$ 11.2	70%		YTD Electric Service revenues are greater than budget, primarily from Residential, and Water & Wastewater expenses being lower than expected at this time.
	Prior Year	\$ 21.5	\$ 5.5	26%		
Change in Net Position Before Contributions (\$M)	Actual	\$ 17.7				
	Budget	\$ 1.8	\$ 15.9	*		YTD Electric Service revenues are greater than budget, primarily from Residential, and Water & Wastewater expenses are lower than expected. Interest Income is also higher than budget. YTD Electric Operating expenses from the PY are higher, primarily due to Purchase Power.
	Prior Year	\$ 12.2	\$ 5.5	45%		
Impact Fees (\$M)	Actual	\$ 15.0				
	Budget	\$ 11.2	\$ 3.8	34%		Several apartment complexes contributed to higher impact fees. Several apartment complexes contributed to higher impact fees.
	Prior Year	\$ 10.7	\$ 4.3	41%		
Change in Net Position After Contributions (\$M)	Actual	\$ 36.1				
	Budget	\$ 15.7	\$ 20.5	*		YTD Electric Service revenues are greater than budget, primarily from Residential, and Water & Wastewater expenses are lower than budget. Impact Fees and Interest Income are also higher than budget. YTD Electric Service revenues and Impact Fees are contributing factors.
	Prior Year	\$ 26.0	\$ 10.2	39%		

\*Note: Variances are based on rounding of actual numbers and not summary numbers in previous column.  
 \*\*Note: Operating expenses less purchased power, purchased water, and depreciation & amortization.

LEGEND			
Favorable		Unfavorable	
Within +10%		Within -10%	
Exceeds +10%		Exceeds -10%	

NEW BRAUNFELS UTILITIES  
 Balance Sheet  
 For the Period Ending March 31, 2024  
 Amounts Shown in Thousands

	March 31 2024	February 29 2024	Variance	% Change
<b>ASSETS</b>				
<b>UTILITY PLANT</b>				
Utility Plant in Service	\$ 1,203,795	\$ 1,200,661	\$ 3,134	0%
Less: Accumulated Depreciation	(366,981)	(363,759)	(3,222)	1%
Construction in Progress	149,159	136,559	12,600	9%
<b>TOTAL UTILITY PLANT</b>	<b>\$ 985,974</b>	<b>\$ 973,461</b>	<b>\$ 12,513</b>	<b>1%</b>
<b>CURRENT &amp; ACCRUED ASSETS</b>				
Cash & Temporary Investments	\$ 36,978	\$ 42,809	\$ (5,832)	-14%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	12,099	15,541	(3,442)	-22%
Accounts Receivable - Other	6,995	6,243	752	12%
Accrued Unbilled Revenue	14,178	13,975	204	1%
Inventory	9,597	9,565	32	0%
Prepaid Expenses	16,660	16,281	379	2%
Accrued Interest Receivable	220	162	57	35%
Rents Receivable	58	448	(390)	-87%
<b>TOTAL CURRENT &amp; ACCRUED ASSETS</b>	<b>\$ 96,785</b>	<b>\$ 105,024</b>	<b>\$ (8,239)</b>	<b>-8%</b>
<b>RESTRICTED ASSETS &amp; DEFERRED DEBITS</b>				
Restricted Funds	\$ 112,846	\$ 117,901	\$ (5,055)	-4%
Designated Funds	71,173	69,358	1,815	3%
Pension Deferred Outflows	16,755	16,755	-	0%
Power Cost Adjustments - Under-Recovered	-	578	(578)	-100%
Mid-Basin Regulatory Asset	3,335	3,265	70	2%
Other Deferred Debits	3,574	3,574	-	0%
<b>TOTAL RESTRICTED ASSETS &amp; DEFERRED DEBITS</b>	<b>\$ 207,683</b>	<b>\$ 211,431</b>	<b>\$ (3,748)</b>	<b>-2%</b>
<b>TOTAL ASSETS</b>	<b>\$ 1,290,441</b>	<b>\$ 1,289,916</b>	<b>\$ 526</b>	<b>0%</b>
<b>LIABILITIES &amp; NET POSITION</b>				
<b>BONDS PAYABLE</b>				
Long-Term Debt	\$ 474,936	\$ 474,928	\$ 9	0%
Unamortized Bond Discount/Premium	26,805	27,053	(248)	-1%
<b>TOTAL BONDS PAYABLE</b>	<b>\$ 501,741</b>	<b>\$ 501,981</b>	<b>\$ (240)</b>	<b>0%</b>
<b>CURRENT &amp; ACCRUED LIABILITIES</b>				
Accounts Payable	\$ 7,310	\$ 7,303	\$ 7	0%
Accrued Purchased Power	6,487	12,013	(5,526)	-46%
Commercial Paper Payable	-	-	-	0%
Note Purchase Payable	-	-	-	0%
Customer Deposits	13,220	13,097	123	1%
Accrued Payroll & Benefits (Including Compensated Absences)	4,029	4,178	(149)	-4%
Interest Accrued on Long Term Debt	4,678	3,033	1,645	54%
Current Portion of Long Term Debt	8,045	8,045	-	0%
Other Payables	2,645	4,318	(1,673)	-39%
<b>TOTAL CURRENT &amp; ACCRUED LIABILITIES</b>	<b>\$ 46,415</b>	<b>\$ 51,988</b>	<b>\$ (5,573)</b>	<b>-11%</b>
<b>NONCURRENT LIABILITIES &amp; DEFERRED CREDITS</b>				
Accumulated Provision for Pension	\$ 29,068	\$ 29,068	\$ -	0%
Power Cost Adjustments - Over-Recovered	6,545	5,018	1,527	30%
Other Deferred Credits	23,503	25,303	(1,801)	-7%
<b>TOTAL NONCURRENT LIABILITIES &amp; DEFERRED CREDITS</b>	<b>\$ 59,115</b>	<b>\$ 59,389</b>	<b>\$ (274)</b>	<b>0%</b>
<b>TOTAL LIABILITIES</b>	<b>\$ 607,271</b>	<b>\$ 613,358</b>	<b>\$ (6,087)</b>	<b>-1%</b>
<b>NET POSITION</b>				
Reserve for Restricted Assets	\$ 102,905	\$ 100,831	\$ 2,074	2%
Reserve for Intergovernmental	9,963	10,233	(270)	-3%
Unrestricted Assets	301,941	297,947	3,994	1%
Contributed Capital	268,361	267,546	815	0%
<b>TOTAL NET POSITION</b>	<b>\$ 683,171</b>	<b>\$ 676,558</b>	<b>\$ 6,613</b>	<b>1%</b>
<b>TOTAL LIABILITIES &amp; NET POSITION</b>	<b>\$ 1,290,441</b>	<b>\$ 1,289,916</b>	<b>\$ 526</b>	<b>0%</b>

NEW BRAUNFELS UTILITIES  
Statement of Revenues & Expenses  
For the Period Ending March 31, 2024  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>VOLUME/RATES</b>								
Electric Sales kWh	119,332	148,046	(28,714)	-19%	1,151,409	1,284,010	(132,601)	-10%
Electric Sales Rate Per kWh	\$ 0.0993	\$ 0.1024	\$(0.0031)	-3%	\$ 0.1169	\$ 0.1001	\$ 0.0168	17%
Purchased kWh	152,226	143,891	8,336	6%	1,213,992	1,293,873	(79,881)	-6%
Purchased Rate per kWh	\$ 0.0387	\$ 0.0790	\$(0.0403)	-51%	\$ 0.0787	\$ 0.0708	\$ 0.0078	11%
Gallons Sold	293,796	292,918	878	0%	2,970,529	2,924,265	46,264	2%
Rate per 1,000 Gallons Sold	\$ 9.40	\$ 10.24	\$(0.83)	-8%	\$ 8.98	\$ 9.49	\$(0.51)	-5%
<b>OPERATING REVENUES</b>								
<b>SERVICE REVENUE</b>								
Electric Service	\$ 11,851	\$ 15,160	\$(3,309)	-22%	\$ 134,610	\$ 128,508	\$ 6,102	5%
Water Service	2,763	2,999	(236)	-8%	26,690	27,759	(1,069)	-4%
Wastewater Service	2,944	3,185	(241)	-8%	23,220	25,789	(2,569)	-10%
<b>TOTAL SERVICE REVENUE</b>	<b>\$ 17,558</b>	<b>\$ 21,344</b>	<b>\$(3,786)</b>	<b>-18%</b>	<b>\$ 184,520</b>	<b>\$ 182,057</b>	<b>\$ 2,463</b>	<b>1%</b>
<b>OTHER OPERATING REVENUE</b>								
Electric Other	\$ 113	\$ 100	\$ 13	13%	\$ 997	\$ 800	\$ 197	25%
Water Other	68	42	26	62%	521	333	188	56%
Wastewater Other	27	18	9	50%	230	140	90	64%
Transmission System Revenue	229	217	12	6%	1,832	1,735	97	6%
Electric Pole Attachments	38	29	9	31%	290	233	57	24%
Water Tower Antenna Lease	21	15	6	40%	167	117	50	43%
<b>TOTAL OTHER OPERATING REVENUE</b>	<b>\$ 496</b>	<b>\$ 420</b>	<b>\$ 76</b>	<b>18%</b>	<b>\$ 4,037</b>	<b>\$ 3,358</b>	<b>\$ 679</b>	<b>20%</b>
<b>TOTAL OPERATING REVENUE</b>	<b>\$ 18,054</b>	<b>\$ 21,763</b>	<b>\$(3,709)</b>	<b>-17%</b>	<b>\$ 188,557</b>	<b>\$ 185,415</b>	<b>\$ 3,142</b>	<b>2%</b>
<b>OPERATING EXPENSES</b>								
<b>ELECTRIC</b>								
Purchased Power	\$ 5,892	\$ 11,370	\$(5,478)	-48%	\$ 95,496	\$ 91,661	\$ 3,835	4%
Electric O&M Expenses	556	775	(219)	-28%	4,374	6,683	(2,309)	-35%
Electric Depreciation & Amortization	1,112	1,215	(103)	-8%	8,745	9,721	(976)	-10%
Electric Support Services Allocated Operating Expenses	928	898	30	3%	6,445	7,794	(1,349)	-17%
<b>TOTAL ELECTRIC OPERATING EXPENSE</b>	<b>\$ 8,488</b>	<b>\$ 14,258</b>	<b>\$(5,770)</b>	<b>-40%</b>	<b>\$ 115,060</b>	<b>\$ 115,859</b>	<b>\$(799)</b>	<b>-1%</b>
<b>WATER</b>								
Purchased Water	\$ 937	\$ 1,032	\$(95)	-9%	\$ 8,050	\$ 8,257	\$(207)	-3%
Water O&M Expenses	633	819	(186)	-23%	5,092	6,869	(1,777)	-26%
Water Depreciation & Amortization	940	1,032	(92)	-9%	7,401	8,256	(855)	-10%
Water Support Services Allocated Operating Expenses	959	954	5	1%	6,908	8,264	(1,356)	-16%
<b>TOTAL WATER OPERATING EXPENSE</b>	<b>\$ 3,469</b>	<b>\$ 3,837</b>	<b>\$(368)</b>	<b>-10%</b>	<b>\$ 27,451</b>	<b>\$ 31,646</b>	<b>\$(4,195)</b>	<b>-13%</b>
<b>WASTEWATER</b>								
Wastewater O&M Expenses	\$ 637	\$ 716	\$(79)	-11%	\$ 4,998	\$ 5,974	\$(976)	-16%
Wastewater Depreciation & Amortization	1,170	1,306	(136)	-10%	9,218	10,451	(1,233)	-12%
Wastewater Support Services Allocated Operating Expenses	643	650	(7)	-1%	4,784	5,620	(836)	-15%
<b>TOTAL WASTEWATER OPERATING EXPENSE</b>	<b>\$ 2,450</b>	<b>\$ 2,672</b>	<b>\$(222)</b>	<b>-8%</b>	<b>\$ 19,000</b>	<b>\$ 22,045</b>	<b>\$(3,045)</b>	<b>-14%</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 14,406</b>	<b>\$ 20,768</b>	<b>\$(6,362)</b>	<b>-31%</b>	<b>\$ 161,511</b>	<b>\$ 169,550</b>	<b>\$(8,039)</b>	<b>-5%</b>
<b>NET OPERATING INCOME</b>								
ELECTRIC	\$ 3,743	\$ 1,247	\$ 2,496	*	\$ 22,670	\$ 15,417	\$ 7,253	47%
WATER	(617)	(782)	165	-21%	(73)	(3,437)	3,364	-98%
WASTEWATER	521	530	(9)	-2%	4,450	3,884	566	15%
<b>TOTAL NET OPERATING INCOME</b>	<b>\$ 3,647</b>	<b>\$ 995</b>	<b>\$ 2,652</b>	<b>*</b>	<b>\$ 27,047</b>	<b>\$ 15,864</b>	<b>\$ 11,183</b>	<b>70%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 1,402	\$ 431	\$ 971	*	\$ 6,235	\$ 3,448	\$ 2,787	81%
Intergovernmental Expense	(944)	(989)	45	-5%	(7,545)	(7,911)	366	-5%
Interest and Amortization Expense	(1,405)	(1,376)	(29)	2%	(11,471)	(11,009)	(462)	4%
Other	(108)	178	(286)	*	3,457	1,421	2,036	*
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (1,055)</b>	<b>\$ (1,756)</b>	<b>\$ 701</b>	<b>-40%</b>	<b>\$ (9,325)</b>	<b>\$ (14,051)</b>	<b>\$ 4,726</b>	<b>34%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 2,592</b>	<b>\$ (762)</b>	<b>\$ 3,354</b>	<b>*</b>	<b>\$ 17,722</b>	<b>\$ 1,813</b>	<b>\$ 15,909</b>	<b>*</b>
<b>CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 2,574	\$ 1,399	\$ 1,175	84%	\$ 15,020	\$ 11,194	\$ 3,826	34%
Services	631	266	365	*	3,376	2,131	1,245	58%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	531	(531)	-100%
<b>TOTAL CAPITAL CONTRIBUTIONS</b>	<b>\$ 3,205</b>	<b>\$ 1,731</b>	<b>\$ 1,474</b>	<b>85%</b>	<b>\$ 18,397</b>	<b>\$ 13,856</b>	<b>\$ 4,541</b>	<b>33%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 5,797</b>	<b>\$ 970</b>	<b>\$ 4,827</b>	<b>*</b>	<b>\$ 36,119</b>	<b>\$ 15,669</b>	<b>\$ 20,450</b>	<b>*</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
ELECTRIC LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending March 31, 2024  
Amounts Shown in Thousands

Item 2.

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>ELECTRIC OPERATING REVENUES</b>								
<b>ELECTRIC SERVICE REVENUE</b>								
Electric Service	\$ 11,851	\$ 15,160	\$ (3,309)	-22%	\$ 134,610	\$ 128,508	\$ 6,102	5%
<b>TOTAL ELECTRIC SERVICE REVENUE</b>	<b>\$ 11,851</b>	<b>\$ 15,160</b>	<b>\$ (3,309)</b>	<b>-22%</b>	<b>\$ 134,610</b>	<b>\$ 128,508</b>	<b>\$ 6,102</b>	<b>5%</b>
<b>OTHER ELECTRIC OPERATING REVENUE</b>								
Electric Other	\$ 113	\$ 100	\$ 13	13%	\$ 997	\$ 800	\$ 197	25%
Transmission System Revenue	229	217	12	6%	1,832	1,735	97	6%
Electric Pole Attachments	38	29	9	31%	290	233	57	24%
<b>TOTAL OTHER ELECTRIC OPERATING REVENUE</b>	<b>\$ 380</b>	<b>\$ 346</b>	<b>\$ 34</b>	<b>10%</b>	<b>\$ 3,119</b>	<b>\$ 2,768</b>	<b>\$ 351</b>	<b>13%</b>
<b>TOTAL ELECTRIC OPERATING REVENUE</b>	<b>\$ 12,231</b>	<b>\$ 15,505</b>	<b>\$ (3,274)</b>	<b>-21%</b>	<b>\$ 137,729</b>	<b>\$ 131,276</b>	<b>\$ 6,453</b>	<b>5%</b>
<b>ELECTRIC OPERATING EXPENSES</b>								
Purchased Power & Other Power Supply	\$ 5,892	\$ 11,370	\$ (5,478)	-48%	\$ 95,496	\$ 91,661	\$ 3,835	4%
Transmission & Distribution	544	725	(181)	-25%	3,987	6,264	(2,277)	-36%
Customer Service	(5)	35	(40)	*	203	281	(78)	-28%
Administrative & General	16	15	1	7%	184	138	46	33%
Depreciation & Amortization	1,112	1,215	(103)	-8%	8,745	9,721	(976)	-10%
Support Services Allocated Operating Expenses	928	898	30	3%	6,445	7,794	(1,349)	-17%
<b>TOTAL ELECTRIC OPERATING EXPENSE</b>	<b>\$ 8,488</b>	<b>\$ 14,258</b>	<b>\$ (5,770)</b>	<b>-40%</b>	<b>\$ 115,060</b>	<b>\$ 115,859</b>	<b>\$ (799)</b>	<b>-1%</b>
<b>ELECTRIC NET OPERATING INCOME</b>	<b>\$ 3,743</b>	<b>\$ 1,247</b>	<b>\$ 2,496</b>	<b>*</b>	<b>\$ 22,670</b>	<b>\$ 15,417</b>	<b>\$ 7,253</b>	<b>47%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 879	\$ 183	\$ 696	*	\$ 2,933	\$ 1,466	\$ 1,467	*
Intergovernmental Expense	(752)	(799)	47	-6%	(6,007)	(6,395)	388	-6%
Interest and Amortization Expense	(556)	(246)	(310)	*	(2,903)	(1,971)	(932)	47%
Other	(46)	90	(136)	*	1,067	721	346	48%
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (474)</b>	<b>\$ (772)</b>	<b>\$ 298</b>	<b>39%</b>	<b>\$ (4,909)</b>	<b>\$ (6,179)</b>	<b>\$ 1,270</b>	<b>21%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 3,269</b>	<b>\$ 474</b>	<b>\$ 2,795</b>	<b>*</b>	<b>\$ 17,761</b>	<b>\$ 9,238</b>	<b>\$ 8,523</b>	<b>92%</b>
<b>ELECTRIC CAPITAL CONTRIBUTIONS</b>								
Services	\$ 455	\$ 216	\$ 239	*	\$ 2,412	\$ 1,726	\$ 686	40%
<b>TOTAL ELECTRIC CAPITAL CONTRIBUTIONS</b>	<b>\$ 455</b>	<b>\$ 216</b>	<b>\$ 239</b>	<b>*</b>	<b>\$ 2,412</b>	<b>\$ 1,726</b>	<b>\$ 686</b>	<b>40%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 3,724</b>	<b>\$ 690</b>	<b>\$ 3,034</b>	<b>*</b>	<b>\$ 20,173</b>	<b>\$ 10,964</b>	<b>\$ 9,209</b>	<b>84%</b>

\*Denotes variance greater than 100%



NEW BRAUNFELS UTILITIES  
WATER LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending March 31, 2024  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>WATER OPERATING REVENUES</b>								
<b>WATER SERVICE REVENUE</b>								
Water Service	\$ 2,763	\$ 2,999	\$ (236)	-8%	\$ 26,690	\$ 27,759	\$ (1,069)	-4%
<b>TOTAL WATER SERVICE REVENUE</b>	<b>\$ 2,763</b>	<b>\$ 2,999</b>	<b>\$ (236)</b>	<b>-8%</b>	<b>\$ 26,690</b>	<b>\$ 27,759</b>	<b>\$ (1,069)</b>	<b>-4%</b>
<b>OTHER WATER OPERATING REVENUE</b>								
Water Other	\$ 68	\$ 42	\$ 26	62%	\$ 521	\$ 333	\$ 188	56%
Water Tower Antenna Lease	21	15	6	40%	167	117	50	43%
<b>TOTAL OTHER WATER OPERATING REVENUE</b>	<b>\$ 89</b>	<b>\$ 56</b>	<b>\$ 33</b>	<b>59%</b>	<b>\$ 688</b>	<b>\$ 450</b>	<b>\$ 238</b>	<b>53%</b>
<b>TOTAL WATER OPERATING REVENUE</b>	<b>\$ 2,852</b>	<b>\$ 3,055</b>	<b>\$ (203)</b>	<b>-7%</b>	<b>\$ 27,378</b>	<b>\$ 28,209</b>	<b>\$ (831)</b>	<b>-3%</b>
<b>WATER OPERATING EXPENSES</b>								
Purchased Water	\$ 937	\$ 1,032	\$ (95)	-9%	\$ 8,050	\$ 8,257	\$ (207)	-3%
Supply Source	5	9	(4)	-44%	71	75	(4)	-5%
Transmission & Distribution	238	289	(51)	-18%	1,710	2,523	(813)	-32%
Pumping	165	235	(70)	-30%	1,555	1,938	(383)	-20%
Water Treatment	170	214	(44)	-21%	1,395	1,834	(439)	-24%
Customer Service	(1)	9	(10)	*	54	68	(14)	-21%
Administrative & General	56	63	(7)	-11%	308	430	(122)	-28%
Depreciation & Amortization	940	1,032	(92)	-9%	7,401	8,256	(855)	-10%
Support Services Allocated Operating Expenses	959	954	5	1%	6,908	8,264	(1,356)	-16%
<b>TOTAL WATER OPERATING EXPENSE</b>	<b>\$ 3,469</b>	<b>\$ 3,837</b>	<b>\$ (368)</b>	<b>-10%</b>	<b>\$ 27,452</b>	<b>\$ 31,645</b>	<b>\$ (4,193)</b>	<b>-13%</b>
<b>WATER NET OPERATING INCOME</b>	<b>\$ (617)</b>	<b>\$ (782)</b>	<b>\$ 165</b>	<b>-21%</b>	<b>\$ (73)</b>	<b>\$ (3,436)</b>	<b>\$ 3,363</b>	<b>-98%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 254	\$ 120	\$ 134	*	\$ 1,601	\$ 961	\$ 640	67%
Intergovernmental Expense	(93)	(90)	(3)	3%	(745)	(720)	(25)	3%
Interest and Amortization Expense	(482)	(578)	96	-17%	(4,678)	(4,620)	(58)	1%
Other	(14)	73	(87)	*	1,370	587	783	*
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (336)</b>	<b>\$ (474)</b>	<b>\$ 138</b>	<b>-29%</b>	<b>\$ (2,453)</b>	<b>\$ (3,792)</b>	<b>\$ 1,339</b>	<b>-35%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ (952)</b>	<b>\$ (1,256)</b>	<b>\$ 304</b>	<b>-24%</b>	<b>\$ (2,526)</b>	<b>\$ (7,228)</b>	<b>\$ 4,702</b>	<b>-65%</b>
<b>WATER CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 1,769	\$ 1,016	\$ 753	74%	\$ 10,160	\$ 8,130	\$ 2,030	25%
Services	176	51	125	*	964	405	559	*
<b>TOTAL WATER CAPITAL CONTRIBUTIONS</b>	<b>\$ 1,945</b>	<b>\$ 1,067</b>	<b>\$ 878</b>	<b>82%</b>	<b>\$ 11,124</b>	<b>\$ 8,535</b>	<b>\$ 2,589</b>	<b>30%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 994</b>	<b>\$ (189)</b>	<b>\$ 1,183</b>	<b>*</b>	<b>\$ 8,598</b>	<b>\$ 1,307</b>	<b>\$ 7,291</b>	<b>*</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
WASTEWATER LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending March 31, 2024  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>WASTEWATER OPERATING REVENUES</b>								
<b>WASTEWATER SERVICE REVENUE</b>								
Wastewater Service	\$ 2,944	\$ 3,185	\$ (241)	-8%	\$ 23,220	\$ 25,789	\$ (2,569)	-10%
<b>TOTAL WASTEWATER SERVICE REVENUE</b>	<b>\$ 2,944</b>	<b>\$ 3,185</b>	<b>\$ (241)</b>	<b>-8%</b>	<b>\$ 23,220</b>	<b>\$ 25,789</b>	<b>\$ (2,569)</b>	<b>-10%</b>
<b>OTHER WASTEWATER OPERATING REVENUE</b>								
Wastewater Other	\$ 27	\$ 18	\$ 9	50%	\$ 230	\$ 140	\$ 90	64%
<b>TOTAL OTHER WASTEWATER OPERATING REVENUE</b>	<b>\$ 27</b>	<b>\$ 18</b>	<b>\$ 9</b>	<b>50%</b>	<b>\$ 230</b>	<b>\$ 140</b>	<b>\$ 90</b>	<b>64%</b>
<b>TOTAL WASTEWATER OPERATING REVENUE</b>	<b>\$ 2,971</b>	<b>\$ 3,202</b>	<b>\$ (231)</b>	<b>-7%</b>	<b>\$ 23,450</b>	<b>\$ 25,929</b>	<b>\$ (2,479)</b>	<b>-10%</b>
<b>WASTEWATER OPERATING EXPENSES</b>								
Transmission & Distribution	\$ -	\$ -	\$ -	100%	\$ 1	\$ -	\$ 1	100%
Wastewater Operations & Maintenance	625	668	(43)	-6%	4,737	5,619	(882)	-16%
Customer Service	(1)	9	(10)	*	71	72	(1)	-1%
Administrative & General	13	39	(26)	-67%	188	283	(95)	-34%
Depreciation & Amortization	1,170	1,306	(136)	-10%	9,218	10,451	(1,233)	-12%
Support Services Allocated Operating Expenses	643	650	(7)	-1%	4,784	5,620	(836)	-15%
<b>TOTAL WASTERWATER OPERATING EXPENSE</b>	<b>\$ 2,450</b>	<b>\$ 2,672</b>	<b>\$ (222)</b>	<b>-8%</b>	<b>\$ 18,999</b>	<b>\$ 22,045</b>	<b>\$ (3,046)</b>	<b>-14%</b>
<b>WASTEWATER NET OPERATING INCOME</b>	<b>\$ 521</b>	<b>\$ 530</b>	<b>\$ (9)</b>	<b>-2%</b>	<b>\$ 4,450</b>	<b>\$ 3,884</b>	<b>\$ 566</b>	<b>15%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 269	\$ 128	\$ 141	*	\$ 1,701	\$ 1,021	\$ 680	67%
Intergovernmental Expense	(99)	(100)	1	-1%	(793)	(796)	3	0%
Interest and Amortization Expense	(367)	(552)	185	-34%	(3,890)	(4,418)	528	-12%
Other	(48)	14	(62)	*	1,020	112	908	*
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (245)</b>	<b>\$ (510)</b>	<b>\$ 265</b>	<b>-52%</b>	<b>\$ (1,962)</b>	<b>\$ (4,081)</b>	<b>\$ 2,119</b>	<b>-52%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 275</b>	<b>\$ 20</b>	<b>\$ 255</b>	<b>*</b>	<b>\$ 2,488</b>	<b>\$ (197)</b>	<b>\$ 2,685</b>	<b>*</b>
<b>WASTEWATER CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 805	\$ 383	\$ 422	*	\$ 4,860	\$ 3,065	\$ 1,795	59%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	531	(531)	-100%
<b>TOTAL WASTEWATER CAPITAL CONTRIBUTIONS</b>	<b>\$ 804</b>	<b>\$ 449</b>	<b>\$ 355</b>	<b>79%</b>	<b>\$ 4,860</b>	<b>\$ 3,595</b>	<b>\$ 1,265</b>	<b>35%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 1,079</b>	<b>\$ 469</b>	<b>\$ 610</b>	<b>*</b>	<b>\$ 7,348</b>	<b>\$ 3,398</b>	<b>\$ 3,950</b>	<b>*</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
Statement of Cash Flows  
For the Period Ending March 31, 2024  
Amounts Shown in Thousands

	MTD	YTD
<b>NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 2,592</b>	<b>\$ 17,722</b>
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 3,222	\$ 25,364
Decrease (increase) in accounts receivable	2,486	15,470
Decrease (increase) in inventories	(32)	(3,060)
Decrease (increase) in other assets	4,150	26,828
Increase (decrease) in current liabilities	(4,518)	(53,489)
Increase (decrease) in other liabilities	(274)	(3,186)
<b>Net Cash Flow from Operating Activities</b>	<b>\$ 7,626</b>	<b>\$ 25,649</b>
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (15,735)	\$ (100,468)
Investments	3,240	(43,933)
Rents/Interest Receivable	332	300
<b>Net Cash Flow from Investing Activities</b>	<b>\$ (12,163)</b>	<b>\$ (144,102)</b>
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (1,055)	\$ (9,325)
Increase (decrease) in long-term debt	(240)	104,265
<b>Net Cash Flow from Financing Activities</b>	<b>\$ (1,295)</b>	<b>\$ 94,940</b>
<b>Net Increase (Decrease) in Cash and Cash Equivalents</b>	<b>\$ (5,832)</b>	<b>\$ (23,513)</b>

CAPITAL EQUIPMENT SUMMARY - FY 2024  
YTD for the Period Ending March 31, 2024



Department	Capital Equipment Description	YTD Actual	FY 2024 Budget	Budget Remaining
<b>ELECTRIC</b>				
117	SEA Air Excavation Unit	-	650,000	650,000
117	Altec Pressure Dipper	429,317	400,000	(29,317)
117	Altec AM 60E	-	300,000	300,000
117	Altec 5F Articulating Boom	-	300,000	300,000
117	Altec AM 60E	21,900	85,000	63,100
117	Acc. Demo Trailer	-	120,000	120,000
117	Ford F-550	111,982	-	-
117	Ford F-550	-	11,982	11,982
117	Ford F-550	-	11,982	11,982
117	Ford F-550	-	11,982	11,982
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Locator Unit	-	45,000	45,000
117	Dump Trailer	12,733	15,000	2,267
119	Ford F-550 w/Crane	-	150,437	150,437
119	Ford F-550 Electric	-	61,393	61,393
	<b>TOTAL ELECTRIC</b>	<b>\$ 575,942</b>	<b>\$ 2,894,750</b>	<b>\$ 2,318,816</b>
<b>WATER</b>				
216	Ford F-150	26,995	55,000	28,005
220	Ford F-550 w/Crane	-	150,437	150,437
220	Ford F-150	54,845	55,000	155
	<b>TOTAL WATER</b>	<b>\$ 81,840</b>	<b>\$ 260,437</b>	<b>\$ 178,597</b>
<b>WASTEWATER</b>				
320	Ford F-550 w/Crane	-	150,437	150,437
320	Ford F-150	54,845	55,000	155
320	Small Utility Unit	-	15,000	15,000
	<b>TOTAL WASTEWATER</b>	<b>\$ 54,845</b>	<b>\$ 220,437</b>	<b>\$ 165,592</b>
<b>SHARED WATER/WASTEWATER</b>				
217/317	CAT 313 Excavator	214,865	250,000	35,135
217/317	Ford F-550	388,120	244,534	(143,586)
217/317	International Dump Truck	-	230,000	230,000
217/317	International HST	85,749	175,000	89,251
217/317	SEA Truck Mounted letter	152,947	150,000	(2,947)
217/317	CAT Backhoe w/Ext	158,995	125,000	(33,995)
217/317	Ford F-550	-	122,267	122,267
217/317	Ford F-550	-	122,267	122,267
217/317	Ford F-550	-	122,267	122,267
217/317	International Dump Truck	-	115,000	115,000
217/317	CAT Backhoe	137,855	115,000	(22,855)
217/317	CAT Backhoe	137,855	115,000	(22,855)
217/317	CAT Backhoe	158,995	115,000	(43,995)
217/317	E.H. Waichs Large VE	-	85,000	85,000
217/317	E.H. Waichs Large VE	-	85,000	85,000
217/317	1500' of Bypass Hose	-	85,000	85,000
217/317	CAT Skid Steer	57,985	65,000	7,015
217/317	Ford F-150	54,845	55,000	155
217/317	Scorpion Towable Attenuator	-	35,000	35,000
217/317	Towable Air Compressor	23,444	25,000	1,556
217/317	Tools for F-550	-	15,000	15,000
217/317	DTS Trailer	6,637	10,000	3,363
	<b>TOTAL SHARED WATER/WASTEWATER</b>	<b>\$ 1,698,282</b>	<b>\$ 2,463,335</b>	<b>\$ 765,043</b>
<b>BUSINESS PLANNING</b>				
425	Ford Escape	-	30,000	30,000
425	GPS Unit	-	30,000	30,000
	<b>TOTAL BUSINESS PLANNING</b>	<b>\$ -</b>	<b>\$ 60,000</b>	<b>\$ 60,000</b>
<b>SAFETY</b>				
524	Ford Explorer	54,845	38,000	(16,845)
	<b>TOTAL SAFETY</b>	<b>\$ 54,845</b>	<b>\$ 38,000</b>	<b>\$ (16,845)</b>
<b>PURCHASING</b>				
527	Ford F-350	-	75,500	75,500
	<b>TOTAL PURCHASING</b>	<b>\$ -</b>	<b>\$ 75,500</b>	<b>\$ 75,500</b>
<b>FLEET/FACILITIES</b>				
528	Ford F-550 Fleet Service	-	85,000	85,000
528	Ford F-350	-	85,576	85,576
528	Ford F-150	54,845	55,000	155
528	Ford F-150	54,845	55,000	155
528	Ford F-150	54,845	55,000	155
528	Ford F-150	-	55,000	55,000
528	Ford F-150	-	55,000	55,000
528	Ford Escape	-	30,000	30,000
528	Lawn Mowing Equipment	-	25,000	25,000
528	Other	-	25,000	25,000
528	Pressure washing trailer	-	16,000	16,000
528	Janitorial Equipment	-	15,000	15,000
	<b>TOTAL FLEET/FACILITIES</b>	<b>\$ 184,535</b>	<b>\$ 656,576</b>	<b>\$ 492,041</b>
<b>CONSERVATION AND CUSTOMER SOLUTIONS</b>				
529	Ford Escape Plug-in Hybrid	26,995	40,000	13,005
529	Ford Escape Plug-in Hybrid	26,995	40,000	13,005
	<b>TOTAL CONSERVATION AND CUSTOMER SOLUTIONS</b>	<b>\$ 53,990</b>	<b>\$ 80,000</b>	<b>\$ 26,010</b>
<b>TECHNOLOGY</b>				
531	Server Replacements	646,595	600,000	(46,595)
531	PC Replacements	197,241	400,000	202,759
531	Dell Monitor	-	400,000	400,000
531	Network Equipment Replacements	95,600	200,000	104,400
531	IT to Purchase Unit	-	50,000	50,000
531	Copier and High-end Printer & Plotter Replacements	-	37,500	37,500
531	UPS Replacements	-	10,000	10,000
	<b>TOTAL TECHNOLOGY</b>	<b>\$ 939,486</b>	<b>\$ 1,697,500</b>	<b>\$ 758,014</b>
<b>SYSTEM CONTROL</b>				
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	27,995	30,000	2,005
532	Ford Escape	27,995	30,000	2,005
	<b>TOTAL SYSTEMS CONTROL</b>	<b>\$ 163,930</b>	<b>\$ 180,000</b>	<b>\$ 16,070</b>
	<b>TOTAL CAPITAL EQUIPMENT</b>	<b>\$ 3,787,704</b>	<b>\$ 8,626,543</b>	<b>\$ 4,838,839</b>

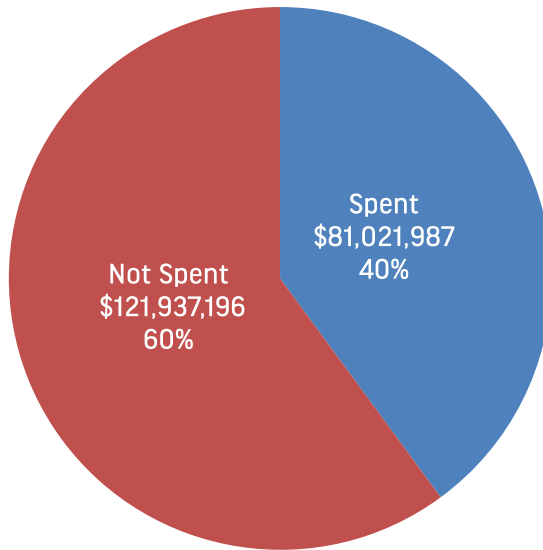
**BUDGETED PRIOR YEAR ITEMS.**

<b>ELECTRIC</b>				
117	Magnum Pintle Trailer (FY23)	50,813	-	(50,813)
	<b>TOTAL ELECTRIC</b>	<b>\$ 50,813</b>	<b>\$ -</b>	<b>\$ (50,813)</b>
<b>WATER</b>				
220	2023 Aluminum Dump Trailer (FY22)	21,080	-	(21,080)
220	2023 Ford F150 4X4 Super crew (FY22)	54,845	-	(54,845)
220	2023 Ford F150 4X4 Super crew (FY22)	-	-	(54,845)
220	2023 Ford Explorer (FY23)	38,994	-	(38,994)
	<b>TOTAL WATER</b>	<b>\$ 169,764</b>	<b>\$ -</b>	<b>\$ (169,764)</b>
<b>SHARED WATER/WASTEWATER</b>				
217/317	2022 CUES Sewer Truck CCTV (FY22)	330,894	-	(330,894)
217/317	2023 Ford F150 4X4 Supercrew (FY22)	54,845	-	(54,845)
	<b>TOTAL SHARED WATER/WASTEWATER</b>	<b>\$ 385,739</b>	<b>\$ -</b>	<b>\$ (385,739)</b>
	<b>TOTAL BUDGETED PRIOR YEAR CAPITAL EQUIPMENT</b>	<b>\$ 606,316</b>	<b>\$ -</b>	<b>\$ (606,316)</b>
<b>UNBUDGETED ITEMS.</b>				
<b>FLEET/FACILITIES</b>				
528	2023 Ford Explorer	38,994	-	(38,994)
528	2023 Ford Explorer	38,994	-	(38,994)
	<b>TOTAL FLEET/FACILITIES</b>	<b>\$ 77,988</b>	<b>\$ -</b>	<b>\$ (77,988)</b>
	<b>TOTAL UNBUDGETED CAPITAL EQUIPMENT</b>	<b>\$ 77,988</b>	<b>\$ -</b>	<b>\$ (77,988)</b>

### FY 2024 Capital Expenditure Summary As of March 31, 2024

66% of Year  
Completed

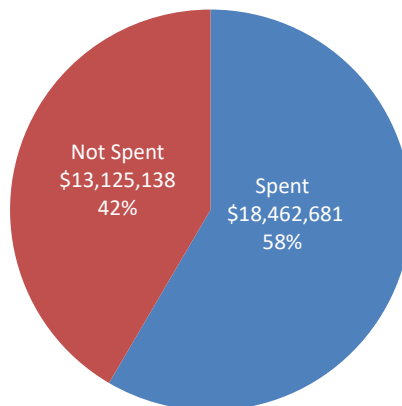
	<u>Spent</u>	<u>Not Spent</u>	<u>Total Budget</u>	<u>% of Total Budget Spent</u>
Electric	\$ 18,462,681	\$ 13,125,138	\$ 31,587,819	58%
Water	33,614,883	38,370,273	71,985,156	47%
Wastewater	12,274,125	40,056,430	52,330,555	23%
Support Services	16,670,297	30,385,356	47,055,653	35%
<b>TOTAL</b>	<b>\$ 81,021,987</b>	<b>\$ 121,937,196</b>	<b>\$ 202,959,183</b>	
	<i>40%</i>	<i>60%</i>	<i>100%</i>	



**Electric Line of Business  
FY 2024 Capital Expenditure Summary  
As of March 31, 2024**

66% of Year Completed

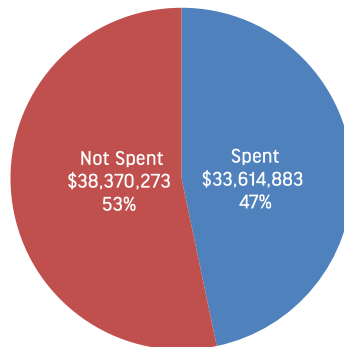
Project	<sup>1</sup> Total Spent YTD	<sup>2</sup> FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	<sup>(1)/(2)</sup> % Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
System Extensions	\$ 5,714,319	\$ 5,582,835	\$ (131,484)	\$ 5,582,835	102%	66%
Distribution Transformers	6,528,843	5,642,698	(886,145)	5,642,698	116%	66%
Electric Meters	1,705,835	3,514,000	1,808,165	3,514,000	49%	66%
Electric Aging Infrastructure	988,941	2,967,536	1,978,595	2,967,536	33%	66%
Electric Technology Upgrades	1,910	149,106	147,196	149,106	1%	80%
Three-Phase Extensions	794,400	1,806,177	1,011,777	9,313,421	44%	90%
Fiber Optic Extensions	639	102,624	101,985	1,086,371	1%	5%
Hueco Springs Substation	568,295	7,301,106	6,732,811	9,939,535	8%	39%
Electric Aging Infrastructure, Substation	222,527	115,672	(106,855)	4,666,606	192%	100%
Freiheit Breaker Additons & Control House	143,792	2,371,748	2,227,956	2,445,650	6%	52%
EC23 FM 482 Feeder	43,276	712,665	669,389	812,622	6%	50%
HE11 Conrads Rd Feeder	119,898	114,026	(5,872)	1,966,183	105%	10%
Transmission Access & Wildlife Protection	247,677	175,117	(72,560)	953,166	141%	100%
Comal T3 Replacement & Feeder C033	169,290	377,427	208,137	3,644,220	45%	45%
Distribution Feeder Breaker Addition & Replacements	-	159,067	159,067	3,113,453	0%	10%
FR24 Kowald Ln. Feeder	49,185	91,221	42,036	880,778	54%	10%
Henne Substation Breaker & Half	7,712	171,040	163,328	2,419,085	5%	23%
CONB Road Widening Adjustments	100,641	233,754	133,113	2,256,995	43%	20%
<b>Total Budgeted Projects</b>	<b>\$ 17,407,181</b>	<b>\$ 31,587,819</b>	<b>\$ 14,180,639</b>	<b>\$ 61,354,259</b>	<b>55%</b>	
<b>Unbudgeted Projects:</b>						
Sheriff's Posse T3 Addition	\$ 20,904	\$ -	\$ (20,904)	\$ 7,622,556	0%	99%
E.C. Mornhinweg T2 & Feeders	50,929	-	(50,929)	4,093,931	0%	85%
Residential OH to UG Conversion	402,663	-	(402,663)	3,776,463	0%	97%
Weltner Rd Feeder 13, Clear Springs	14,927	-	(14,927)	965,027	0%	100%
L023 Loop 337 FM 1863 Extension Phase 2	3,019	-	(3,019)	1,224,681	0%	100%
C014 Kentucky Rd Feeder	93,292	-	(93,292)	601,370	0%	34%
HE23 IH-35 Stolte Feeder	408,401	-	(408,401)	1,564,074	0%	45%
Freiheit Feeder 11, Alves Ln	41,874	-	(41,874)	1,951,344	0%	100%
Kohlenberg Rd Substation	14,486	-	(14,486)	44,780	0%	23%
Industrial Substation PWT Replacement (TXI T1)	5,005	-	(5,005)	1,155,967	0%	100%
<b>Total Unbudgeted Projects</b>	<b>\$ 1,055,500</b>	<b>\$ -</b>	<b>\$ (1,055,500)</b>	<b>\$ 23,000,192</b>		
<b>TOTAL</b>	<b>\$ 18,462,681</b>	<b>\$ 31,587,819</b>	<b>\$ 13,125,138</b>	<b>\$ 84,354,451</b>	<b>58%</b>	



**Water Line of Business  
FY 2024 Capital Expenditure Summary  
As of March 31, 2024**

66% of Year Completed

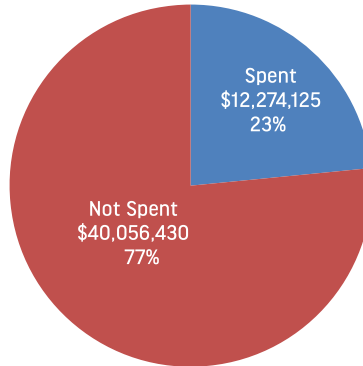
Project	1		2		Project Life Total Budget	(1)/(2) % Spent YTD	% Physical Completion
	Total Spent YTD	FY24 Project Budget	FY24 Budget Remaining				
<b>Budgeted Projects:</b>							
System Extensions	\$ 858,670	\$ 375,703	\$ (482,967)	\$ 375,703	229%	58%	
Water Meters	1,611,370	1,844,670	233,300	1,844,670	87%	45%	
Water Technology Upgrades	-	140,116	140,116	140,116	0%	2%	
Aging System Replacements	1,267,062	2,092,123	825,061	2,092,123	61%	17%	
ASR Feasibility Dev (IF)	123,512	2,069,462	1,945,950	38,120,155	6%	41%	
Wood Meadows Water Line River Crossing	467,668	216,373	(251,295)	3,052,319	216%	28%	
I-35 Water Line (Downtown)	6,802,179	7,963,912	1,161,734	11,468,136	85%	61%	
1.00MG Solms Ground Storage Tank and Flow Control Valve	278	235,473	235,195	4,337,137	0%	6%	
Western Downtown to Morningside PZ Conversion	85,581	308,393	222,812	8,525,525	28%	21%	
FM 306 Pump Station & Discharge Pipeline	1,203,397	1,885,704	682,307	10,821,940	64%	69%	
Conrads EST	1,953,608	5,488,218	3,534,610	6,852,776	36%	16%	
Goodwin Lane Water Main	5,122,825	6,884,157	1,761,332	12,624,155	74%	85%	
Klein Rd Reconstruction Phase 2	386,250	1,126,496	740,246	1,404,382	34%	80%	
Landa Pump Station Phase 2/Well 5	2,973,157	6,242,981	3,269,824	15,931,146	48%	69%	
Trinity Expansion- Treatment Plant	7,014,523	17,173,917	10,159,394	27,357,602	41%	50%	
Trinity Expansion- Well Field	1,498,998	7,057,207	5,558,209	10,222,796	21%	30%	
FM 1044 EST	29,644	1,373,451	1,343,807	13,187,743	2%	2%	
GBRA Interconnect Metering Station	843,993	701,780	(142,213)	996,909	120%	52%	
Garden Street Bridge Water Line	330,075	390,851	60,776	587,926	84%	58%	
Goodwin/Conrads Water Adjustments	1,043	403,683	402,640	434,276	0%	4%	
Mision/Westpointe Connection Waterlines	64,794	5,539,877	5,475,083	6,495,952	1%	11%	
Senate Bill 3 EPP Generators	113,517	1,301,224	1,187,707	1,328,362	9%	4%	
Tank Decommission	412,501	865,803	453,302	954,937	48%	50%	
Water Tank Rehabilitations	23,901	303,582	279,681	303,582	8%	10%	
<b>Total Budgeted Projects</b>	<b>\$ 33,188,545</b>	<b>\$ 71,985,156</b>	<b>\$ 38,796,611</b>	<b>\$ 179,460,368</b>	<b>46%</b>		
<b>Unbudgeted Projects:</b>							
Castell Ave Rehabilitation (CNB)	\$ -	\$ -	\$ -	\$ 26,681,290		100%	
Infrastructure Replacement Package 1-W	234	-	(234)	2,762		10%	
30/24-inch SWTP Discharge Line (Downtown)	17,449	-	(17,449)	21,587,112		100%	
Well 4 to Grandview Pump Station & Discharge Line Upgrades	188,301	-	(188,301)	9,460,061		100%	
Weltner Rd Ground Strg Tank & Pump Station-Ph 1	145,719	-	(145,719)	24,173,897		100%	
24-inch McQueeney Road Parallel Water Line (Downtown)	74,635	-	(74,635)	9,659,699			
<b>Total Unbudgeted Projects</b>	<b>\$ 426,338</b>	<b>\$ -</b>	<b>\$ (426,338)</b>	<b>\$ 91,564,820</b>			
<b>TOTAL</b>	<b>\$ 33,614,883</b>	<b>\$ 71,985,156</b>	<b>\$ 38,370,273</b>	<b>\$ 271,025,188</b>	<b>47%</b>		



**Wastewater Line of Business  
FY 2024 Capital Expenditure Summary  
As of March 31, 2024**

66% of Year Completed

Project	<sup>1</sup> Total Spent YTD	<sup>2</sup> FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	<sup>(1)/(2)</sup> % Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
System Extensions	\$ 339,520	\$ 249,038	\$ (90,482)	\$ 249,038	136%	55%
Aging System Replacements	781,988	2,046,224	1,264,236	2,046,224	38%	11%
Wastewater Technology Upgrades	-	145,563	145,563	145,563	0%	1%
Manhole Rehabilitation	230,005	789,673	559,668	789,673	29%	37%
South Kuehler Interceptor Phase 1	54,581	480,284	425,703	5,426,066	11%	16%
Gruene Rd Sewer Main Rehabilitation/Relocation	-	107,441	107,441	2,896,802	0%	6%
McKenzie WRF Expansion	9,190,890	20,026,694	10,835,804	72,312,120	46%	16%
Solms Lift Station Expansion	484,824	1,076,397	591,573	1,705,332	45%	23%
I-35 Interceptor Upgrade	310,200	4,090,487	3,780,287	14,155,678	8%	7%
Kuehler WRF Access Road-Courtyard Dr	28,128	3,265,043	3,236,915	3,739,824	1%	14%
McKenzie Interceptor Upgrade	417,252	2,291,295	1,874,043	50,706,156	18%	3%
Kuehler WRF Rehabilitation	33,161	12,890,556	12,857,395	44,788,333	0%	3%
Sewer Infrastructure Replacement Package 2	178,134	739,180	561,046	4,957,511	24%	9%
Saengerhalle North Interceptor	40,570	215,817	175,247	5,888,532	19%	13%
Goodwin/Conrads Adjustments (CNB)-WW	27,434	406,908	379,474	1,114,676	7%	6%
Gruene WRF Spoils & Materials Yard	70,404	447,632	377,228	1,061,999	16%	100%
North Kuehler Manhole Rehabilitation-Segment 3	-	494,109	494,109	1,016,271	0%	100%
Kuehler WRF Rehabilitation-Clarifier Replacement	175,560	2,568,214	2,392,654	2,758,806	7%	8%
<b>Total Budgeted Projects</b>	<b>\$ 12,362,649</b>	<b>\$ 52,330,555</b>	<b>\$ 39,967,906</b>	<b>\$ 215,758,603</b>	<b>24%</b>	
<b>Unbudgeted Projects:</b>						
Castell Ave Rehabilitation (CNB)	\$ -	\$ -	\$ -	\$ 5,585,413		100%
North Kuehler 42" Interceptor Upgrade	2,217	-	(2,217)	15,524,017		100%
North Kuehler 30 and 33-inch Interceptor Upgrade	40	-	(40)	26,748,112		100%
Gruene Rd Sewer Main Odor Control	66,478	-	(66,478)	239,659		16%
Infrastructure Replacement Package 1-WW	9,524	-	(9,524)	123,819		20%
Rio Lift Station Expansion	55,136	-	(55,136)	3,576,417		100%
Schmidt I-35 N Sewer Main Replacement	(236,923)	-	236,923	376,069		97%
Saengerhalle Lift Station Expansion & Force Main	15,003	-	(15,003)	4,892,290		100%
<b>Total Unbudgeted Projects</b>	<b>\$ (88,524)</b>	<b>\$ -</b>	<b>\$ 88,524</b>	<b>\$ 57,065,796</b>		
<b>TOTAL</b>	<b>\$ 12,274,125</b>	<b>\$ 52,330,555</b>	<b>\$ 40,056,430</b>	<b>\$ 272,824,400</b>	<b>23%</b>	

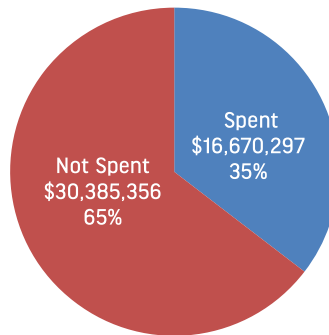




Support Services Line of Business  
 FY 2024 Capital Expenditure Summary  
 As of March 31, 2024

66% of Year Completed

Project	<sup>1</sup> Total Spent YTD	<sup>2</sup> FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	<sup>(1)+(2)</sup> % Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
Headwaters at the Comal	\$ 2,709,452	\$ 4,500,000	\$ 1,790,548	\$ 25,670,681	60%	60%
Cyber Security System	78,500	325,000	246,500	325,000	24%	15%
Software Replacement and Enhancements	-	130,000	130,000	130,000	0%	10%
NBU Headquarters, Maint & Support Facility	11,954,023	25,000,000	13,045,977	134,505,960	48%	10%
Laserfiche Development	-	300,000	300,000	570,867	0%	20%
Backup Operations Center	63,748	1,280,000	1,216,252	8,452,700	5%	20%
Upgrade or Replace all NBU Radios	-	200,000	200,000	200,000	0%	10%
Kerlick Tower Modifications	-	450,000	450,000	457,597	0%	20%
Data Strategy Upgrades - BDAP	642,955	1,185,653	542,698	1,185,653	54%	33%
System Technology Upgrades - Monitoring	70,241	400,000	329,759	400,000	18%	0%
Fiber Network Distribution Expansion	-	650,000	650,000	1,428,700	0%	10%
Fleet AVL	-	75,000	75,000	75,000	0%	0%
Data Strategy Upgrades - GIS Upgrades	-	200,000	200,000	1,900,000	0%	15%
Pioneer Upgrade	-	171,000	171,000	171,000	0%	5%
Smartsheet Control Center	-	73,000	73,000	73,000	0%	0%
Tele-Communications Enhancements	6,500	102,000	95,500	181,754	6%	40%
Water/Wastewater SCADA Aging Infrastructure	-	1,000,000	1,000,000	1,000,000	0%	0%
Water SCADA Replacement & Integration	307,636	2,000,000	1,692,364	3,413,098	15%	50%
OT Security	-	50,000	50,000	50,000	0%	0%
Customer Bill Pay Portal	7,004	160,000	152,996	230,044	4%	0%
ARCGIS Indoors	-	50,000	50,000	50,000	0%	0%
Loop 337 Substation Control House	-	42,000	42,000	42,000	0%	0%
Replace Control Center Console	196,525	100,000	(96,525)	100,000	197%	0%
Future Facilities Rehab Projects	-	150,000	150,000	1,229,990	0%	0%
Firewall and VPN Replacement	-	120,000	120,000	120,000	0%	0%
Gruene Rd Fence	21,250	32,000	10,750	32,000	66%	0%
CIS Functionality Upgrade	-	1,500,000	1,500,000	1,500,000	0%	0%
Ipads for Cityworks Mobile & mcare	-	125,000	125,000	125,000	0%	30%
Customer Service Kiosk	-	78,000	78,000	78,000	0%	0%
Level 2 EV Chargers	-	72,000	72,000	72,000	0%	0%
Meraki Wifi Replacement	77,304	125,000	47,696	125,000	62%	60%
RTU replacement 4.6,7 Main office	62,800	40,000	(22,800)	40,000	157%	0%
New Braunfels Police Department	400,487	3,585,000	3,184,513	3,645,000	11%	0%
RuggedCom Switch Replacement	-	200,000	200,000	600,000	0%	10%
Sheriff's Posse Control House Recondition	-	35,000	35,000	35,000	0%	0%
Solar Array and Battery Storage	-	50,000	50,000	50,000	0%	0%
Mass Meter Change Out	-	2,000,000	2,000,000	2,000,000	0%	0%
Water Meter Study	-	500,000	500,000	500,000	0%	0%
<b>Total Budgeted Projects</b>	<b>\$ 16,598,426</b>	<b>\$ 47,055,653</b>	<b>\$ 30,457,227</b>	<b>\$ 190,765,042</b>	<b>35%</b>	
<b>Unbudgeted Projects:</b>						
Physical Security Systems	\$ 71,872	\$ -	\$ (71,872)	\$ 71,872		90%
<b>Total</b>	<b>\$ 71,872</b>	<b>\$ -</b>	<b>\$ (71,872)</b>	<b>\$ 71,872</b>		
<b>Total</b>	<b>\$ 16,670,297</b>	<b>\$ 47,055,653</b>	<b>\$ 30,385,356</b>	<b>\$ 190,836,914</b>	<b>35%</b>	



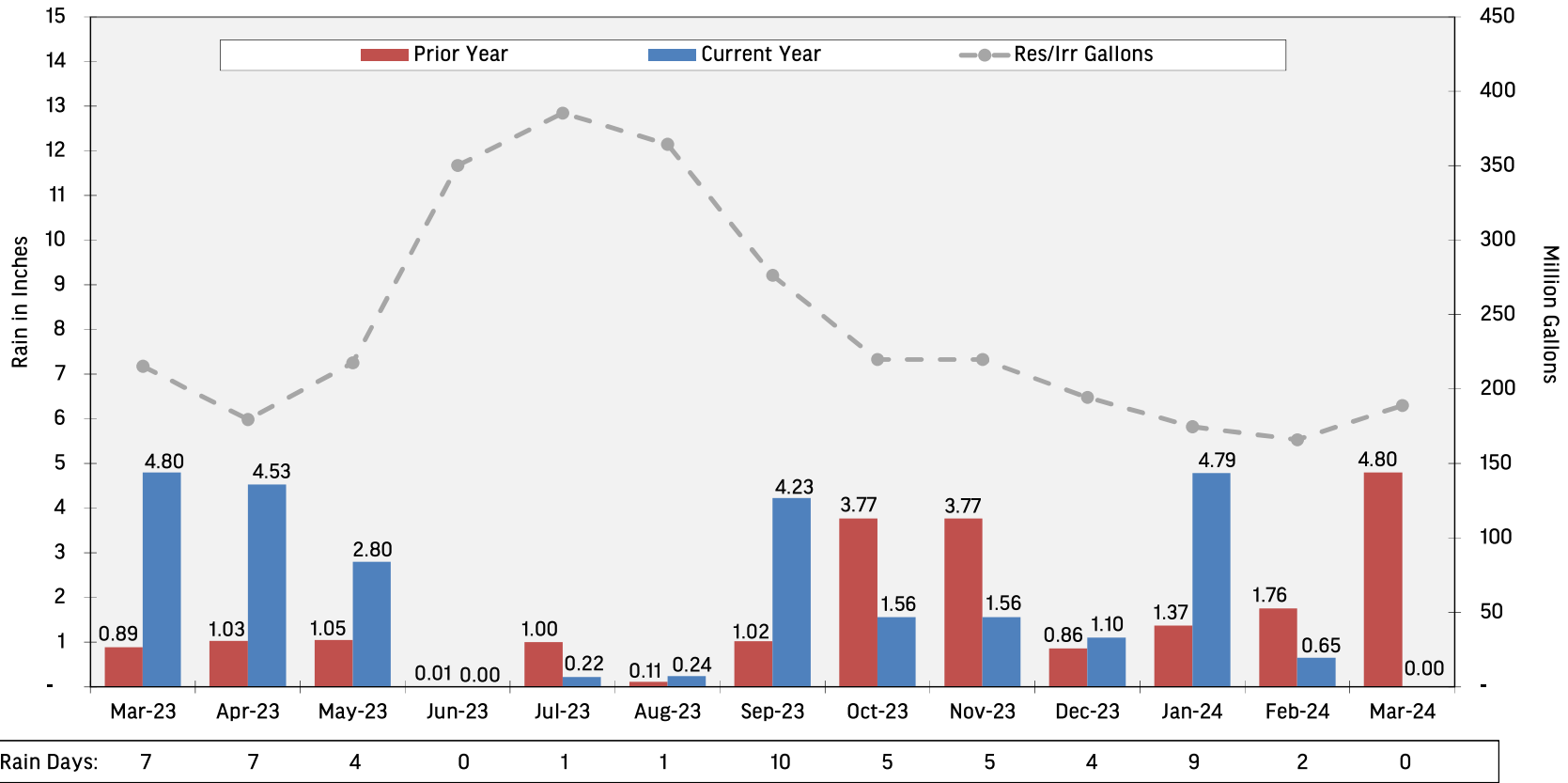
Electric Statistics are provided separately due to competitive matters.

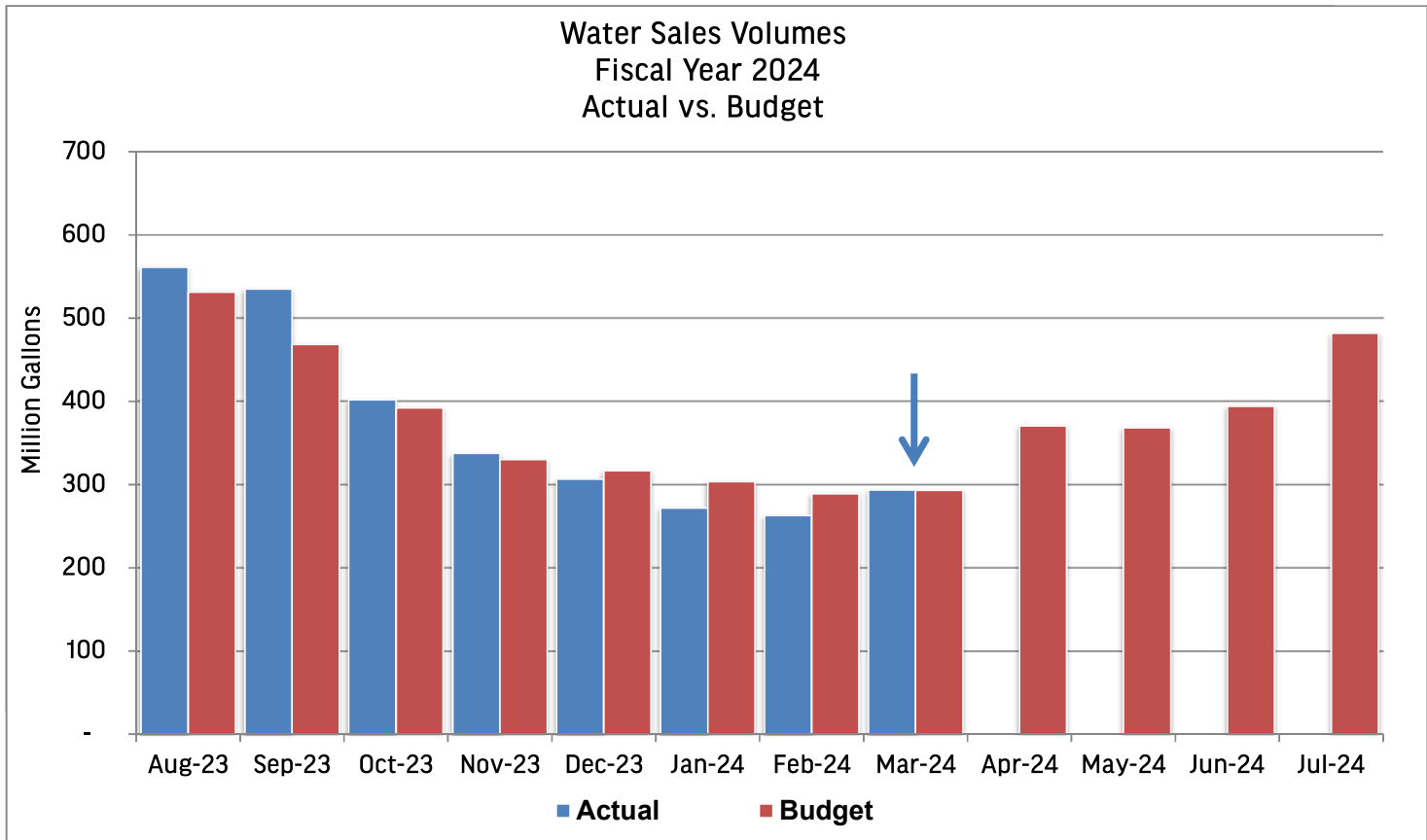
# WATER STATISTICS

**NEW BRAUNFELS UTILITIES  
WATER STATISTICS  
HIGHLIGHTS OVERVIEW**

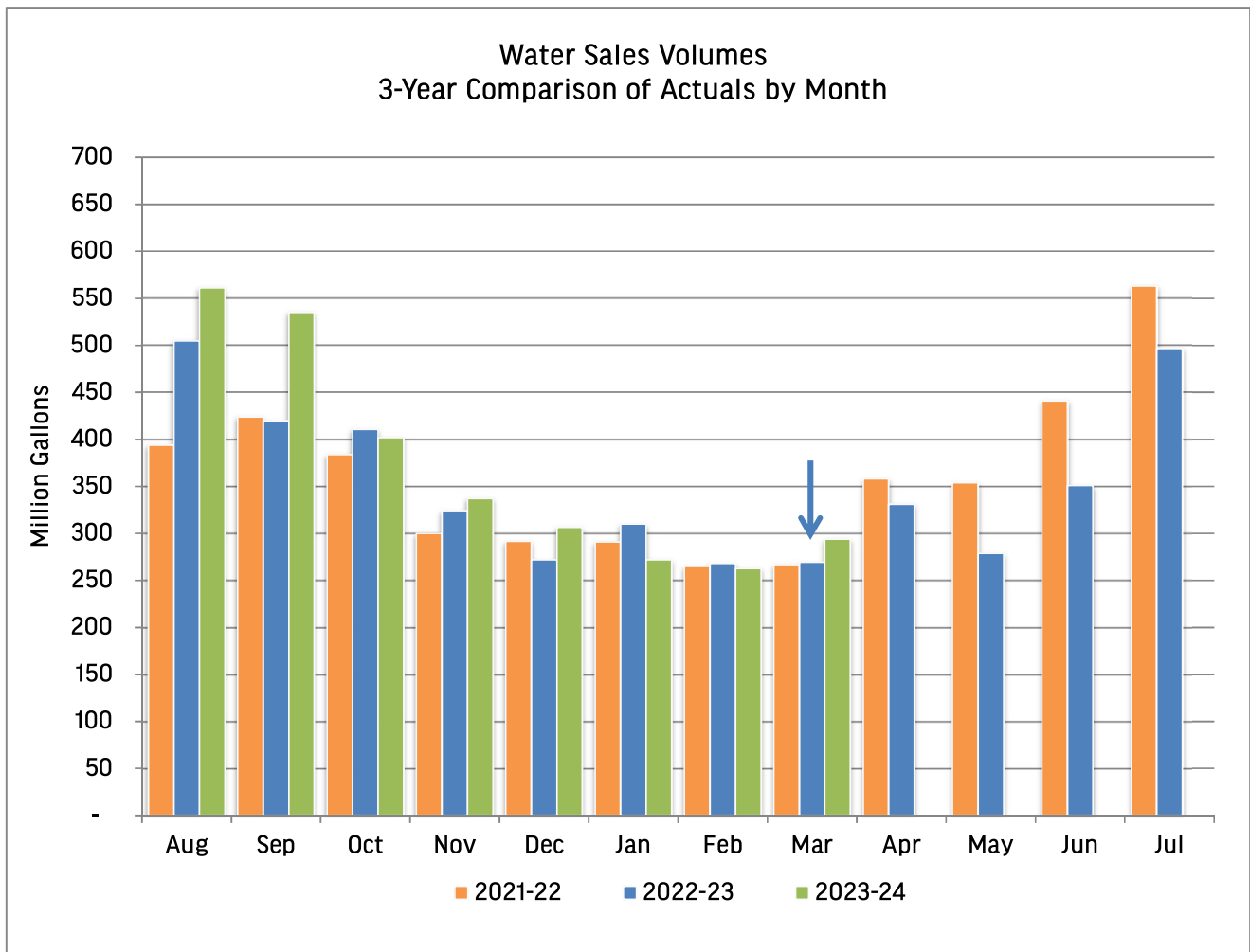
- March MTD rainfall was lower than the prior year rainfall, totaling zero inches for the month. The March rainfall total of zero inches was 2.20 inches lower than the historical average rainfall of 2.20 inches. For March 2024, there were zero rain days during the month compared to seven rain days in March 2023.
- March YTD rainfall totaled 14.13 inches compared to the prior year total of 17.46 inches, which is a decrease of 3.33 inches compared to prior year YTD. For YTD, there have been 36 rain days compared to 35 rain days for prior year YTD.
- Average MTD consumption by residential water customer in March 2024 was 4,295 gallons compared to 4,184 gallons in March 2023, reflecting a 2.7% increase.
- Actual YTD consumption by residential water customer through March 2024 was 43,209 gallons compared to 42,216 for YTD through March 2023, reflecting an increase of 2.4%.
- Overall trend for fiscal year-to-date in total water sales volume is more than the sales volume over the same period for the previous year with the change being 191.3 million gallons, or 6.9% (2,970.5 million gallons for FY 2024 YTD vs. 2,779.2 million gallons for FY 2023 YTD).
- Actual total water sales volume for year-to-date FY 2024 is 2,970.5 million gallons, which is 46.2 million more than the budgeted amount of 2,924.3 million gallons for the same time period.
  - The following are major contributors, by rate classification, towards the 46.2 million gallons change from budget:
    - Multi-Unit 2-4 – increase of 0.4 million gallons (up 3.1% from budget)
    - Multi-Unit 5+ - increase of 18.7 million gallons (up 9.8% from budget)
    - Residential Irrigation – decrease of 22.3 million gallons (down 5.1% from budget)
    - Commercial Irrigation – increase of 21.0 million gallons (up 13.2 % from budget)
    - Small General Services – increase of 74.1 million gallons (up 33.1% from budget)
    - Large General Services – decrease of 66.1 million gallons (down 21.7% from budget)
    - Other Sales – increase of 25.3 million gallons (up 93.9% from budget)
    - ReUse Water – increase of 7.0 million gallons (up 435.5% from budget)

Monthly Rain Data  
 Prior Year vs. Current Year  
 Rolling 13 Months





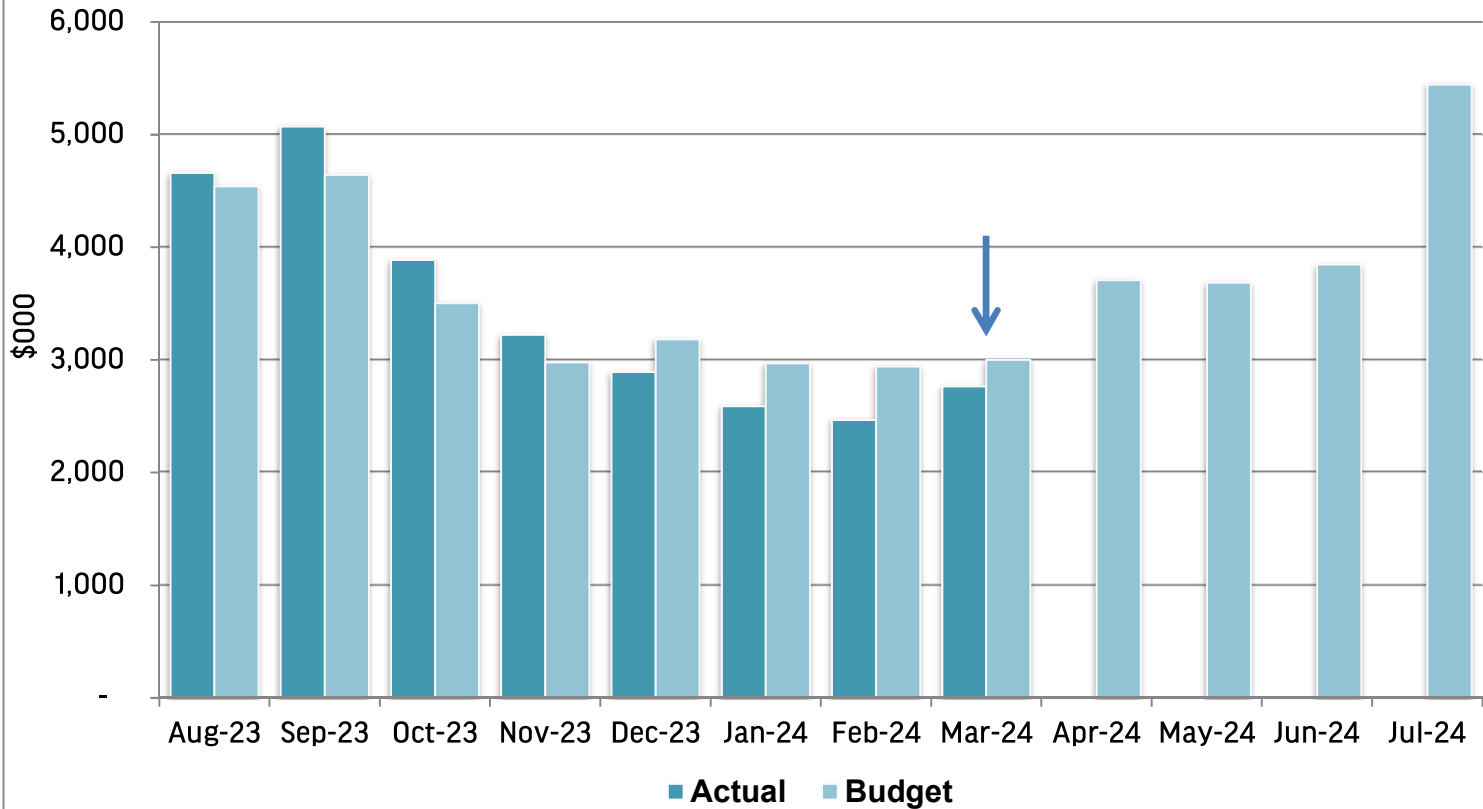
Month	Actual	Budget
Aug-23	561	531
Sep-23	535	468
Oct-23	402	392
Nov-23	337	330
Dec-23	306	317
Jan-24	272	304
Feb-24	263	289
Mar-24	294	293
Apr-24	-	371
May-24	-	368
Jun-24	-	394
Jul-24	-	482
<b>TOTAL</b>	<b>2,971</b>	<b>4,539</b>



Water Sales Volumes (Million Gallons)			
Month	2021-22	2022-23	2023-24
Aug	394	505	561
Sep	424	420	535
Oct	384	411	402
Nov	300	324	337
Dec	292	272	306
Jan	291	310	272
Feb	265	268	263
Mar	267	269	294
Apr	358	331	-
May	354	279	-
Jun	441	351	-
Jul	563	497	-
<b>TOTAL</b>	<b>4,333</b>	<b>4,237</b>	<b>2,971</b>

Meter Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	33,919	3.93%	35,253	3.80%	36,593
Irrigation	12,660	8.79%	13,773	8.54%	14,949
Other	2,945	0.71%	2,966	4.86%	3,110
<b>TOTAL</b>	<b>49,524</b>	<b>4.98%</b>	<b>51,992</b>	<b>5.12%</b>	<b>54,652</b>

**Total Water Sales  
Fiscal Year 2024  
Actual vs. Budget**



Month	Total Water Sales (\$000)	
	Actual	Budget
Aug-23	\$ 4,660	\$ 4,539
Sep-23	\$ 5,070	\$ 4,642
Oct-23	\$ 3,888	\$ 3,503
Nov-23	\$ 3,224	\$ 2,978
Dec-23	\$ 2,890	\$ 3,184
Jan-24	\$ 2,587	\$ 2,971
Feb-24	\$ 2,465	\$ 2,943
Mar-24	\$ 2,767	\$ 2,999
Apr-24	\$ -	\$ 3,708
May-24	\$ -	\$ 3,685
Jun-24	\$ -	\$ 3,847
Jul-24	\$ -	\$ 5,445
<b>TOTAL</b>	<b>\$ 27,553</b>	<b>\$ 44,444</b>



# WATER SUPPLEMENTAL INFORMATION

**NEW BRAUNFELS UTILITIES**  
**Water Volume (Gallons)**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	ACT	AVG
<b>Residential</b>										
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	152,601,010	153,302,646	157,174,649	1,559,038,189	194,879,774
Budget	278,669,478	237,292,325	207,072,688	175,109,490	173,209,570	174,176,159	163,056,961	162,170,495	1,570,757,166	196,344,646
Prior Year	264,945,370	214,133,721	210,921,150	168,052,918	147,195,572	177,670,848	150,738,797	147,502,230	1,481,160,606	185,145,076
<b>Multi-Unit 2-4</b>										
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	1,409,153	1,552,115	1,324,190	13,642,081	1,705,260
Budget	2,133,762	2,020,591	1,702,965	1,531,918	1,502,289	1,598,116	1,411,754	1,326,910	13,228,304	1,653,538
Prior Year	2,255,895	1,811,283	1,706,631	1,468,178	1,558,732	1,991,094	1,731,278	1,499,746	14,022,837	1,752,855
<b>Multi-Unit 5+</b>										
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	25,622,619	27,819,886	26,634,330	209,726,117	26,215,765
Budget	25,326,666	25,620,852	24,285,693	22,896,149	23,054,060	23,641,597	23,603,566	22,619,338	191,047,921	23,880,990
Prior Year	25,435,941	26,247,479	23,126,169	22,573,660	22,243,553	27,640,694	24,981,709	20,919,119	193,168,324	24,146,041
<b>Residential Irrigation</b>										
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	22,127,445	12,702,243	31,763,383	411,407,691	51,425,961
Budget	101,916,516	89,848,970	67,370,554	47,455,669	40,755,051	29,226,787	25,896,276	31,239,450	433,709,273	54,213,659
Prior Year	75,502,265	57,908,800	60,546,492	42,139,788	25,242,936	22,372,220	18,434,179	28,352,401	330,499,081	41,312,385
<b>Commercial Irrigation</b>										
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	10,744,133	5,317,364	9,807,255	179,768,909	22,471,114
Budget	31,806,969	32,170,482	23,953,236	19,136,346	16,184,358	13,285,633	10,869,113	11,380,673	158,786,810	19,848,351
Prior Year	33,744,774	30,535,334	28,118,852	21,721,253	14,886,687	8,439,663	8,440,206	9,447,251	155,334,021	19,416,753
<b>SGS</b>										
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	26,281,878	27,100,968	27,988,408	297,890,652	37,236,331
Budget	31,764,131	29,773,888	26,212,617	27,978,022	28,661,024	23,437,606	27,384,033	28,582,232	223,793,552	27,974,194
Prior Year	78,178,199	78,468,416	69,448,844	58,815,374	57,772,260	67,638,990	59,416,751	55,376,946	525,115,781	65,639,473
<b>LGS</b>										
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	238,357,790	29,794,724
Budget	51,137,660	44,700,916	38,954,200	34,714,127	32,435,703	36,602,561	33,955,022	31,959,274	304,459,464	38,057,433
Prior Year	-	-	-	-	-	-	-	-	-	-
<b>Other Sales</b>										
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	2,123,877	2,696,819	5,633,216	52,141,352	6,517,669
Budget	7,964,649	7,211,502	2,237,575	1,361,680	320,031	1,497,983	2,870,647	3,420,026	26,884,092	3,360,512
Prior Year	19,291,639	10,429,974	11,829,866	6,504,861	2,722,722	4,009,008	2,940,187	5,494,272	63,222,529	7,902,816
<b>ReUse Water</b>										
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	8,556,249	1,069,531
Budget	613,050	(292,400)	117,738	177,998	442,163	235,575	84,025	219,800	1,597,948	199,744
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	762,700	16,700,600	2,087,575
<b>Total Sales</b>										
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	272,090,315	262,824,137	293,796,498	2,970,529,029	371,316,129
Budget	531,332,881	468,347,126	391,907,266	330,361,397	316,564,249	303,702,017	289,131,396	292,918,198	2,924,264,530	365,533,066
Prior Year	504,840,083	419,802,207	410,811,004	324,222,832	271,907,662	310,232,817	268,052,507	269,354,665	2,779,223,778	347,402,972

**NEW BRAUNFELS UTILITIES**  
**Water Volume (Gallons) Variance**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	ACT	AVG
<b>Residential</b>										
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	152,601,010	153,302,646	157,174,649	1,559,038,189	194,879,774
Actual vs Budget	7,708,959	32,678,690	(1,565,002)	(2,607,610)	(1,608,704)	(21,575,149)	(9,754,315)	(4,995,846)	(11,718,977)	(1,464,872)
Actual vs Prior Year	21,433,067	55,837,294	(5,413,464)	4,448,962	14,405,294	(25,069,838)	2,563,849	9,672,419	77,877,583	9,734,698
<b>Multi-Unit 2-4</b>										
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	1,409,153	1,552,115	1,324,190	13,642,081	1,705,260
Actual vs Budget	108,101	293,754	196,958	(9,706)	(124,009)	(188,963)	140,361	(2,720)	413,777	51,722
Actual vs Prior Year	(14,032)	503,062	193,292	54,034	(180,452)	(581,941)	(179,163)	(175,556)	(380,756)	(47,595)
<b>Multi-Unit 5+</b>										
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	25,622,619	27,819,886	26,634,330	209,726,117	26,215,765
Actual vs Budget	1,808,652	1,787,130	(1,812,216)	1,642,741	5,039,555	1,981,022	4,216,320	4,014,992	18,678,196	2,334,775
Actual vs Prior Year	1,699,377	1,160,503	(652,692)	1,965,230	5,850,062	(2,018,075)	2,838,177	5,715,211	16,557,793	2,069,724
<b>Residential Irrigation</b>										
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	22,127,445	12,702,243	31,763,383	411,407,691	51,425,961
Actual vs Budget	(2,850,427)	4,616,876	3,593,888	(26,770)	(7,865,707)	(7,099,342)	(13,194,033)	523,933	(22,301,582)	(2,787,698)
Actual vs Prior Year	23,563,824	36,557,046	10,417,950	5,289,111	7,646,408	(244,775)	(5,731,936)	3,410,982	80,908,610	10,113,576
<b>Commercial Irrigation</b>										
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	10,744,133	5,317,364	9,807,255	179,768,909	22,471,114
Actual vs Budget	7,389,631	9,778,635	8,960,510	3,620,110	899,880	(2,541,500)	(5,551,749)	(1,573,418)	20,982,099	2,622,762
Actual vs Prior Year	5,451,826	11,413,783	4,794,894	1,035,203	2,197,551	2,304,470	(3,122,842)	360,004	24,434,888	3,054,361
<b>SGS</b>										
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	26,281,878	27,100,968	27,988,408	297,890,652	37,236,331
Actual vs Budget	56,380,749	6,311,243	5,635,380	3,163,393	638,951	2,844,272	(283,065)	(593,824)	74,097,099	9,262,137
Actual vs Prior Year	9,966,681	(42,383,285)	(37,600,847)	(27,673,959)	(28,472,285)	(41,357,112)	(32,315,783)	(27,388,539)	(227,225,129)	(28,403,141)
<b>LGS</b>										
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	238,357,790	29,794,724
Actual vs Budget	(51,137,660)	3,666,488	(11,924,886)	(141,756)	(564,317)	(5,422,361)	(1,622,926)	1,045,745	(66,101,674)	(8,262,709)
Actual vs Prior Year	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	238,357,790	29,794,724
<b>Other Sales</b>										
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	2,123,877	2,696,819	5,633,216	52,141,352	6,517,669
Actual vs Budget	6,808,615	5,358,460	5,130,264	1,454,650	3,840,014	625,894	(173,828)	2,213,190	25,257,260	3,157,157
Actual vs Prior Year	(4,518,375)	2,139,988	(4,462,027)	(3,688,531)	1,437,323	(1,885,131)	(243,368)	138,944	(11,081,177)	(1,385,147)
<b>ReUse Water</b>										
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	8,556,249	1,069,531
Actual vs Budget	3,699,850	2,248,300	1,703,662	(177,998)	(442,163)	(235,575)	(84,025)	246,249	6,958,301	869,788
Actual vs Prior Year	(1,173,100)	1,688,700	(3,291,600)	(2,946,800)	(285,200)	(470,300)	(1,369,400)	(296,651)	(8,144,351)	(1,018,044)
<b>Total Sales</b>										
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	272,090,315	262,824,137	293,796,498	2,970,529,029	371,316,129
Actual vs Budget	29,916,470	66,739,576	9,918,558	6,917,056	(10,186,500)	(31,611,702)	(26,307,259)	878,301	46,264,499	5,783,062
Actual vs Prior Year	56,409,268	115,284,495	(8,985,180)	13,055,621	34,470,087	(38,142,502)	(5,228,370)	24,441,833	191,305,252	23,913,156

**NEW BRAUNFELS UTILITIES**  
**Water Revenue**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD		
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	ACT	AVG	
<b>Residential</b>											
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 1,224,701	\$ 1,225,157	\$ 1,264,360	\$ 12,400,120	\$ 1,550,015	
Budget	\$ 1,675,906	\$ 1,751,798	\$ 1,399,790	\$ 1,266,297	\$ 1,417,615	\$ 1,371,746	\$ 1,309,178	\$ 1,327,852	\$ 11,520,181	\$ 1,440,023	
Prior Year	\$ 1,435,468	\$ 1,424,172	\$ 1,284,509	\$ 1,094,836	\$ 976,144	\$ 1,109,772	\$ 972,939	\$ 975,688	\$ 9,273,527	\$ 1,159,191	
<b>Multi-Unit 2-4</b>											
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 15,725	\$ 16,542	\$ 15,215	\$ 138,714	\$ 17,339	
Budget	\$ 20,133	\$ 22,197	\$ 18,479	\$ 17,431	\$ 18,354	\$ 19,284	\$ 18,172	\$ 17,245	\$ 151,294	\$ 18,912	
Prior Year	\$ 19,176	\$ 17,926	\$ 16,683	\$ 15,050	\$ 16,630	\$ 17,942	\$ 16,479	\$ 15,143	\$ 135,028	\$ 16,878	
<b>Multi-Unit 5+</b>											
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 255,463	\$ 270,981	\$ 260,191	\$ 2,039,531	\$ 254,941	
Budget	\$ 266,804	\$ 279,964	\$ 279,474	\$ 255,175	\$ 286,678	\$ 288,535	\$ 286,395	\$ 284,064	\$ 2,227,088	\$ 278,386	
Prior Year	\$ 241,401	\$ 258,388	\$ 239,757	\$ 226,649	\$ 220,174	\$ 253,389	\$ 237,675	\$ 217,571	\$ 1,895,005	\$ 236,876	
<b>Residential Irrigation</b>											
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 421,127	\$ 336,040	\$ 510,115	\$ 5,525,495	\$ 690,687	
Budget	\$ 1,313,660	\$ 1,294,138	\$ 883,179	\$ 648,549	\$ 645,400	\$ 503,243	\$ 523,810	\$ 556,623	\$ 6,368,602	\$ 796,075	
Prior Year	\$ 876,750	\$ 751,431	\$ 715,064	\$ 518,829	\$ 371,346	\$ 345,040	\$ 310,796	\$ 396,258	\$ 4,285,514	\$ 535,689	
<b>Commercial Irrigation</b>											
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 136,872	\$ 75,668	\$ 126,890	\$ 2,208,176	\$ 276,022	
Budget	\$ 424,000	\$ 469,064	\$ 310,403	\$ 234,897	\$ 222,201	\$ 184,303	\$ 153,156	\$ 159,906	\$ 2,157,929	\$ 269,741	
Prior Year	\$ 405,253	\$ 401,101	\$ 328,274	\$ 240,204	\$ 164,788	\$ 94,550	\$ 97,630	\$ 109,278	\$ 1,841,079	\$ 230,135	
<b>SGS</b>											
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 267,962	\$ 267,142	\$ 280,827	\$ 2,829,688	\$ 353,711	
Budget	\$ 434,693	\$ 388,629	\$ 291,965	\$ 281,162	\$ 354,123	\$ 315,931	\$ 346,915	\$ 358,489	\$ 2,771,908	\$ 346,489	
Prior Year	\$ 616,047	\$ 678,287	\$ 558,030	\$ 450,987	\$ 450,757	\$ 516,134	\$ 461,766	\$ 434,665	\$ 4,166,674	\$ 520,834	
<b>LGS</b>											
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 1,601,579	\$ 200,197	
Budget	\$ 290,436	\$ 325,951	\$ 289,257	\$ 252,430	\$ 233,412	\$ 259,549	\$ 243,598	\$ 229,544	\$ 2,124,178	\$ 265,522	
Prior Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Other Sales</b>											
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 50,717	\$ 55,637	\$ 84,058	\$ 761,645	\$ 95,206	
Budget	\$ 110,730	\$ 111,853	\$ 30,081	\$ 20,845	\$ 5,798	\$ 28,566	\$ 61,475	\$ 65,352	\$ 434,701	\$ 54,338	
Prior Year	\$ 241,628	\$ 145,742	\$ 143,275	\$ 89,711	\$ 50,358	\$ 62,775	\$ 51,200	\$ 76,503	\$ 861,191	\$ 107,649	
<b>ReUse Water</b>											
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 48,165	\$ 6,021	
Budget	\$ 3,125	\$ (1,309)	\$ 634	\$ 952	\$ -	\$ -	\$ -	\$ -	\$ 3,402	\$ 425	
Prior Year	\$ 25,191	\$ 1,078	\$ 24,810	\$ 14,201	\$ 1,166	\$ 2,072	\$ 6,476	\$ 3,504	\$ 78,497	\$ 9,812	
<b>Total Sales</b>											
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 2,587,060	\$ 2,465,474	\$ 2,767,131	\$ 27,553,113	\$ 3,444,139	
Budget	\$ 4,539,486	\$ 4,642,285	\$ 3,503,262	\$ 2,977,737	\$ 3,183,581	\$ 2,971,156	\$ 2,942,699	\$ 2,999,075	\$ 27,759,282	\$ 3,469,910	
Prior Year	\$ 3,860,913	\$ 3,678,125	\$ 3,310,402	\$ 2,650,466	\$ 2,251,363	\$ 2,401,673	\$ 2,154,961	\$ 2,228,611	\$ 22,536,515	\$ 2,817,064	

**NEW BRAUNFELS UTILITIES**  
**Water Revenue Variance**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	ACT	AVG
<b>Residential</b>										
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 1,224,701	\$ 1,225,157	\$ 1,264,360	\$ 12,400,120	\$ 1,550,015
Actual vs Budget	\$ 151,366	\$ 640,842	\$ 347,460	\$ 146,062	\$ (111,232)	\$ (147,045)	\$ (84,021)	\$ (63,492)	\$ 879,939	\$ 109,992
Actual vs Prior Year	\$ 391,804	\$ 968,468	\$ 462,741	\$ 317,523	\$ 330,238	\$ 114,929	\$ 252,218	\$ 288,671	\$ 3,126,593	\$ 390,824
<b>Multi-Unit 2-4</b>										
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 15,725	\$ 16,542	\$ 15,215	\$ 138,714	\$ 17,339
Actual vs Budget	\$ (176)	\$ (1,410)	\$ 10	\$ (1,060)	\$ (2,726)	\$ (3,559)	\$ (1,630)	\$ (2,030)	\$ (12,580)	\$ (1,572)
Actual vs Prior Year	\$ 781	\$ 2,861	\$ 1,806	\$ 1,321	\$ (1,001)	\$ (2,216)	\$ 62	\$ 73	\$ 3,686	\$ 461
<b>Multi-Unit 5+</b>										
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 255,463	\$ 270,981	\$ 260,191	\$ 2,039,531	\$ 254,941
Actual vs Budget	\$ (6,575)	\$ (22,694)	\$ (48,714)	\$ (13,849)	\$ (23,366)	\$ (33,072)	\$ (15,414)	\$ (23,873)	\$ (187,558)	\$ (23,445)
Actual vs Prior Year	\$ 18,828	\$ (1,119)	\$ (8,997)	\$ 14,676	\$ 43,138	\$ 2,074	\$ 33,305	\$ 42,620	\$ 144,525	\$ 18,066
<b>Residential Irrigation</b>										
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 421,127	\$ 336,040	\$ 510,115	\$ 5,525,495	\$ 690,687
Actual vs Budget	\$ (195,872)	\$ (188,188)	\$ (13,200)	\$ (1,062)	\$ (128,393)	\$ (82,116)	\$ (187,769)	\$ (46,507)	\$ (843,106)	\$ (105,388)
Actual vs Prior Year	\$ 241,039	\$ 354,519	\$ 154,916	\$ 128,659	\$ 145,660	\$ 76,086	\$ 25,245	\$ 113,857	\$ 1,239,981	\$ 154,998
<b>Commercial Irrigation</b>										
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 136,872	\$ 75,668	\$ 126,890	\$ 2,208,176	\$ 276,022
Actual vs Budget	\$ 53,522	\$ 35,845	\$ 88,505	\$ 41,894	\$ (11,584)	\$ (47,431)	\$ (77,488)	\$ (33,016)	\$ 50,247	\$ 6,281
Actual vs Prior Year	\$ 72,269	\$ 103,808	\$ 70,634	\$ 36,587	\$ 45,828	\$ 42,322	\$ (21,962)	\$ 17,612	\$ 367,098	\$ 45,887
<b>SGS</b>										
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 267,962	\$ 267,142	\$ 280,827	\$ 2,829,688	\$ 353,711
Actual vs Budget	\$ 330,538	\$ (44,787)	\$ 17,063	\$ 22,896	\$ (62,525)	\$ (47,969)	\$ (79,774)	\$ (77,663)	\$ 57,780	\$ 7,222
Actual vs Prior Year	\$ 149,184	\$ (334,445)	\$ (249,002)	\$ (146,929)	\$ (159,159)	\$ (248,172)	\$ (194,625)	\$ (153,839)	\$ (1,336,986)	\$ (167,123)
<b>LGS</b>										
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 1,601,579	\$ 200,197
Actual vs Budget	\$ (290,436)	\$ (37,006)	\$ (80,664)	\$ (17,421)	\$ (19,812)	\$ (45,112)	\$ (25,346)	\$ (6,801)	\$ (522,599)	\$ (65,325)
Actual vs Prior Year	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 1,601,579	\$ 200,197
<b>Other Sales</b>										
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 50,717	\$ 55,637	\$ 84,058	\$ 761,645	\$ 95,206
Actual vs Budget	\$ 68,689	\$ 43,939	\$ 75,222	\$ 37,625	\$ 66,451	\$ 22,151	\$ (5,838)	\$ 18,706	\$ 326,944	\$ 40,868
Actual vs Prior Year	\$ (62,209)	\$ 10,051	\$ (37,972)	\$ (31,240)	\$ 21,891	\$ (12,059)	\$ 4,437	\$ 7,554	\$ (99,546)	\$ (12,443)
<b>ReUse Water</b>										
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 48,165	\$ 6,021
Actual vs Budget	\$ 9,420	\$ 1,482	\$ (470)	\$ 31,430	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 44,763	\$ 5,595
Actual vs Prior Year	\$ (12,646)	\$ (905)	\$ (24,645)	\$ 18,181	\$ (1,109)	\$ (2,016)	\$ (6,419)	\$ (772)	\$ (30,332)	\$ (3,791)
<b>Total Sales</b>										
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 2,587,060	\$ 2,465,474	\$ 2,767,131	\$ 27,553,113	\$ 3,444,139
Actual vs Budget	\$ 120,477	\$ 428,022	\$ 385,214	\$ 246,514	\$ (293,131)	\$ (384,096)	\$ (477,225)	\$ (231,944)	\$ (206,169)	\$ (25,771)
Actual vs Prior Year	\$ 799,050	\$ 1,392,183	\$ 578,074	\$ 573,785	\$ 639,087	\$ 185,387	\$ 310,513	\$ 538,520	\$ 5,016,598	\$ 627,075

**NEW BRAUNFELS UTILITIES**  
**Water Meters**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	AVG
<b>Residential</b>									
Actuals	35,651	35,942	36,027	36,016	36,162	36,355	36,419	36,593	36,146
Budget	35,570	35,716	35,862	36,008	36,154	36,301	36,447	36,593	36,081
Prior Year	34,863	35,017	35,058	35,080	35,155	35,219	35,235	35,253	35,110
<b>Multi-Unit 2-4</b>									
Actuals	208	221	225	223	223	222	222	220	221
Budget	208	208	208	208	208	208	208	208	208
Prior Year	208	209	207	208	209	209	208	206	208
<b>Multi-Unit 5+</b>									
Actuals	262	269	270	270	273	274	275	275	271
Budget	260	262	263	265	267	269	270	272	266
Prior Year	257	257	259	258	258	259	259	259	258
<b>Residential Irrigation</b>									
Actuals	13,351	13,533	13,592	13,610	13,749	13,895	13,938	14,102	13,721
Budget	13,187	13,347	13,507	13,668	13,828	13,989	14,149	14,310	13,748
Prior Year	12,525	12,620	12,669	12,722	12,769	12,831	12,901	12,915	12,744
<b>Commercial Irrigation</b>									
Actuals	884	830	831	832	839	841	845	847	844
Budget	860	862	865	868	870	873	876	878	869
Prior Year	845	835	849	849	850	851	855	858	849
<b>SGS</b>									
Actuals	2,412	2,282	2,276	2,270	2,290	2,293	2,290	2,293	2,301
Budget	2,268	2,271	2,275	2,277	2,280	2,284	2,288	2,292	2,280
Prior Year	2,380	2,383	2,383	2,386	2,389	2,384	2,383	2,382	2,384
<b>LGS</b>									
Actuals	-	198	213	214	219	218	219	221	188
Budget	133	134	134	136	137	137	137	137	136
Prior Year	-	-	-	-	-	-	-	-	-
<b>Other Sales</b>									
Actuals	109	111	116	108	107	102	101	100	107
Budget	151	153	154	156	158	160	161	163	157
Prior Year	124	124	130	132	124	120	115	118	123
<b>ReUse Water</b>									
Actuals	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1
<b>Total Meters</b>									
Actuals	52,878	53,387	53,551	53,544	53,863	54,201	54,310	54,652	53,798
Budget	52,638	52,954	53,271	53,588	53,904	54,221	54,537	54,854	53,746
Prior Year	51,203	51,446	51,556	51,636	51,755	51,874	51,957	51,992	51,677

New Meters	241	509	164	(7)	319	338	109	342	252
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New Meter Growth	0.5%	1.0%	0.3%	0.0%	0.6%	0.6%	0.2%	0.6%	0.5%
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**NEW BRAUNFELS UTILITIES**  
**Water Volume per Meter (Gallons)**  
**For Month Ending March 31, 2024**

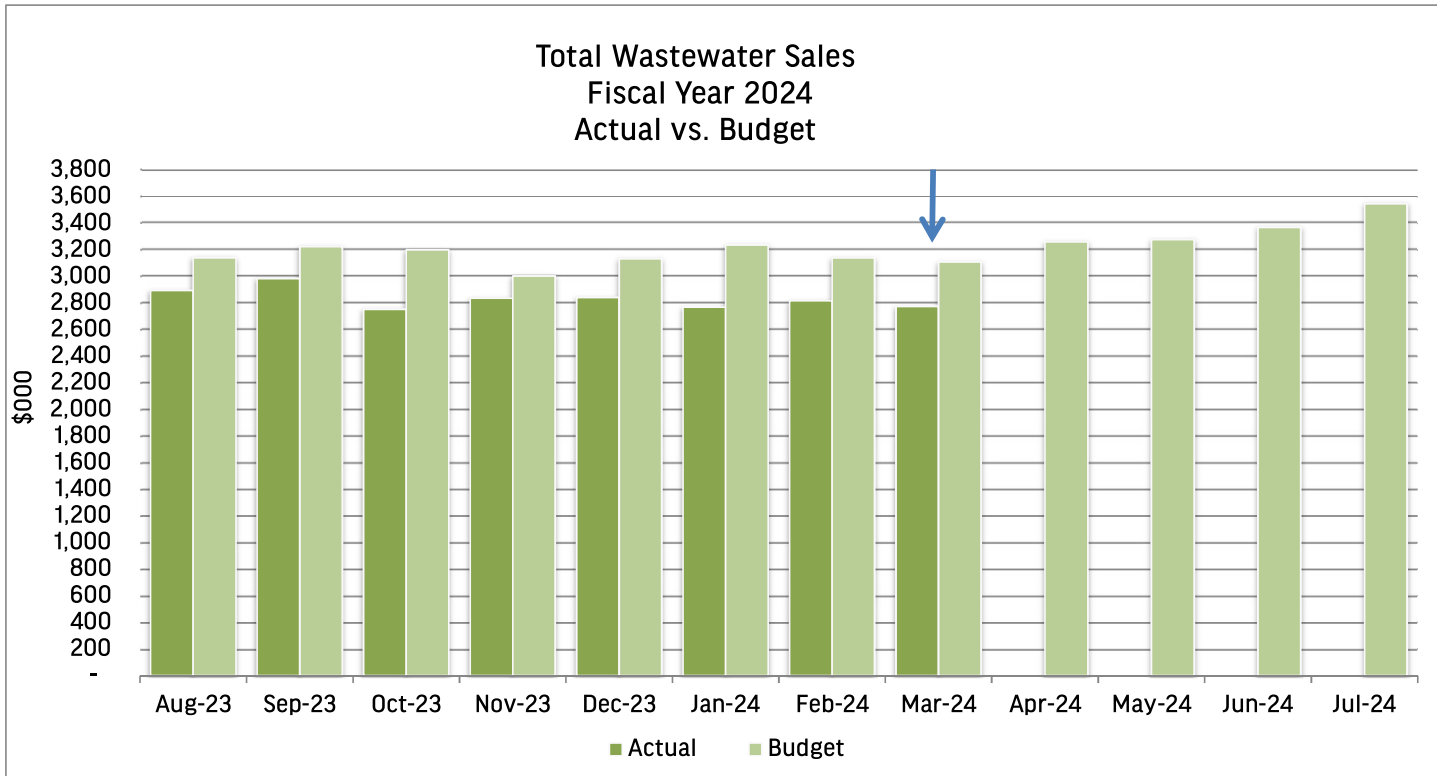
DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	ACT	AVG
<b>Residential</b>										
Actuals	8,033	7,511	5,704	4,790	4,469	4,198	4,209	4,295	43,209	5,401
Budget	7,834	6,644	5,774	4,863	4,791	4,798	4,474	4,432	43,610	5,451
Prior Year	7,600	6,115	6,016	4,791	4,187	5,045	4,278	4,184	42,216	5,277
<b>Multi-Unit 2-4</b>										
Actuals	10,778	10,472	8,444	6,826	6,181	6,348	6,992	6,019	62,059	7,757
Budget	10,258	9,714	8,187	7,365	7,223	7,683	6,787	6,379	63,598	7,950
Prior Year	10,846	8,666	8,245	7,059	7,458	9,527	8,323	7,280	67,404	8,425
<b>Multi-Unit 5+</b>										
Actuals	103,570	101,888	83,235	90,885	102,907	93,513	101,163	96,852	774,014	96,752
Budget	97,504	97,976	92,253	86,400	86,426	88,050	87,340	83,159	719,109	89,889
Prior Year	98,973	102,130	89,290	87,495	86,215	106,721	96,454	80,769	748,047	93,506
<b>Residential Irrigation</b>										
Actuals	7,420	6,980	5,221	3,485	2,392	1,592	911	2,252	30,255	3,782
Budget	7,729	6,732	4,988	3,472	2,947	2,089	1,830	2,183	31,970	3,996
Prior Year	6,028	4,589	4,779	3,312	1,977	1,744	1,429	2,195	26,053	3,257
<b>Commercial Irrigation</b>										
Actuals	44,340	50,541	39,607	27,352	20,363	12,775	6,293	11,579	212,850	26,606
Budget	36,995	37,302	27,689	22,053	18,594	15,217	12,411	12,956	183,216	22,902
Prior Year	39,935	36,569	33,120	25,585	17,514	9,917	9,872	11,011	183,522	22,940
<b>SGS</b>										
Actuals	36,544	15,813	13,993	13,719	12,795	11,462	11,834	12,206	128,366	16,046
Budget	14,002	13,108	11,520	12,285	12,568	10,260	11,966	12,468	98,176	12,272
Prior Year	32,848	32,928	29,143	24,650	24,183	28,372	24,934	23,248	220,306	27,538
<b>LGS</b>										
Actuals	-	244,280	126,898	161,553	145,531	143,028	147,635	149,344	1,118,270	139,784
Budget	384,494	333,589	290,703	255,251	236,757	267,172	247,847	233,279	2,249,092	281,136
Prior Year	-	-	-	-	-	-	-	-	-	-
<b>Other Sales</b>										
Actuals	135,535	113,243	63,516	26,077	38,879	20,822	26,701	56,332	481,105	60,138
Budget	52,714	47,203	14,487	8,721	2,028	9,391	17,809	20,998	173,350	21,669
Prior Year	155,578	84,113	90,999	49,279	21,957	33,408	25,567	46,562	507,463	63,433
<b>ReUse Water</b>										
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	8,556,249	1,069,531
Budget	613,050	(292,400)	117,738	177,998	442,163	235,575	84,025	219,800	1,597,948	199,744
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	762,700	16,700,600	2,087,575

**NEW BRAUNFELS UTILITIES**  
**Water Rates (per Gallon)**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	AVG	
<b>Residential</b>										
Actuals	\$ 0.0064	\$ 0.0089	\$ 0.0085	\$ 0.0082	\$ 0.0081	\$ 0.0080	\$ 0.0080	\$ 0.0080	\$ 0.0080	\$ 0.0080
Budget	\$ 0.0060	\$ 0.0074	\$ 0.0068	\$ 0.0072	\$ 0.0082	\$ 0.0079	\$ 0.0080	\$ 0.0082	\$ 0.0082	\$ 0.0075
Prior Year	\$ 0.0054	\$ 0.0067	\$ 0.0061	\$ 0.0065	\$ 0.0066	\$ 0.0062	\$ 0.0065	\$ 0.0066	\$ 0.0066	\$ 0.0063
<b>Multi-Unit 2-4</b>										
Actuals	\$ 0.0089	\$ 0.0090	\$ 0.0097	\$ 0.0108	\$ 0.0113	\$ 0.0112	\$ 0.0107	\$ 0.0115	\$ 0.0115	\$ 0.0104
Budget	\$ 0.0094	\$ 0.0110	\$ 0.0109	\$ 0.0114	\$ 0.0122	\$ 0.0121	\$ 0.0129	\$ 0.0130	\$ 0.0130	\$ 0.0116
Prior Year	\$ 0.0085	\$ 0.0099	\$ 0.0098	\$ 0.0103	\$ 0.0107	\$ 0.0090	\$ 0.0095	\$ 0.0101	\$ 0.0101	\$ 0.0097
<b>Multi-Unit 5+</b>										
Actuals	\$ 0.0096	\$ 0.0094	\$ 0.0103	\$ 0.0098	\$ 0.0094	\$ 0.0100	\$ 0.0097	\$ 0.0098	\$ 0.0098	\$ 0.0097
Budget	\$ 0.0105	\$ 0.0109	\$ 0.0115	\$ 0.0111	\$ 0.0124	\$ 0.0122	\$ 0.0121	\$ 0.0126	\$ 0.0126	\$ 0.0117
Prior Year	\$ 0.0095	\$ 0.0098	\$ 0.0104	\$ 0.0100	\$ 0.0099	\$ 0.0092	\$ 0.0095	\$ 0.0104	\$ 0.0104	\$ 0.0098
<b>Residential Irrigation</b>										
Actuals	\$ 0.0113	\$ 0.0117	\$ 0.0123	\$ 0.0137	\$ 0.0157	\$ 0.0190	\$ 0.0265	\$ 0.0161	\$ 0.0161	\$ 0.0158
Budget	\$ 0.0129	\$ 0.0144	\$ 0.0131	\$ 0.0137	\$ 0.0158	\$ 0.0172	\$ 0.0202	\$ 0.0178	\$ 0.0178	\$ 0.0156
Prior Year	\$ 0.0116	\$ 0.0130	\$ 0.0118	\$ 0.0123	\$ 0.0147	\$ 0.0154	\$ 0.0169	\$ 0.0140	\$ 0.0140	\$ 0.0137
<b>Commercial Irrigation</b>										
Actuals	\$ 0.0122	\$ 0.0120	\$ 0.0121	\$ 0.0122	\$ 0.0123	\$ 0.0127	\$ 0.0142	\$ 0.0129	\$ 0.0129	\$ 0.0126
Budget	\$ 0.0133	\$ 0.0146	\$ 0.0130	\$ 0.0123	\$ 0.0137	\$ 0.0139	\$ 0.0141	\$ 0.0141	\$ 0.0141	\$ 0.0136
Prior Year	\$ 0.0120	\$ 0.0131	\$ 0.0117	\$ 0.0111	\$ 0.0111	\$ 0.0112	\$ 0.0116	\$ 0.0116	\$ 0.0116	\$ 0.0117
<b>SGS</b>										
Actuals	\$ 0.0087	\$ 0.0095	\$ 0.0097	\$ 0.0098	\$ 0.0100	\$ 0.0102	\$ 0.0099	\$ 0.0100	\$ 0.0100	\$ 0.0097
Budget	\$ 0.0137	\$ 0.0131	\$ 0.0111	\$ 0.0100	\$ 0.0124	\$ 0.0135	\$ 0.0127	\$ 0.0125	\$ 0.0125	\$ 0.0124
Prior Year	\$ 0.0079	\$ 0.0086	\$ 0.0080	\$ 0.0077	\$ 0.0078	\$ 0.0076	\$ 0.0078	\$ 0.0078	\$ 0.0078	\$ 0.0079
<b>LGS</b>										
Actuals	\$ -	\$ 0.0060	\$ 0.0077	\$ 0.0068	\$ 0.0067	\$ 0.0069	\$ 0.0068	\$ 0.0067	\$ 0.0067	\$ 0.0059
Budget	\$ 0.0057	\$ 0.0073	\$ 0.0074	\$ 0.0073	\$ 0.0072	\$ 0.0071	\$ 0.0072	\$ 0.0072	\$ 0.0072	\$ 0.0070
Prior Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Other Sales</b>										
Actuals	\$ 0.0121	\$ 0.0124	\$ 0.0143	\$ 0.0208	\$ 0.0174	\$ 0.0239	\$ 0.0206	\$ 0.0149	\$ 0.0149	\$ 0.0170
Budget	\$ 0.0139	\$ 0.0155	\$ 0.0134	\$ 0.0153	\$ 0.0181	\$ 0.0191	\$ 0.0214	\$ 0.0191	\$ 0.0191	\$ 0.0170
Prior Year	\$ 0.0125	\$ 0.0140	\$ 0.0121	\$ 0.0138	\$ 0.0185	\$ 0.0157	\$ 0.0174	\$ 0.0139	\$ 0.0139	\$ 0.0147
<b>ReUse Water</b>										
Actuals	\$ 0.0029	\$ 0.0001	\$ 0.0001	\$ -	\$ -	\$ -	\$ -	\$ 0.0059	\$ 0.0059	\$ 0.0011
Budget	\$ 0.0051	\$ 0.0045	\$ 0.0054	\$ 0.0053	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.0025
Prior Year	\$ 0.0046	\$ 0.0040	\$ 0.0049	\$ 0.0048	\$ 0.0041	\$ 0.0044	\$ 0.0047	\$ 0.0046	\$ 0.0046	\$ 0.0045



# WASTEWATER STATISTICS



Month	Total Wastewater Sales (\$000)	
	Actual	Budget
Aug-23	\$ 2,896	\$ 3,143
Sep-23	\$ 2,985	\$ 3,224
Oct-23	\$ 2,755	\$ 3,201
Nov-23	\$ 2,838	\$ 3,005
Dec-23	\$ 2,845	\$ 3,134
Jan-24	\$ 2,770	\$ 3,238
Feb-24	\$ 2,818	\$ 3,140
Mar-24	\$ 2,775	\$ 3,111
Apr-24	\$ -	\$ 3,260
May-24	\$ -	\$ 3,279
Jun-24	\$ -	\$ 3,370
Jul-24	\$ -	\$ 3,549
<b>TOTAL</b>	<b>\$ 22,684</b>	<b>\$ 38,653</b>

Customer Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	30,502	4.23%	31,793	4.17%	33,120
Other	2,555	0.35%	2,564	3.32%	2,649
<b>TOTAL</b>	<b>33,057</b>	<b>3.93%</b>	<b>34,357</b>	<b>4.11%</b>	<b>35,769</b>

# WASTEWATER SUPPLEMENTAL INFORMATION

**NEW BRAUNFELS UTILITIES**  
**Wastewater Revenue**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	ACT	AVG
<b>Residential</b>										
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 1,732,442	\$ 1,739,432	\$ 1,718,326	\$ 13,777,741	\$ 1,722,218
Budget	\$ 1,877,005	\$ 1,952,128	\$ 1,949,215	\$ 1,872,739	\$ 1,976,311	\$ 2,036,536	\$ 1,986,258	\$ 1,949,832	\$ 15,600,024	\$ 1,950,003
Prior Year	\$ 1,431,988	\$ 1,602,167	\$ 1,517,326	\$ 1,513,842	\$ 1,516,902	\$ 1,594,334	\$ 1,541,595	\$ 1,489,397	\$ 12,207,550	\$ 1,525,944
<b>Multi-Unit 2-4</b>										
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 15,819	\$ 15,767	\$ 15,496	\$ 125,864	\$ 15,733
Budget	\$ 15,982	\$ 16,707	\$ 16,656	\$ 15,857	\$ 16,392	\$ 16,876	\$ 16,643	\$ 16,260	\$ 131,373	\$ 16,422
Prior Year	\$ 12,873	\$ 14,215	\$ 13,595	\$ 13,583	\$ 13,704	\$ 14,466	\$ 13,990	\$ 13,418	\$ 109,843	\$ 13,730
<b>Multi-Unit 5+</b>										
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 349,101	\$ 367,256	\$ 344,244	\$ 2,813,454	\$ 351,682
Budget	\$ 387,068	\$ 401,507	\$ 399,515	\$ 372,282	\$ 397,709	\$ 411,152	\$ 404,255	\$ 389,172	\$ 3,162,660	\$ 395,332
Prior Year	\$ 324,197	\$ 352,643	\$ 334,562	\$ 322,131	\$ 318,915	\$ 360,340	\$ 334,996	\$ 310,016	\$ 2,657,800	\$ 332,225
<b>SGS</b>										
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 671,740	\$ 694,327	\$ 696,069	\$ 5,956,344	\$ 744,543
Budget	\$ 861,177	\$ 851,972	\$ 833,952	\$ 741,792	\$ 741,660	\$ 771,065	\$ 730,594	\$ 753,402	\$ 6,285,614	\$ 785,702
Prior Year	\$ 720,511	\$ 787,794	\$ 743,962	\$ 649,301	\$ 662,503	\$ 740,317	\$ 672,769	\$ 629,555	\$ 5,606,711	\$ 700,839
<b>Schertz Sewer</b>										
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 1,311	\$ 1,407	\$ 1,192	\$ 10,359	\$ 1,295
Budget	\$ 1,902	\$ 1,867	\$ 1,902	\$ 1,865	\$ 1,853	\$ 2,085	\$ 2,178	\$ 1,877	\$ 15,528	\$ 1,941
Prior Year	\$ 1,476	\$ 1,282	\$ 1,310	\$ 1,306	\$ 1,194	\$ 1,269	\$ 1,425	\$ 1,178	\$ 10,440	\$ 1,305
<b>Total Sales</b>										
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 2,770,413	\$ 2,818,188	\$ 2,775,328	\$ 22,683,763	\$ 2,835,470
Budget	\$ 3,143,133	\$ 3,224,180	\$ 3,201,239	\$ 3,004,535	\$ 3,133,925	\$ 3,237,713	\$ 3,139,928	\$ 3,110,543	\$ 25,195,198	\$ 3,149,400
Prior Year	\$ 2,491,044	\$ 2,758,100	\$ 2,610,754	\$ 2,500,162	\$ 2,513,218	\$ 2,710,727	\$ 2,564,775	\$ 2,443,564	\$ 20,592,344	\$ 2,574,043

**NEW BRAUNFELS UTILITIES**  
**Wastewater Revenue Variance**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	ACT	AVG
<b>Residential</b>										
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 1,732,442	\$ 1,739,432	\$ 1,718,326	\$ 13,777,741	\$ 1,722,218
Actual vs Budget	\$ (256,620)	\$ (171,872)	\$ (258,420)	\$ (135,477)	\$ (217,468)	\$ (304,094)	\$ (246,826)	\$ (231,506)	\$ (1,822,282)	\$ (227,785)
Actual vs Prior Year	\$ 188,397	\$ 178,089	\$ 173,470	\$ 223,421	\$ 241,941	\$ 138,108	\$ 197,837	\$ 228,929	\$ 1,570,191	\$ 196,274
<b>Multi-Unit 2-4</b>										
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 15,819	\$ 15,767	\$ 15,496	\$ 125,864	\$ 15,733
Actual vs Budget	\$ (1,628)	\$ (430)	\$ (738)	\$ 270	\$ (286)	\$ (1,056)	\$ (876)	\$ (764)	\$ (5,508)	\$ (689)
Actual vs Prior Year	\$ 1,481	\$ 2,063	\$ 2,323	\$ 2,544	\$ 2,402	\$ 1,353	\$ 1,776	\$ 2,078	\$ 16,021	\$ 2,003
<b>Multi-Unit 5+</b>										
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 349,101	\$ 367,256	\$ 344,244	\$ 2,813,454	\$ 351,682
Actual vs Budget	\$ (24,285)	\$ (32,143)	\$ (72,316)	\$ (28,430)	\$ (48,054)	\$ (62,050)	\$ (37,000)	\$ (44,928)	\$ (349,205)	\$ (43,651)
Actual vs Prior Year	\$ 38,586	\$ 16,721	\$ (7,364)	\$ 21,721	\$ 30,740	\$ (11,239)	\$ 32,260	\$ 34,228	\$ 155,654	\$ 19,457
<b>SGS</b>										
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 671,740	\$ 694,327	\$ 696,069	\$ 5,956,344	\$ 744,543
Actual vs Budget	\$ 36,188	\$ (33,935)	\$ (113,873)	\$ (2,025)	\$ (22,698)	\$ (99,326)	\$ (36,267)	\$ (57,332)	\$ (329,269)	\$ (41,159)
Actual vs Prior Year	\$ 176,854	\$ 30,242	\$ (23,883)	\$ 90,466	\$ 56,459	\$ (68,578)	\$ 21,558	\$ 66,515	\$ 349,633	\$ 43,704
<b>Schertz Sewer</b>										
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 1,311	\$ 1,407	\$ 1,192	\$ 10,359	\$ 1,295
Actual vs Budget	\$ (595)	\$ (547)	\$ (606)	\$ (552)	\$ (640)	\$ (774)	\$ (771)	\$ (685)	\$ (5,170)	\$ (646)
Actual vs Prior Year	\$ (169)	\$ 38	\$ (14)	\$ 7	\$ 19	\$ 41	\$ (18)	\$ 14	\$ (81)	\$ (10)
<b>Total Sales</b>										
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 2,770,413	\$ 2,818,188	\$ 2,775,328	\$ 22,683,763	\$ 2,835,470
Actual vs Budget	\$ (246,941)	\$ (238,926)	\$ (445,953)	\$ (166,214)	\$ (289,145)	\$ (467,300)	\$ (321,740)	\$ (335,215)	\$ (2,511,435)	\$ (313,929)
Actual vs Prior Year	\$ 405,148	\$ 227,154	\$ 144,532	\$ 338,159	\$ 331,561	\$ 59,686	\$ 253,414	\$ 331,764	\$ 2,091,419	\$ 261,427

**NEW BRAUNFELS UTILITIES**  
**Wastewater Usage (Gallons)**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	ACT	AVG
<b>Residential</b>										
Actuals	104,591,818	110,400,361	98,017,580	104,695,640	106,901,538	102,505,493	103,123,767	100,389,112	830,625,311	103,828,164
Prior Year	105,945,683	113,046,276	100,144,142	99,574,341	99,394,434	165,422,006	103,083,536	95,079,883	881,690,301	110,211,288
<b>Multi-Unit 2-4</b>										
Actuals	835,859	859,259	803,385	849,140	838,636	814,487	800,547	771,054	6,572,367	821,546
Prior Year	834,405	876,991	783,357	774,377	790,783	904,980	832,938	758,277	6,556,108	819,514
<b>Multi-Unit 5+</b>										
Actuals	26,464,494	26,498,569	21,294,621	23,400,792	23,794,355	23,835,720	25,905,743	23,228,453	194,422,747	24,302,843
Prior Year	25,753,140	28,032,246	23,907,336	22,819,107	22,650,042	27,891,169	24,467,609	20,651,634	196,172,283	24,521,535
<b>SGS</b>										
Actuals	147,287,980	131,416,134	111,637,606	114,268,301	111,907,830	102,975,607	107,558,109	108,463,284	935,514,854	116,939,357
Prior Year	130,005,417	129,722,018	125,164,836	97,417,889	104,504,690	119,839,409	108,336,432	99,625,140	914,615,834	114,326,979
<b>Schertz Sewer</b>										
Actuals	433,200	437,700	429,500	435,300	402,200	434,500	466,400	395,200	3,434,000	429,250
Prior Year	145,500	141,667	144,733	144,333	131,933	140,267	157,433	130,133	1,136,000	142,000
<b>Total Sales</b>										
Actuals	279,613,351	269,612,023	232,182,693	243,649,174	243,844,560	230,565,808	237,854,567	233,247,104	1,970,569,279	246,321,160
Prior Year	262,684,145	271,819,198	250,144,405	220,730,048	227,471,883	314,197,831	236,877,949	216,245,068	2,000,170,526	250,021,316

**NEW BRAUNFELS UTILITIES**  
**Wastewater Customers**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	AVG
<b>Residential</b>									
Actuals	32,187	32,472	32,558	32,545	32,691	32,878	32,947	33,120	32,675
Budget	34,071	34,211	34,352	34,494	34,636	34,779	34,922	35,066	34,566
Prior Year	31,424	31,569	31,602	31,627	31,697	31,757	31,772	31,793	31,655
<b>Multi-Unit 2-4</b>									
Actuals	173	186	189	188	188	187	187	186	186
Budget	182	182	182	182	182	182	182	182	182
Prior Year	174	174	173	174	175	175	174	172	174
<b>Multi-Unit 5+</b>									
Actuals	261	268	269	269	270	270	270	270	268
Budget	260	261	263	265	267	268	270	272	266
Prior Year	256	257	259	258	258	258	258	258	258
<b>SGS</b>									
Actuals	2,158	2,167	2,168	2,167	2,185	2,191	2,190	2,192	2,177
Budget	2,135	2,139	2,142	2,146	2,150	2,154	2,158	2,162	2,148
Prior Year	2,125	2,127	2,131	2,131	2,134	2,127	2,130	2,133	2,130
<b>Schertz Sewer</b>									
Actuals	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1
<b>Total Accounts</b>									
Actuals	34,780	35,094	35,185	35,170	35,335	35,527	35,595	35,769	35,307
Budget	36,648	36,794	36,941	37,088	37,236	37,384	37,533	37,683	37,164
Prior Year	33,980	34,128	34,166	34,191	34,265	34,318	34,335	34,357	34,218

New Customers	85	314	91	(15)	165	192	68	174	134
---------------	----	-----	----	------	-----	-----	----	-----	-----

New Customer Growth %	0.2%	0.9%	0.3%	0.0%	0.5%	0.5%	0.2%	0.5%	0.4%
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**NEW BRAUNFELS UTILITIES**  
**Wastewater Rates (per Customer)**  
**For Month Ending March 31, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	FY 2024 YTD AVG
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	
<b>Residential</b>									
Actuals	\$ 50.34	\$ 54.82	\$ 51.93	\$ 53.38	\$ 53.80	\$ 52.69	\$ 52.79	\$ 51.88	\$ 52.71
Budget	\$ 55.09	\$ 57.06	\$ 56.74	\$ 54.29	\$ 57.06	\$ 58.56	\$ 56.88	\$ 55.60	\$ 56.41
Prior Year	\$ 45.57	\$ 50.75	\$ 48.01	\$ 47.87	\$ 47.86	\$ 50.20	\$ 48.52	\$ 46.85	\$ 48.20
<b>Multi-Unit 2-4</b>									
Actuals	\$ 82.97	\$ 87.52	\$ 84.22	\$ 85.78	\$ 85.67	\$ 84.60	\$ 84.31	\$ 83.31	\$ 84.80
Budget	\$ 87.80	\$ 91.78	\$ 91.48	\$ 87.08	\$ 90.01	\$ 92.65	\$ 91.36	\$ 89.25	\$ 90.18
Prior Year	\$ 73.98	\$ 81.69	\$ 78.58	\$ 78.06	\$ 78.31	\$ 82.66	\$ 80.40	\$ 78.01	\$ 78.96
<b>Multi-Unit 5+</b>									
Actuals	\$ 1,389.97	\$ 1,378.22	\$ 1,216.35	\$ 1,278.26	\$ 1,295.02	\$ 1,292.97	\$ 1,360.21	\$ 1,274.98	\$ 1,310.75
Budget	\$ 1,490.48	\$ 1,535.99	\$ 1,518.40	\$ 1,405.67	\$ 1,491.88	\$ 1,532.25	\$ 1,496.72	\$ 1,431.48	\$ 1,487.86
Prior Year	\$ 1,266.40	\$ 1,372.15	\$ 1,291.75	\$ 1,248.57	\$ 1,236.11	\$ 1,396.67	\$ 1,298.43	\$ 1,201.61	\$ 1,288.96
<b>SGS</b>									
Actuals	\$ 415.83	\$ 377.50	\$ 332.14	\$ 341.38	\$ 329.04	\$ 306.59	\$ 317.04	\$ 317.55	\$ 342.13
Budget	\$ 403.40	\$ 398.37	\$ 389.25	\$ 345.61	\$ 344.93	\$ 357.97	\$ 338.57	\$ 348.52	\$ 365.83
Prior Year	\$ 339.06	\$ 370.38	\$ 349.11	\$ 304.69	\$ 310.45	\$ 348.06	\$ 315.85	\$ 295.15	\$ 329.10
<b>Schertz Sewer</b>									
Actuals	\$ 1,306.75	\$ 1,320.32	\$ 1,295.59	\$ 1,313.08	\$ 1,213.24	\$ 1,310.67	\$ 1,406.90	\$ 1,192.12	\$ 1,294.83
Budget	\$ 1,902.07	\$ 1,866.97	\$ 1,901.70	\$ 1,864.68	\$ 1,853.06	\$ 2,084.54	\$ 2,178.27	\$ 1,877.19	\$ 1,941.06
Prior Year	\$ 1,476.00	\$ 1,282.01	\$ 1,309.76	\$ 1,306.14	\$ 1,193.93	\$ 1,269.34	\$ 1,424.69	\$ 1,177.64	\$ 1,304.94





# Financial Update

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March 2024 Financials

Kimberly Huffman

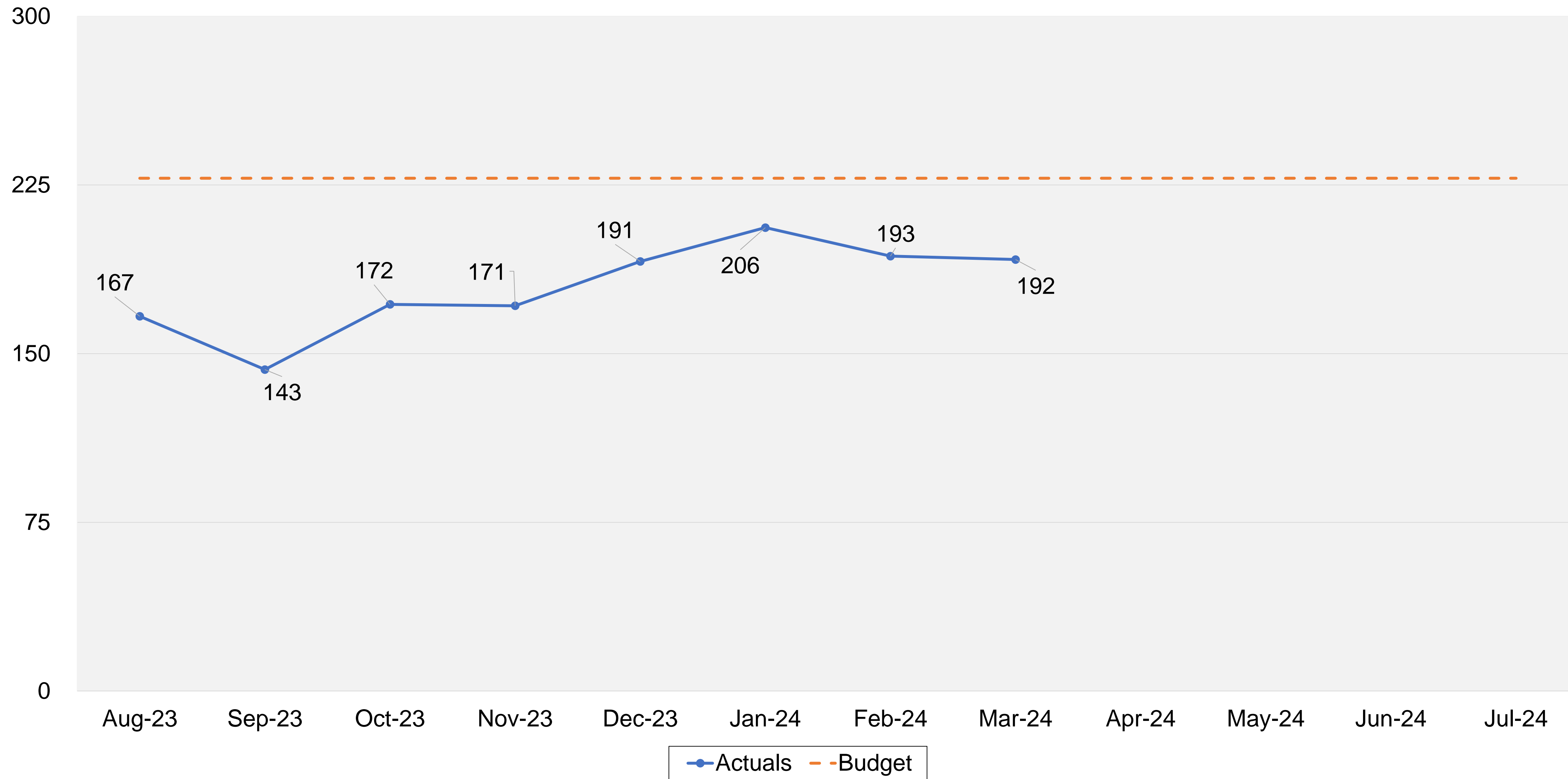
Accounting Manager

# Board Financial Policy Compliance - March 2024 YTD

	FY 2023 Actual	FY 2024 Budget	Financial Policy	FY 2024 Actual*
<b>Debt to Capitalization (lower is better)</b>	39.1%	47.4%	≤55.0%	<b>42.7%</b>
<b>Debt Service Coverage (higher is better)</b>	5.05	4.28	≥2.40	<b>4.76</b>
<b>Days Cash on Hand (higher is better)</b>	214	228	≥140	<b>192</b>
<b>Days Liquidity on Hand (higher is better)</b>	442	N/A	N/A	<b>503</b>

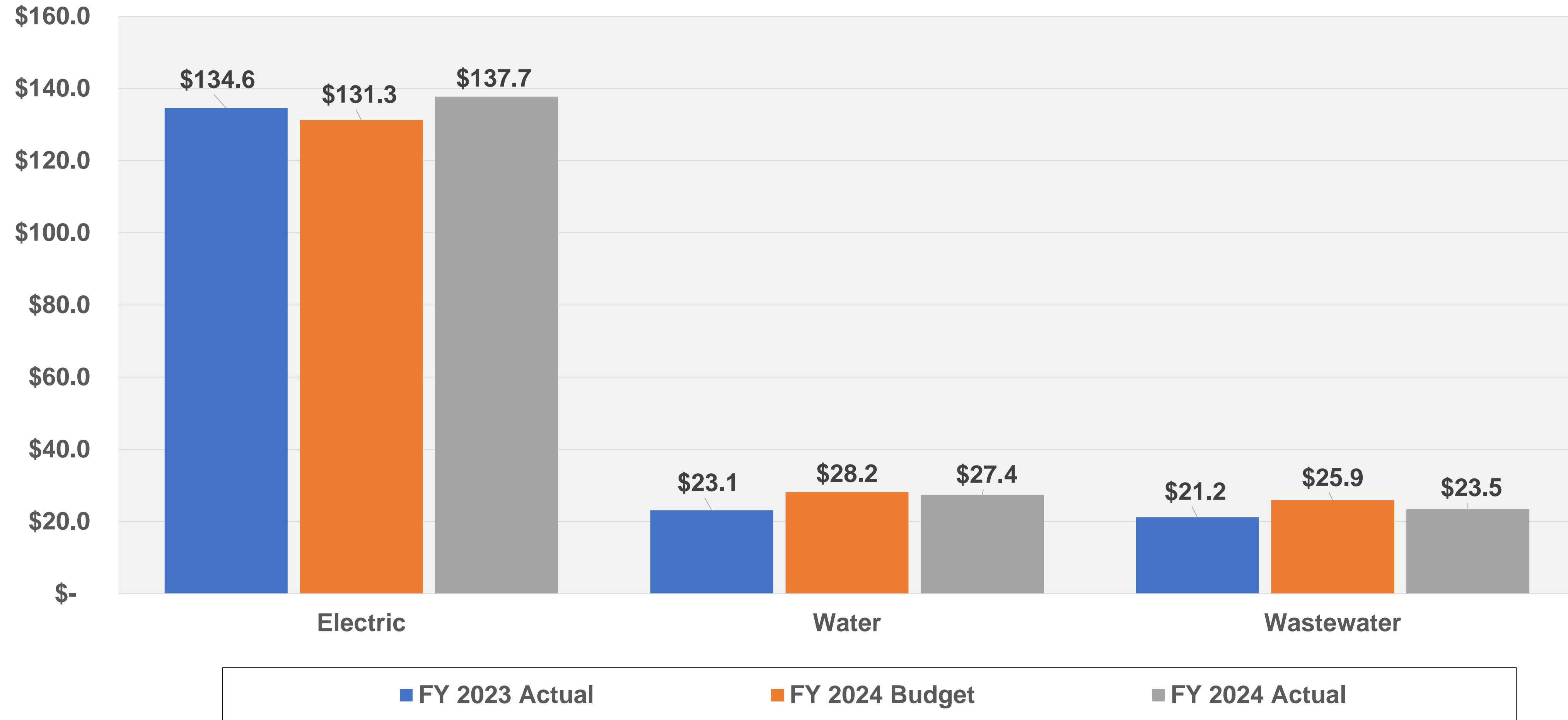
\* Amounts are calculated by annualizing the YTD results

# Days Cash on Hand - March 2024 YTD



# Operating Revenue by LOB

## March 2024 YTD – Amounts in Millions



### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service

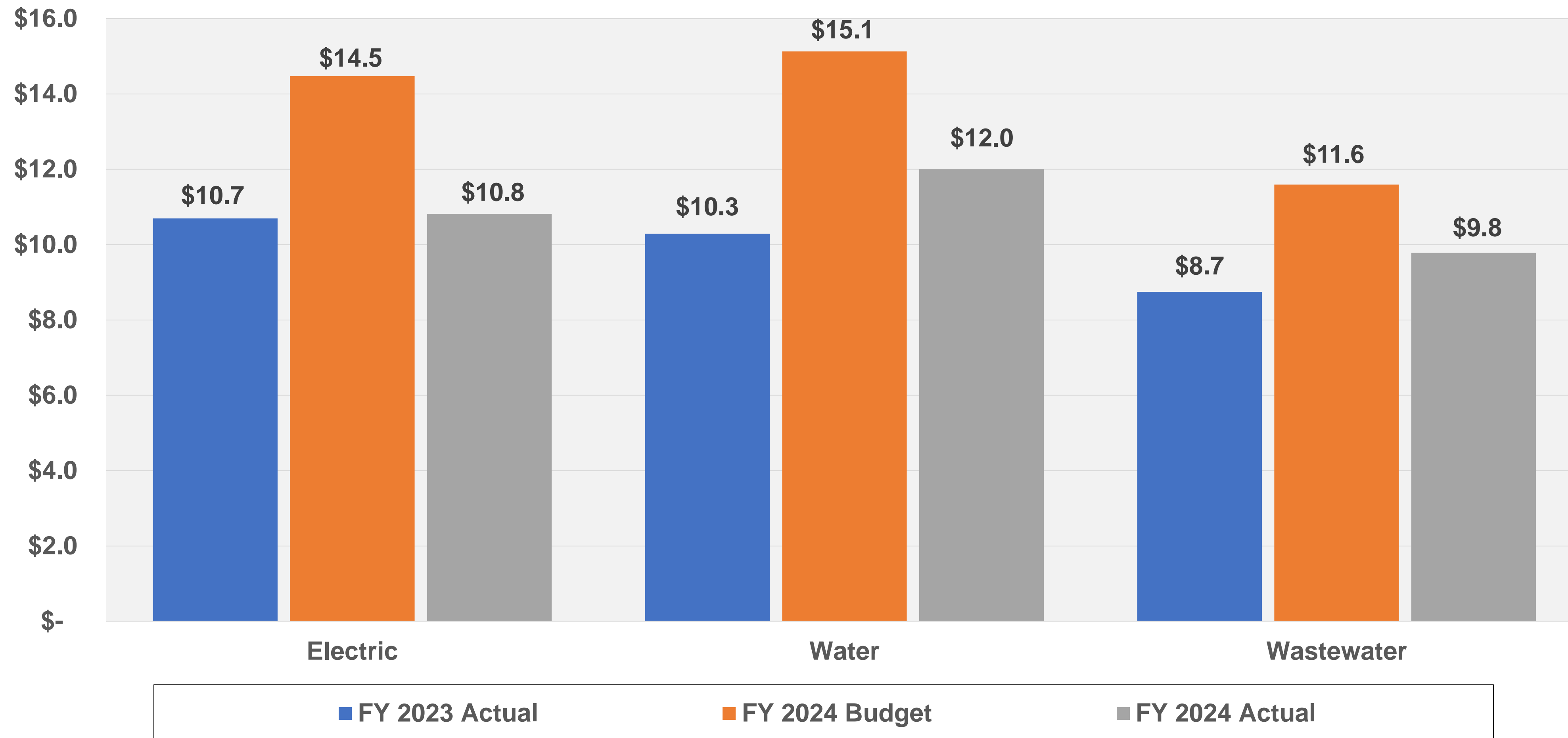


### Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Operating Expenses\* by LOB

## March 2024 YTD – Amounts in Millions



\*Excludes purchased power, purchased water, and depreciation expense

### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service



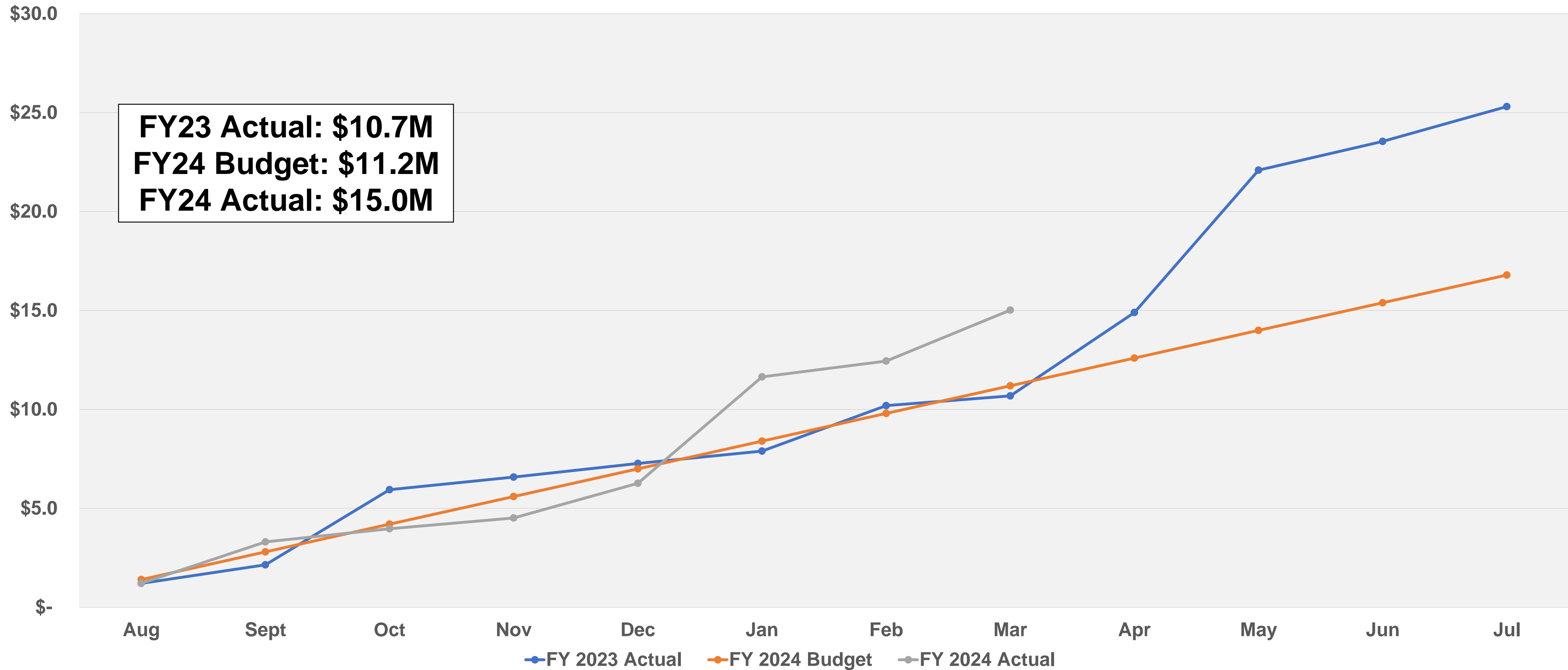
### Core Values

Safety, Team, Integrity, Culture, and Stewardship



# Impact Fees

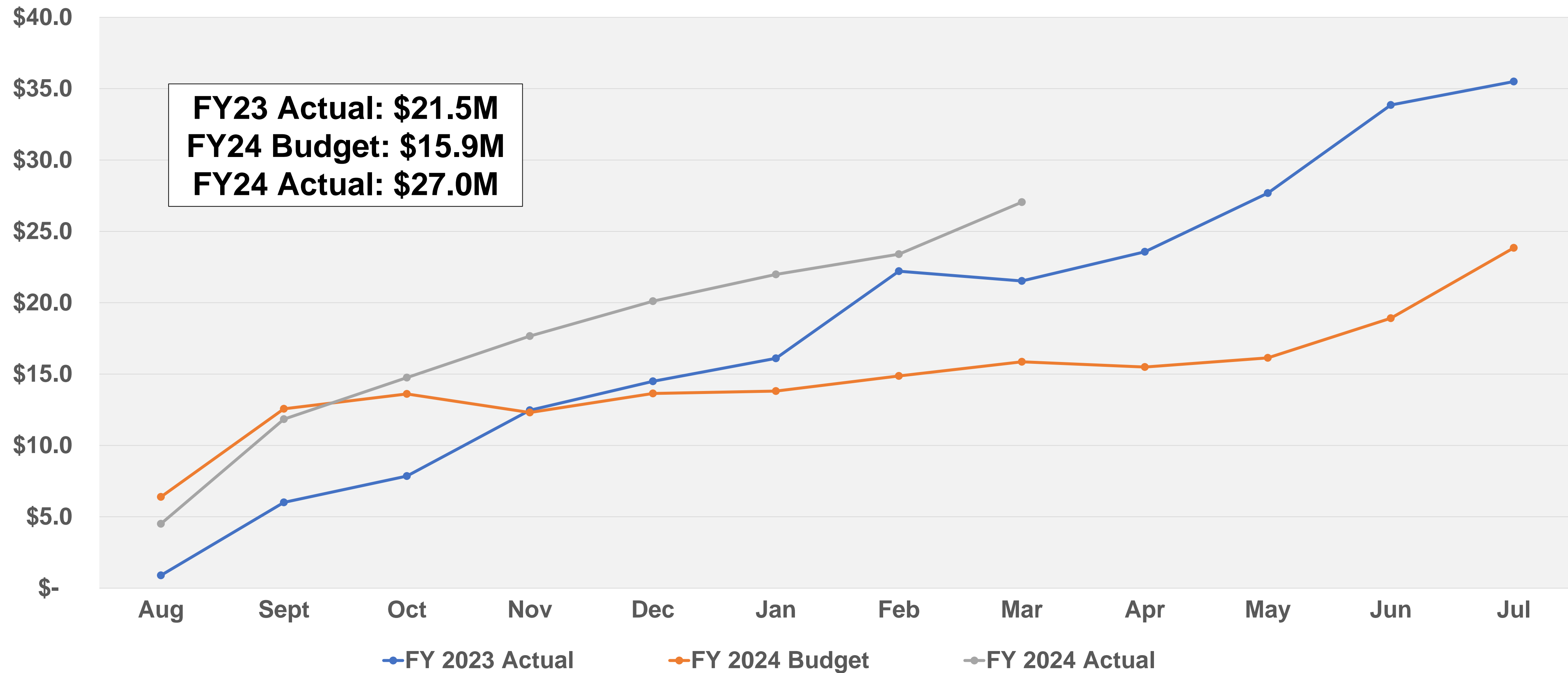
## March 2024 YTD – Amounts in Millions\*



\* Amounts shown are YTD for each month

# Net Operating Income

## March 2024– Amounts in Millions\*



\* Amounts shown are YTD for each month

### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service

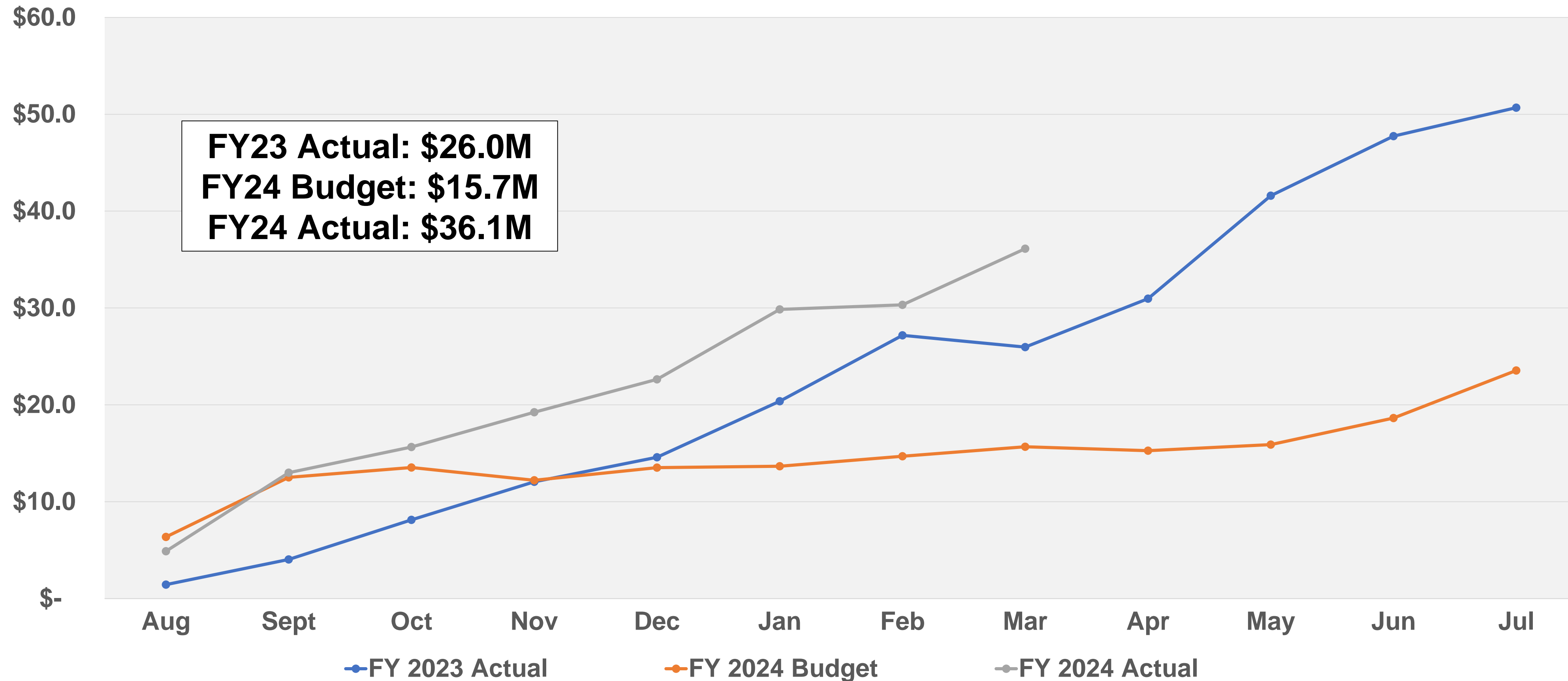


### Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Change in Net Position After Contributions

## March 2024– Amounts in Millions\*



\* Amounts shown are YTD for each month

### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service



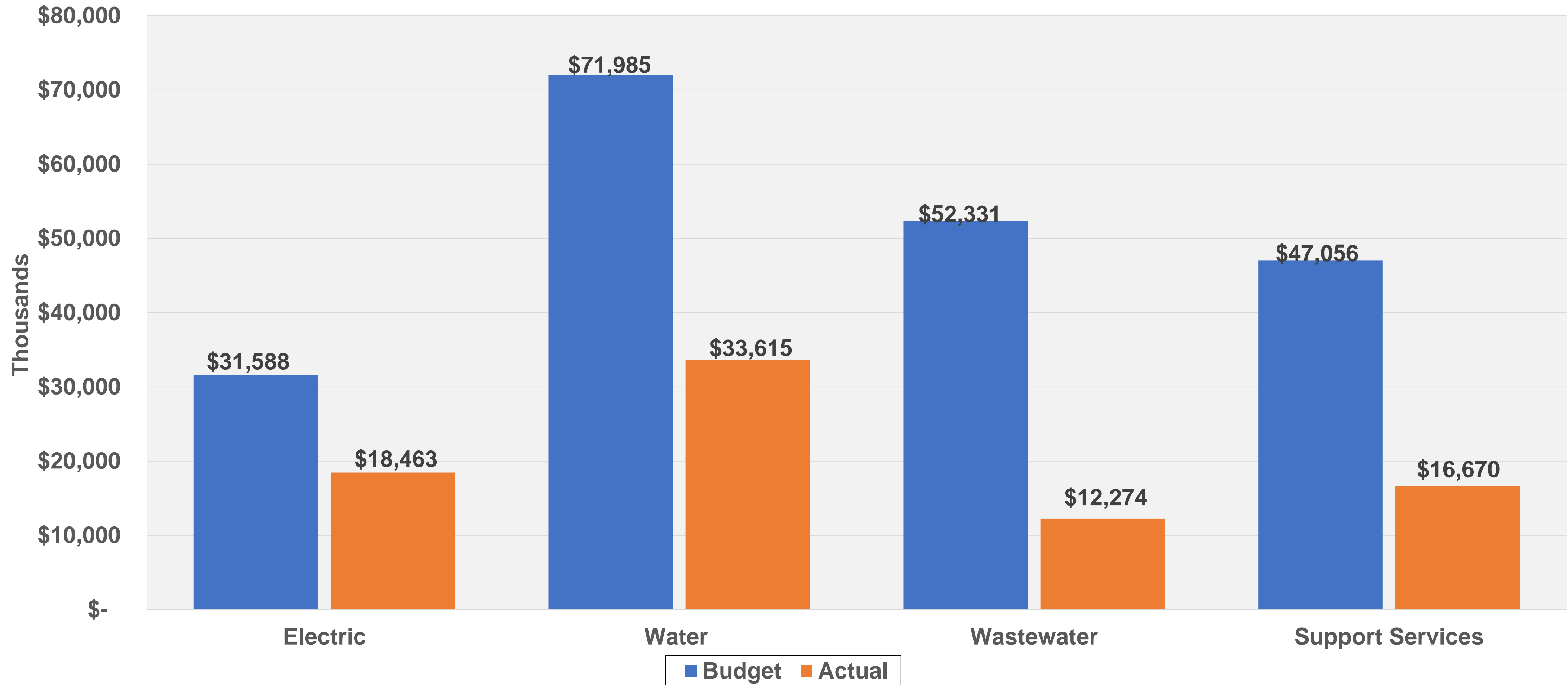
### Core Values

Safety, Team, Integrity, Culture, and Stewardship



# Capital Project Expenditures

## March 2024 YTD – Amounts in Thousands



# Questions?



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# CIP Update

FY 2024, Q2

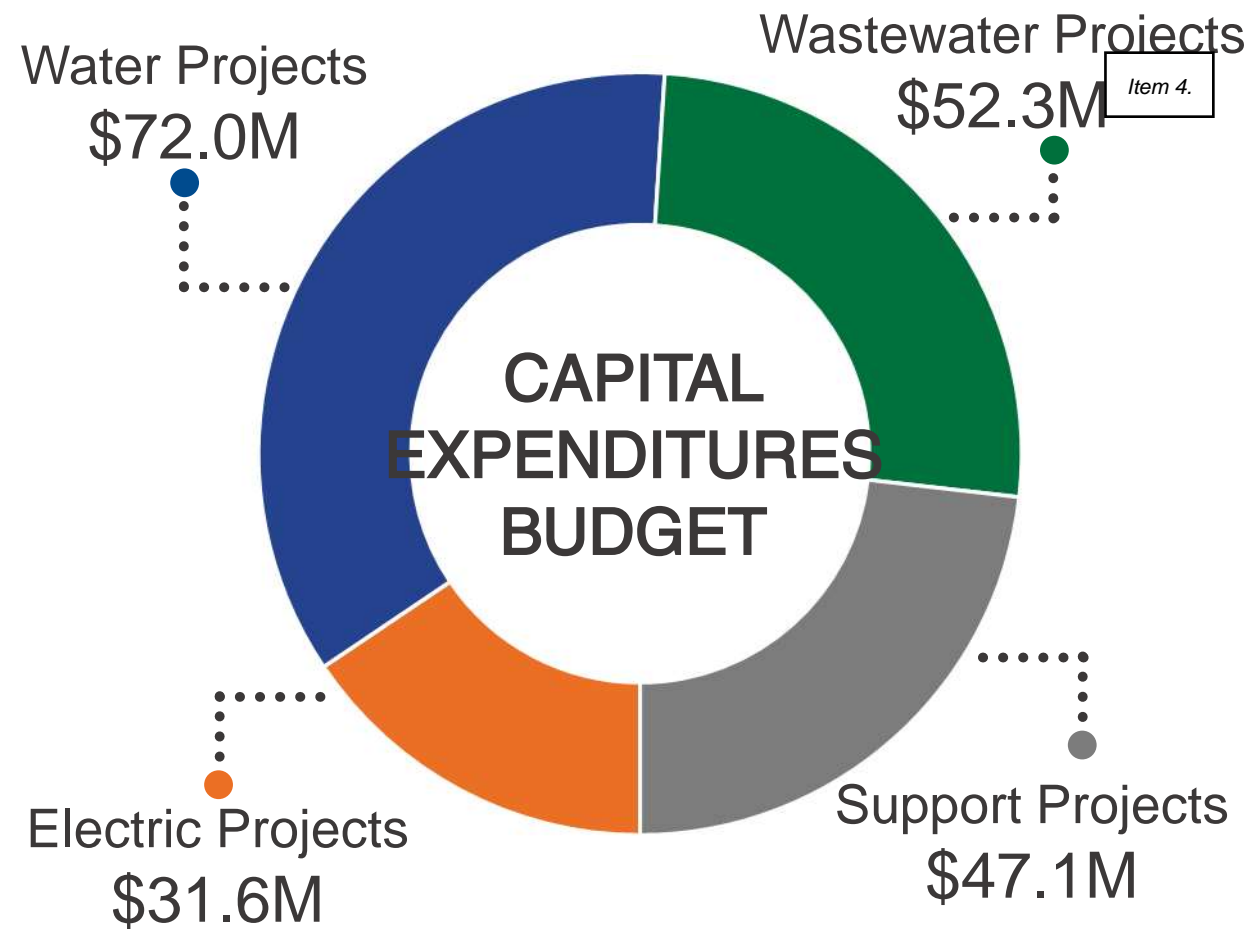
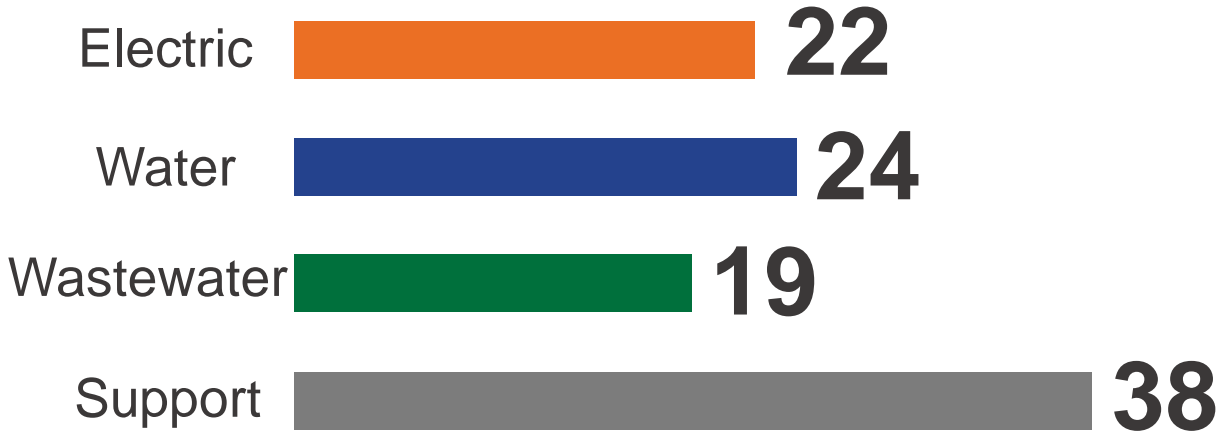
# Overview

---

- Program Status through Q2 of FY 2024
- Performance & Accomplishments for each line of business

# FY 2024 Budget Capital Projects

## PROJECT COUNT



### BUDGET

Developed in February 2023 based on expected project costs

**\$202,959,183**

### SPENDING

Year-to-date project spending through Q2 (January 2024)

**\$59,688,178**

### YTD %

Year-to-date project spending versus budget (January 2024)

**29%**

### VARIANCE

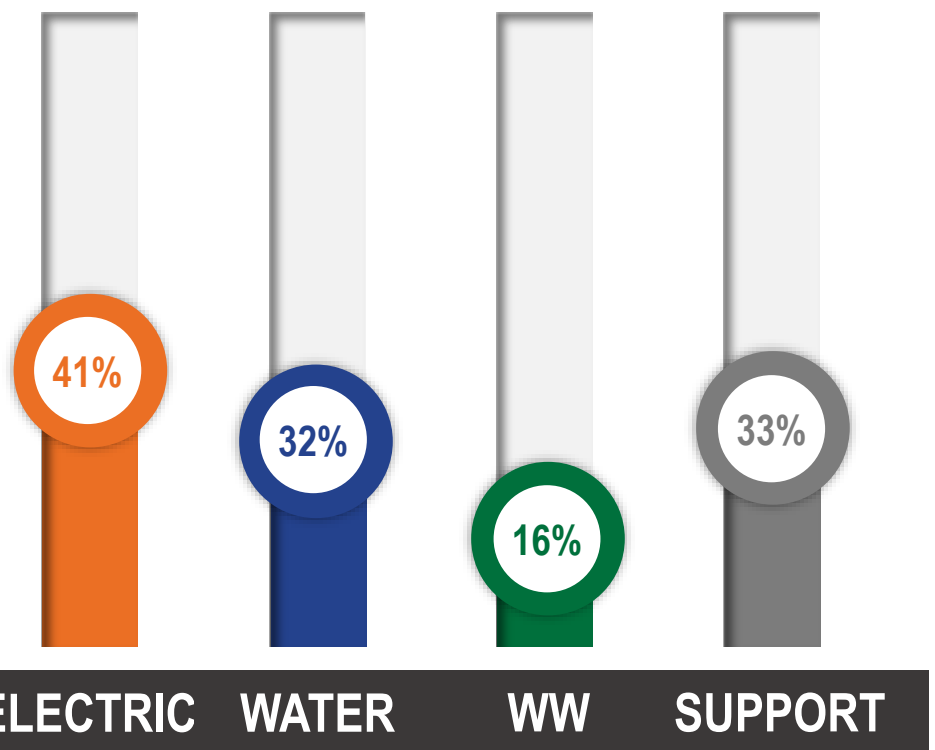
Difference between budget and year-end projected costs

**\$50,971,064**

# FY 2024 Spending Capital Projects

- Through Q2 expect spending to be ~50% of budget
- Electric projects slightly behind budget but projected to catch up by year-end and be right at budget
- Water/Wastewater behind budget due to various project delays and will likely not catch up by year-end
- Support projects behind budget due to delayed Annex contract negotiations
- Adjustments to future budgets have been made to account for delays
- New PMIS will improve data transparency, analytics, and lessons learned for future budgeting

## YTD Actual Spending vs Budget



# Project Stage

Item 4.

NOT  
STARTED



PLANNING  
OR STUDY



DESIGN &  
LAND ACQ.



CONSTRUCTION  
OR EXECUTION



COMPLETE



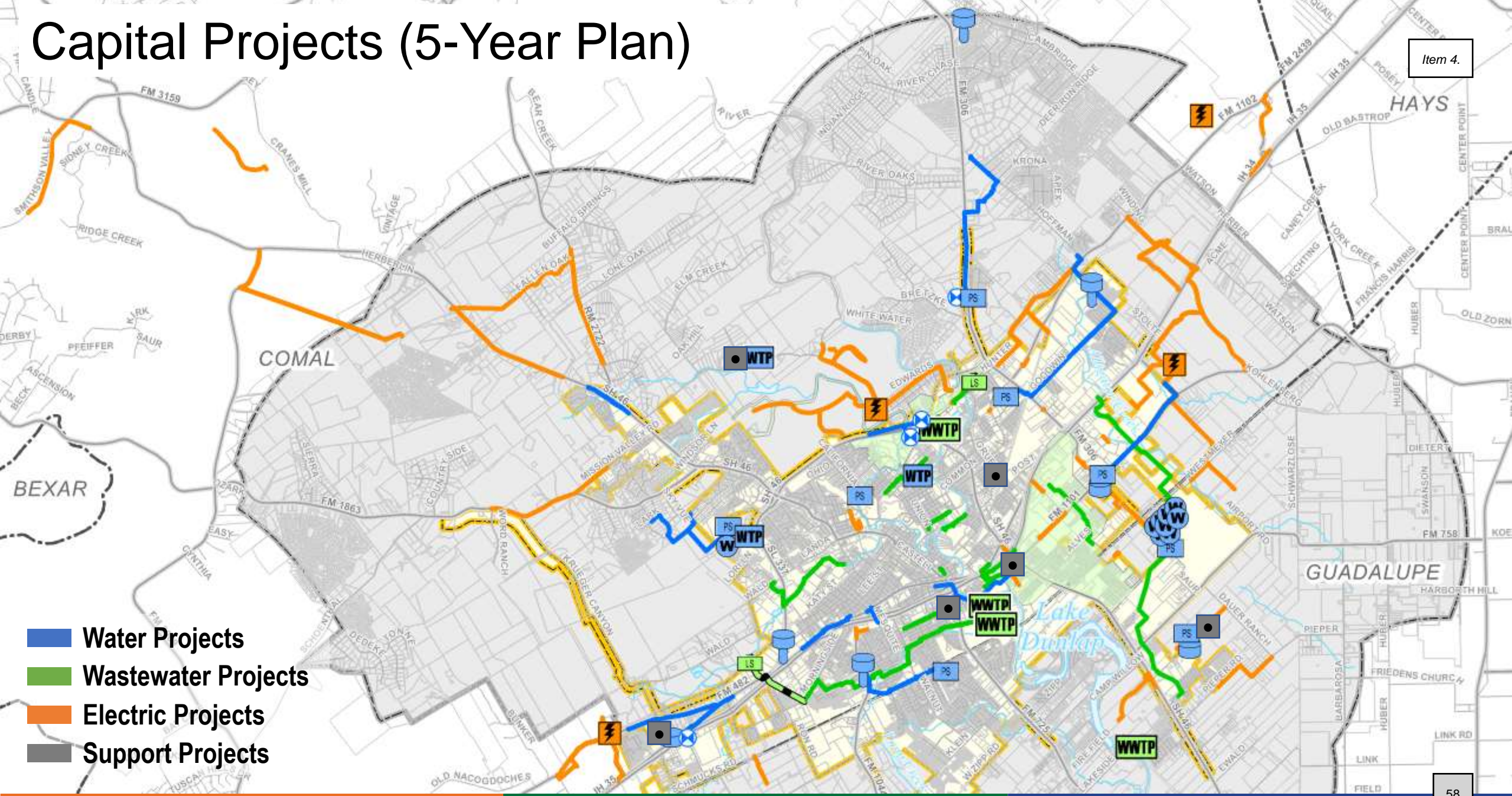
	NOT STARTED	PLANNING OR STUDY	DESIGN & LAND ACQ.	CONSTRUCTION OR EXECUTION	COMPLETE
WATER	1	1	6	15	1
WASTEWATER	1	0	10	7	1
ELECTRIC	0	3	6	12	1
SUPPORT	15	6	4	8	5
<b>Q2 TOTAL</b>	<b>17</b>	<b>10</b>	<b>26</b>	<b>42</b>	<b>8</b>
<b>FY24 Q1 TOTAL</b>	<b>20</b>	<b>14</b>	<b>30</b>	<b>39</b>	<b>0</b>



# Capital Projects (5-Year Plan)

Item 4.

- Water Projects
- Wastewater Projects
- Electric Projects
- Support Projects





# Traffic Impacts

**— Current Traffic Impacts**

**— Traffic Impacts Expected in the next 6 months (none)**

**Mission/Westpointe WLs**

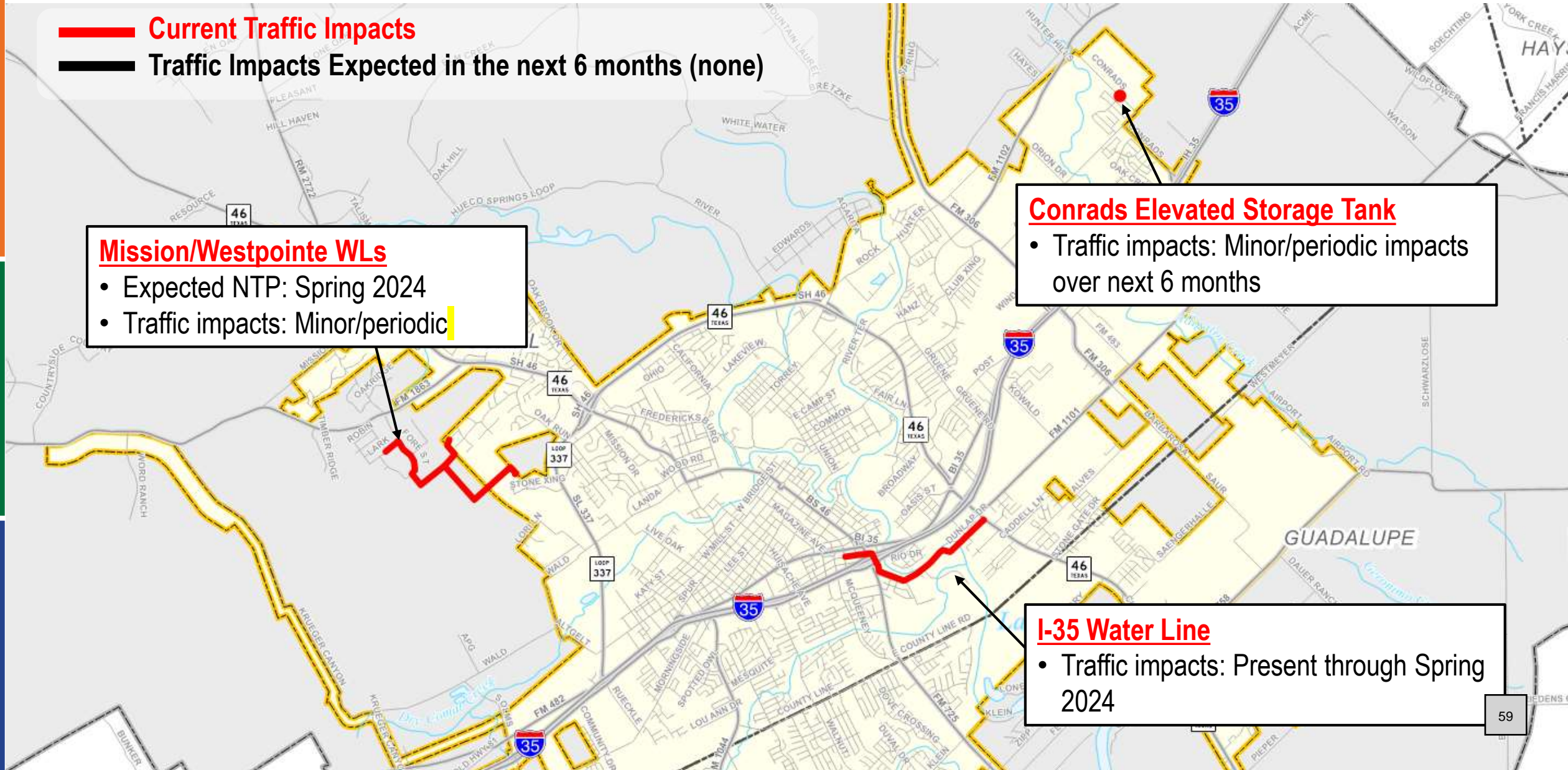
- Expected NTP: Spring 2024
- Traffic impacts: Minor/periodic

**Conrads Elevated Storage Tank**

- Traffic impacts: Minor/periodic impacts over next 6 months

**I-35 Water Line**

- Traffic impacts: Present through Spring 2024



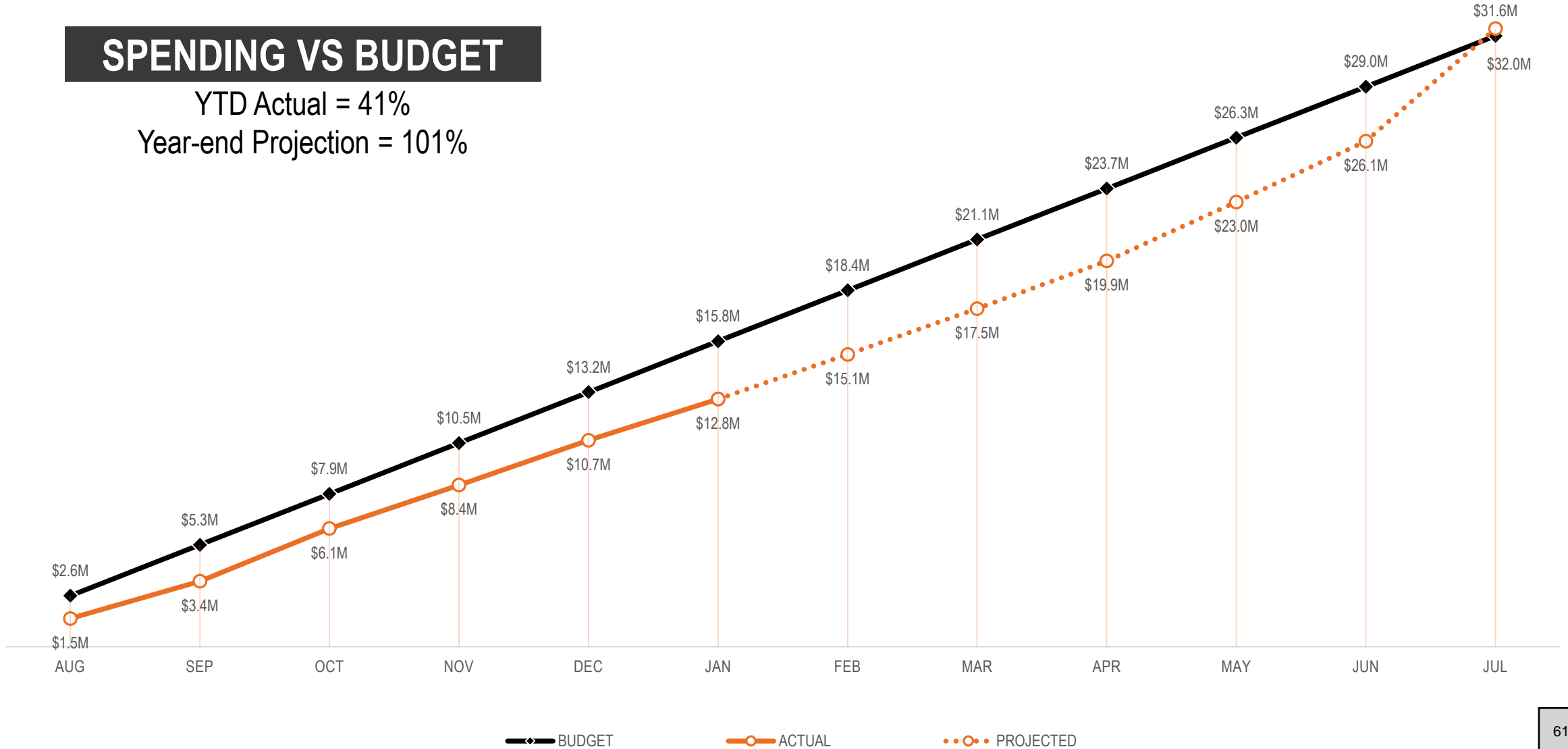
# CIP Performance & Accomplishments

# Electric – Spending vs Budget

Item 4.

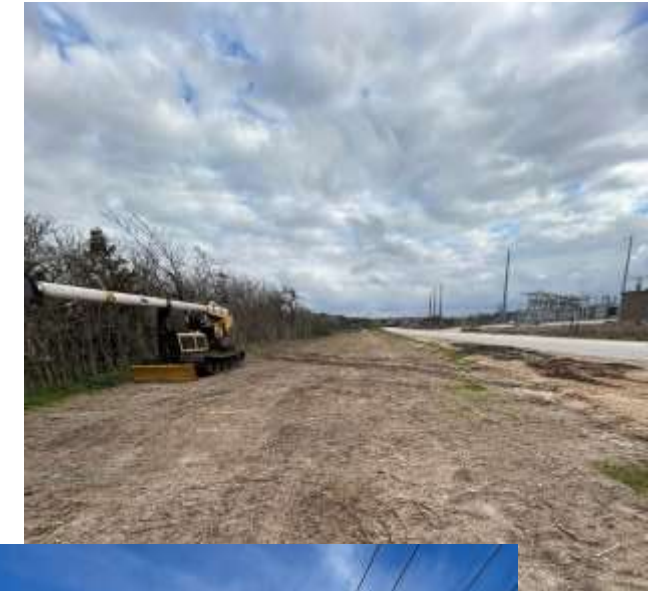
## SPENDING VS BUDGET

YTD Actual = 41%  
Year-end Projection = 101%





- Added 708 new metered customers Q2 FY24, mostly within developments previously completed.
- Energized 3 new single-family projects and 3 new multi-family projects Q2 FY24.
- Completed 2 major underground primary only line extensions, Guthrie Trail Mayfair & Word Parkway Veramendi.
- Land-Clearing & Vegetation Clearing complete for several projects in preparation for construction.
  - E.C. Mornhinweg Feeder Extensions (2 feeders)
  - Henne Feeder Extensions (1 feeder)



**ELECTRIC**

**DISTRIBUTION**



**TRANSMISSION**



**SUBSTATION**



**Guthrie Trail Phase 1 & Phase 2**

Completion: January 2024

Purpose: The bulk feeder rated underground will help serve the first Phase of Mayfair development east of IH-35. The installation consists of 6,500 linear ft. of three-phase 1000MCM 25kV insulated cable and 15 switchgear units. The switchgear units provide sectionalizing ability and have fused ways to help serve individual developments along Guthrie Trail.

**Four major projects to be served from Guthrie Trail**

- E-8 Single-Family
- E-6 Single-Family
- E-9S Single Family for Rent
- EA-2 Comal ISD Elementary School

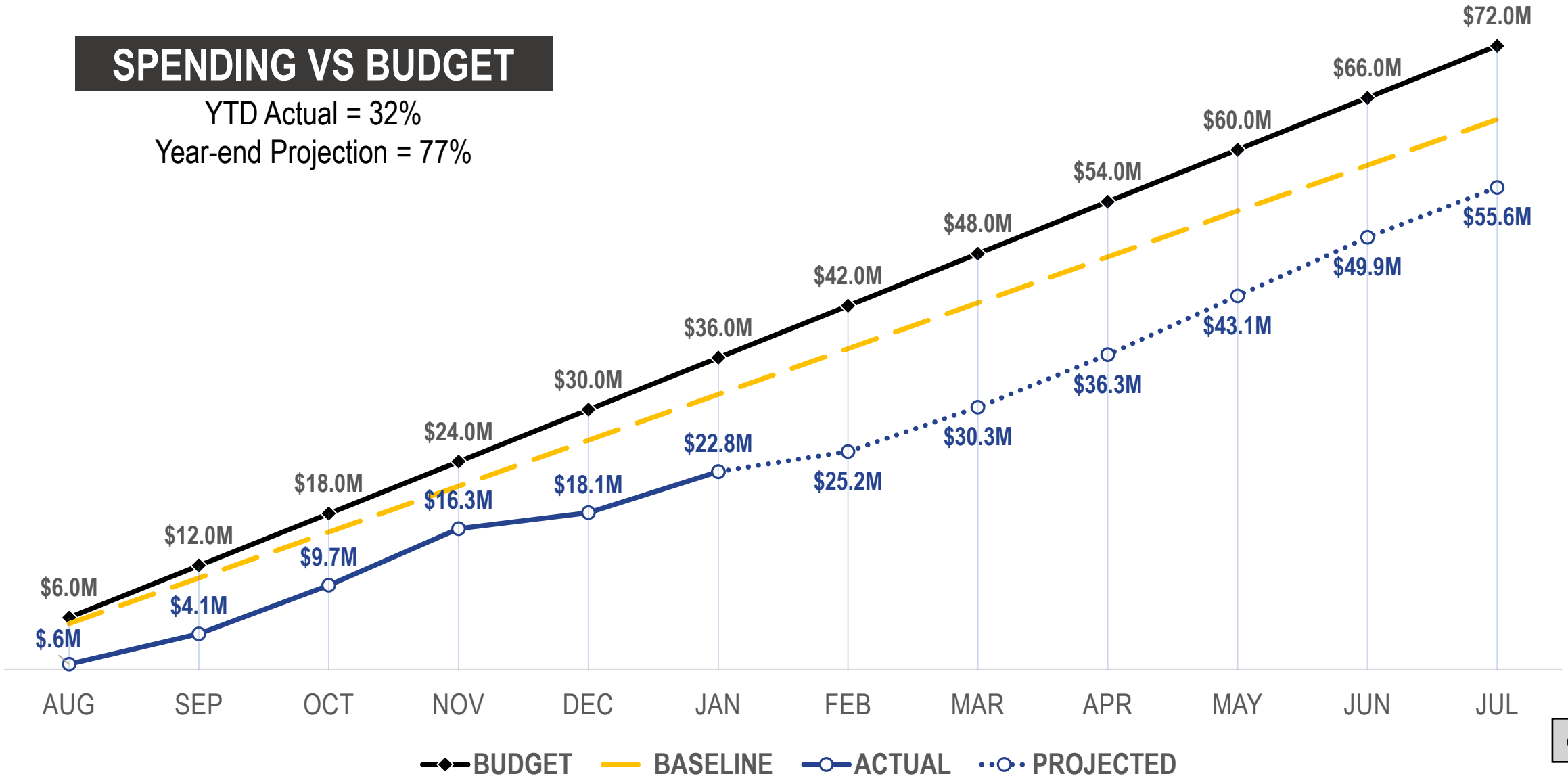


# Water – Spending vs Budget

Item 4.

## SPENDING VS BUDGET

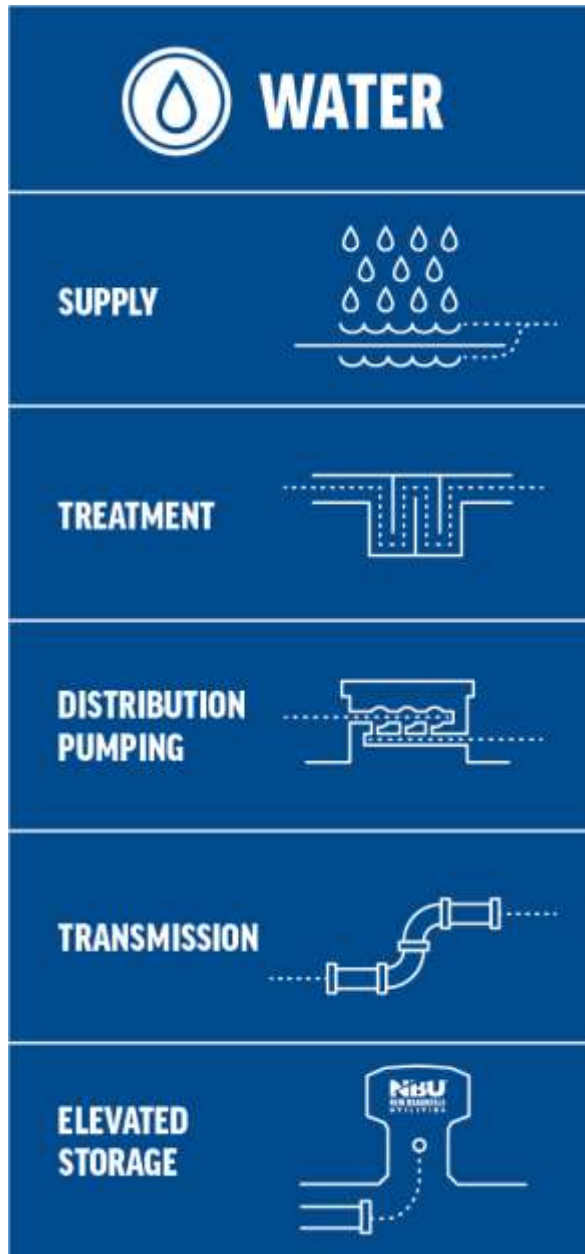
YTD Actual = 32%  
Year-end Projection = 77%



# Q2 Water Accomplishments

- Completed well drilling and testing of two Trinity Aquifer wells
- Completed updates to NBU's standardized specifications and details
- Started construction on Conrads EST
- Kohlenberg Standpipe piping repairs completed
- Garden St Waterline project substantially completed





## Garden Street Waterline

Completion: January 2024

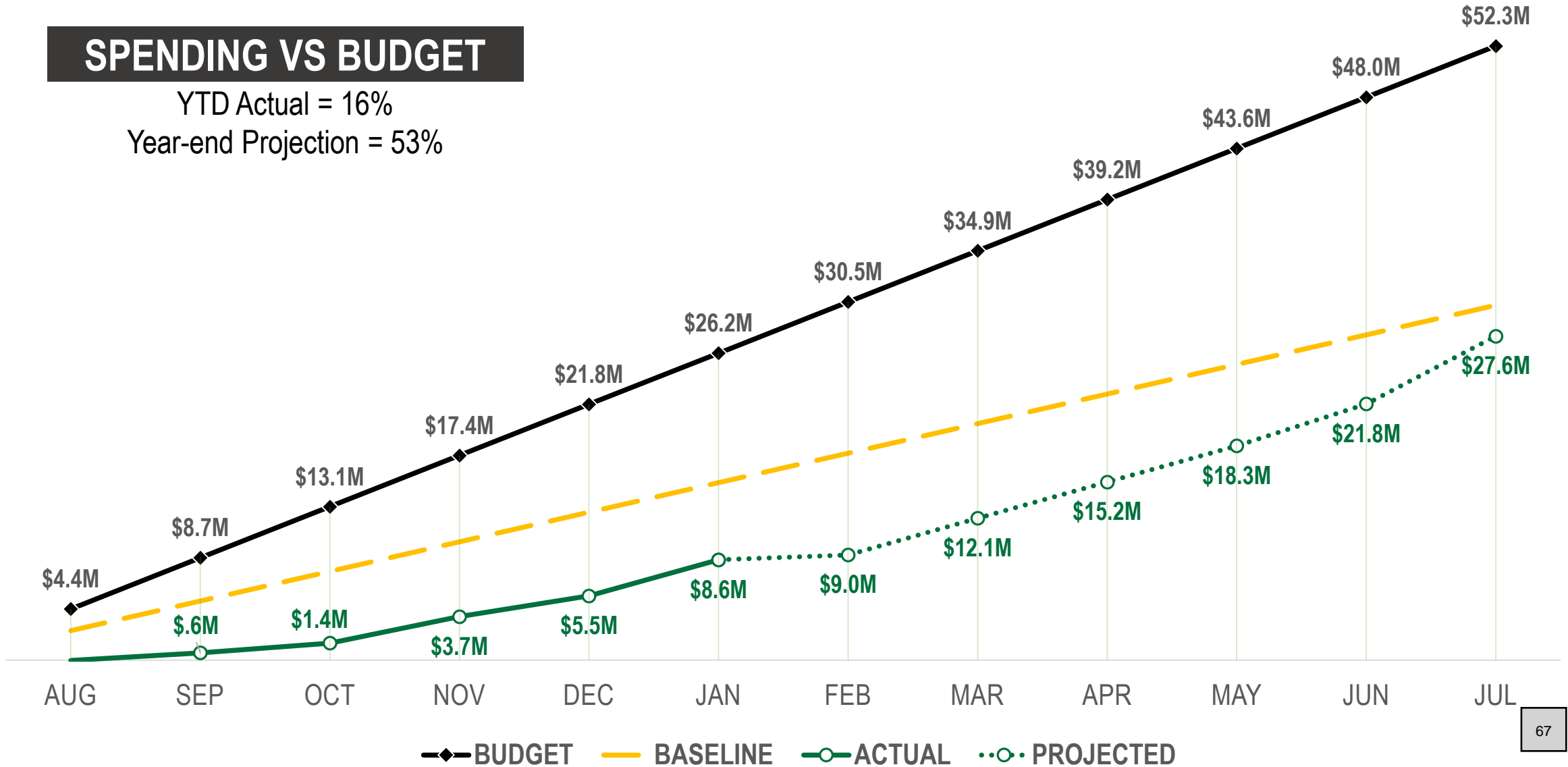
Purpose: Removal and replacement of an 8-inch water main attached to the bridge to restore the redundancy of a river crossing water connection.

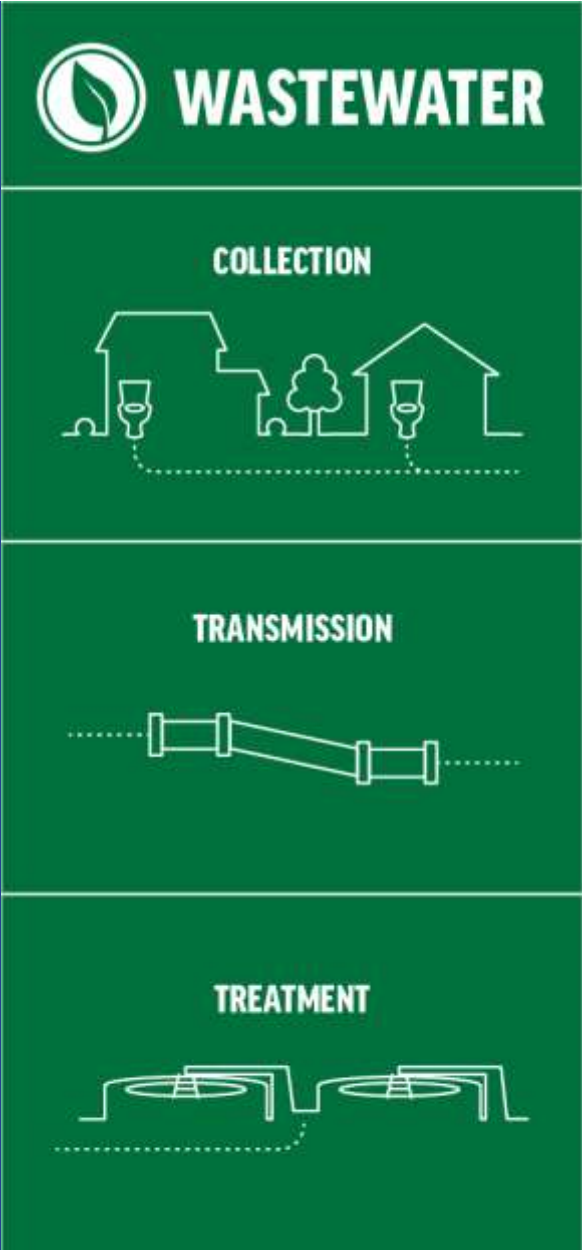


# Wastewater – Spending vs Budget Item 4.

## SPENDING VS BUDGET

YTD Actual = 16%  
Year-end Projection = 53%





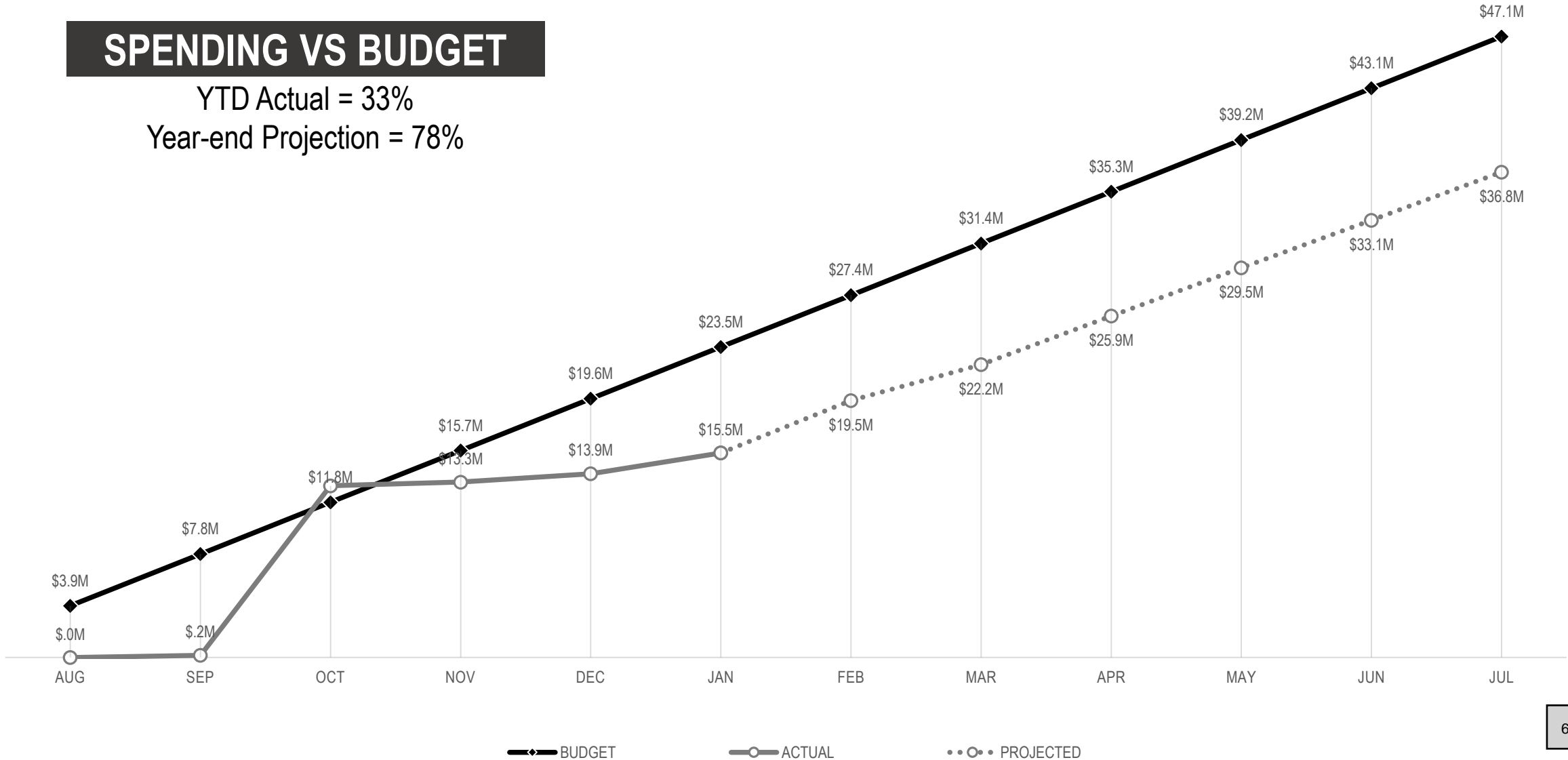
### Heatherfield LS Decommissioning

Expected Completion: 2026

Purpose: The McKenzie Interceptor project will be installed in a manner to support gravity flow from the existing lift station, allowing the facility to be decommissioned and reducing the O&M of our operations personnel.

## SPENDING VS BUDGET

YTD Actual = 33%  
Year-end Projection = 78%



- Demolition of three abandoned structures on NBU properties
- Completed W/WW SCADA master plan
- Replace four rooftop AC units at Main Plaza
- Change out of radios in fleet vehicles
- Getting hardware in place to move Comal County radio antennas to the Kerlick water tank



## SUPPORT

### FLEET & FACILITIES



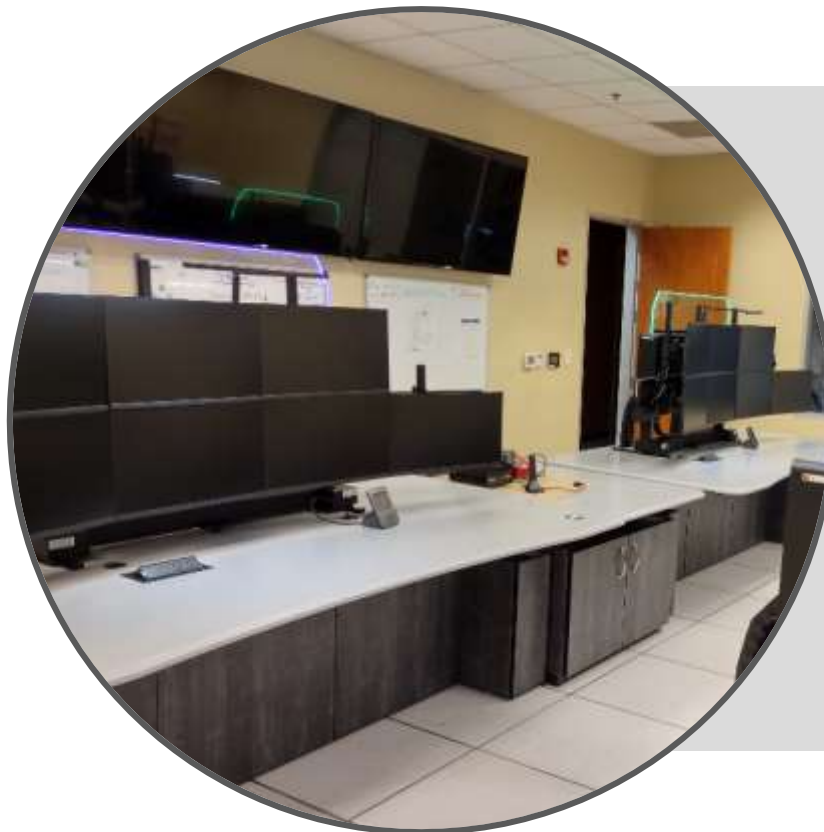
### INFORMATION TECHNOLOGY



### SYSTEMS CONTROL



### DATA STRATEGY



### Control Center Console Replacement

Completion: January 2024

Purpose: This project replaced the previous console that was installed in the early 2000s. The console was falling apart, inefficient, and lacked any form of ergonomic comfort for our operators.



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**QUESTIONS?**



**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Laura Ayala  
Board Relations Coordinator      **Reviewed by:** Laura Rivers  
Chief of Staff

**Submitted by:** Laura Rivers  
Chief of Staff      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Approve Minutes of the NBU Regular Board Meeting of March 28, 2024

**BACKGROUND**

None

**FINANCIAL IMPACT**

None

**LINK TO STRATEGIC PLAN**

**Customers and Community**

**EXHIBITS**

- 1. March 28, 2024 Regular Board Meeting Minutes

**MINUTES  
NEW BRAUNFELS UTILITIES BOARD OF DIRECTORS  
REGULAR BOARD MEETING**

**1:00 P.M.  
Thursday, March 28, 2024  
NBU Board Room  
263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130**

Board President Wayne Peters opened the meeting at 1:00 p.m. A quorum of the NBU Board was present.

**PRESENT**

Board President Wayne Peters, Board Vice President Judith Dykes-Hoffmann, Board Trustee John Harrell, Board Trustee Yvette Barrera Villanueva and Mayor Neal Linnartz

**ABSENT**

None

**NBU PERSONNEL**

Dawn Schriewer, Connie Lock, David Hubbard, Greg Brown, and Laura Rivers

**NBU CONSULTANTS**

None

**PLEDGE AND INVOCATION**

Board President Wayne Peters led the pledge of allegiance and offered the invocation.

**NBU VISION: Be a Trusted Community Partner Dedicated to Excellence in Service**

Chief Financial Officer Dawn Schriewer shared the vision of New Braunfels Utilities. This month the focus was on the NBU Vision. She highlighted two recent events that exemplify the NBU Vision, including staff participation in a Community Helper Day and the New Braunfels Food Bank's Back Pack drive.

**PUBLIC COMMENT**

Ron Schmidt, citizen, addressed the Board on the need for an easement to serve as a pathway for emergency vehicles or for emergency situations.

**RECOGNITIONS**

**1. New Braunfels Utilities (“NBU”) Kinderschuhe 5K Check Presentation to Communities in School of South Central Texas**

Chief of Staff Laura Rivers recognized staff who participated in this year’s Kinderschuhe 5K run event. New Braunfels Utilities (NBU) partnered with the Athletic Guild to raise funds for Communities in Schools, helping them purchase shoes for area children in need.



Representatives from the Athletic Guild, along with Communities in Schools staff, volunteers, and students, were present to receive a check for \$5000.

## **ITEMS FROM THE CHAIR**

### **1. American Public Power Association (APPA) Legislative Rally Update**

Board President Wayne Peters, Chief of Staff Laura Rivers, and Board Relations Coordinator Laura Ayala recently attended the American Public Power Association (APPA) Legislative Rally. Along with attending pre-conference seminars, Mr. Peters attended the Policy Makers Council meeting for a Legislative Overview and a presentation of proposed APPA resolutions. Additionally, they met with five Legislative staffs: (1) Senator Ted Cruz and his staff, (2) Senator John Cornyn's staff, (3) Representative Chip Roy's staff, (4) Representative Dan Crenshaw's staff, and (5) Representative Marc Veasey's staff. Discussions highlighted supply chain concerns, reducing financing costs for infrastructure investments, promoting affordable and reliable power and policies regarding Distributed Energy Resources (DERs), Federal policies related to Electric Vehicles (EVs), and strengthening partnerships for a secure grid.

### **2. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code**

None

## **ITEMS FROM STAFF**

### **1. CEO Update**

CEO Ryan Kelso was absent from the meeting. Chief of Staff Laura Rivers presented updates on the following events that NBU staff participated in on his behalf:

#### **a. Update on Electric Operations: Materials and Project Status Updates**

New Braunfels Utilities has received several critical deliveries of materials, including transformers. As a result, our Electric Department's materials queue backlog for residential projects, including subdivisions & multi-family units, has been cleared and is now at zero once again.

Electric Operations is now focused on catching up with construction for seven (7) projects, with the most significant being Mayfair E-8 which had developer requirements complete November 13, 2023.

#### **b. NBU Control Center Ribbon Cutting Ceremony**

The previous console in the Control Center, a relic from the early 2000s, was long overdue for a replacement. Its deteriorating condition, inefficiency, and ergonomic hazards were a constant concern for our operators. The need for a new console had been a topic of discussion for over a decade, with numerous drawings and vendor research conducted. Finally, in late 2022, a design was crafted that met all our operators' requirements. The most crucial was the sit-stand option, allowing them to work comfortably during their 12-hour shifts. The new consoles also facilitate the addition of an extra workstation, making the room more spacious. Since their installation, the room's morale has significantly improved. We have received the following direct feedback:

“The Control Center is significantly more comfortable, professional, and an all-around better work environment with the renovations. Just wanted to say the improvements are definitely appreciated.”

On February 28<sup>th</sup>, we held a grand re-opening of the Control Center to celebrate the much-deserved upgrades to the workstations.

c. Customer Service Real-Time Survey

Coming in FY25 and in an effort to provide a better Customer Experience, New Braunfels Utilities is moving to a Real-Time Survey for customers. Customers will have the opportunity to answer a short survey after interacting with NBU. The results will be available immediately via a dashboard and reported on more frequently to enable us to make any necessary changes/improvements before the customers' next encounter.

d. NBU Leadership Team Participation in Project Management Professional Bootcamp Training Update

The Business Planning team worked with The Project Management Academy to provide two independent trainings designed to increase awareness about the project management process and the benefits that companies world-wide are realizing by formalizing it. The first course was the four-day Project Management Professional boot camp, which is an in-depth dive into project management designed to set up an attendee to be able to take the PMP certification exam. The second was the two-day Project Management Workshop, which is an introduction to project management and its associated processes and provides an opportunity to work with other workshop members on practical applications. These trainings should benefit staff as formal project management is adopted company-wide to be able to use a common lexicon, increase communication, and increase efficiency.

e. Update on the Participating Solar Contracting Program

New Braunfels Utilities launched its new Participating Solar Contractor Program on March 1, 2024. Aimed at revolutionizing how individuals and businesses harness the power of solar energy in our region, this program represents a significant leap forward in NBU's commitment to customer-first support and resilient energy services. This new program emphasizes education around solar energy, a standard code of conduct for solar contractors, and additional NBU personnel to help streamline the process for all parties involved in the solar energy pipeline. If you have any questions about the program, please contact Adriane Tschoepe in the Conservation and Customer Solutions department. Here's to a cleaner and brighter future ahead!

f. Leadership Announcements: Jacob Cleland was announced as the newest addition to our leadership team. Jacob started with NBU on December 1, 2020, as the Communications & External Affairs Intern and was promoted to Communications & External Affairs Coordinator in January 2021, until September 2023, in his most recent role as Senior Communications Specialist, then Interim Communications & External Affairs Interim Manager this past February.

g. Any other items permitted under Section 55.0415 of the Texas Government Code: No additional items were discussed. \*no discussion under this item

**2. Financial Update and Report**

Accounting Manager Kimberly Huffman provided an update on the financial status of NBU.

**3. Discuss NBU Outage Notification Protocols**

Chief of Staff Laura Rivers presented information on the NBU Outage Notification Protocols. Information shared includes an overview of communication goals, possible causes of electric outages and water main breaks, an outage response timeline, target audience notifications, types of outages, NBU Protocols, Water Line Main Break Restoration, Key Account Enhanced Outage Communications, Protocol for Additional Priority Communications, and Technology Opportunities on the Horizon.

**CONSENT ITEMS FOR ACTION**

**Board Trustee John Harrell made a motion, and Mayor Neal Linnartz seconded the motion to approve the Consent Items for Action as follows: #1, #2, #3, #4, #5, #6, and #7. The vote was unanimous.**

1. Approve Minutes of the NBU Regular Board Meeting of February 29, 2024
2. Approve the Change Order Log from January 15, 2024, through February 15, 2024
3. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through February 15, 2024
4. Approve the Electric Line of Business Alternative Procurements from January 15, 2024, through February 15, 2024
5. Authorize CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement for Construction Management and Inspections for the FM 306 Pump Station & Discharge Line Project with Freese and Nichols, Inc.
6. Authorize CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Gruene Wastewater and Inverted Siphon Improvements as part of the Gruene Road Sewer Main Rehabilitation/Relocation Project
7. Authorize CEO or His Designee to Negotiate and Execute a Materials Agreement for Annual Steel Pole Purchases with KBS Electrical Distributors

**ACTION ITEMS**

1. **Discuss and Consider Authorizing CEO or His Designee to Negotiate and Execute a Treated Water Sharing Agreement with Guadalupe Blanco River Authority for the Resale of Water from the Gonzales Carrizo Water Supply Project on a Temporary Basis**  
Mayor Neal Linnartz made a motion, and Board Trustee John Harrell seconded the motion to approve the Treated Water Sharing Agreement with Guadalupe Blanco River Authority for

the resale of water from the Gonzales Carrizo Water Supply Project on a temporary basis. The vote was unanimous.

**2. Discuss and Consider Approving the Updated NBU Five-Year Water Conservation Plan as Required by the Texas Commission on Environmental Quality (TCEQ)**

Board Trustee John Harrell made a motion, and Board Trustee Yvette Barrera Villanueva seconded the motion to approve the updated NBU Five-Year Water Conservation Plan as Required by the Texas Commission on Environmental Quality. The vote was unanimous.

**3. Discuss and Consider Authorizing CEO or His Designee to Negotiate and Execute an AIA Standard Form of Agreement Between Owner and Construction Manager as Constructor with SpawGlass, Contractors, Inc. for the Construction of the Proposed NBU Headquarters Facility Project Located on a 76-acre Tract of Property at the Intersection of Engel Road and IH-35**

Board Trustee John Harrell made a motion, and Board Trustee Yvette Barrera Villanueva seconded the motion to approve the AIA Standard Form of Agreement Between Owner and Construction Manager as Constructor with SpawGlass, Contractors, Inc. for the Construction of the Proposed NBU Headquarters Facility Project Located on a 76-acre Tract of Property at the Intersection of Engel Road and IH-35. The vote was unanimous

## PRESENTATION ITEMS

**1. Presentation on the Future Population Growth and Economic Outlook in the Texas Area from Real Estate Research Firm, Zonda Intelligence Corp**

Bryan Glasshagel, Zonda Intelligence Corp, presented a New Braunfels Housing Market Update. The presentation included information on the mortgage rate and homeowner backdrop, the local area economy, housing demand, and housing supply.

**2. Presentation Regarding the Transfer of Real Property Located at 263 Main Plaza, New Braunfels, Texas (the “Property”) from NBU to the City of New Braunfels (the “City”) and Lease of the Property from the City to NBU**

Laura Rivers presented information on the transfer of the NBU property located at 263 Main Plaza, New Braunfels, Texas to the City of New Braunfels.

## EXECUTIVE SESSION

Board President Wayne Peters recessed the Open Session at 2:48 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included Power Supply Resources – Competitive Matters; Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney Client Privilege: Discuss the Pending Litigation Styled *Skyblue Utilities, Inc. v. New Braunfels Utilities*, Comal County, 433rd Judicial District Cause No. 2024-0253D, Discuss Legal Matters Related to the Texas Open Meetings Act

The Executive Session was opened at 2:57 pm and closed at 3:55 pm.

## RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE

**ADJOURN**

There was no further business, and Board President Wayne Peters adjourned the meeting at 3:55 p.m.

**Attest:**

\_\_\_\_\_  
*Wayne Peters, President*  
*Approved*

\_\_\_\_\_  
*Ryan Kelso, Secretary of the Board*  
*Chief Executive Officer*

*Date Approved: April 25, 2024*



**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Jesse Luna      **Reviewed by:** David Hubbard  
Purchasing Manager      Chief Administrative Officer

**Submitted by:** David Hubbard      **Approved by:** Ryan Kelso  
Chief Administrative Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Approve the Change Order Log from February 15, 2024, through March 15, 2024

## BACKGROUND

The Board of Trustees approved the NBU Purchasing Policy on October 31, 2019. The Purchasing Policy defines the process for obtaining approval of change orders. In addition to the individual approval by the Board of Trustees for change orders greater than \$50,000, the policy further states, “Each department manager will keep a log of all change orders and forward that log on a monthly basis to the Purchasing Manager before each Board of Trustees’ meeting. The Purchasing Manager will prepare a consent agenda item to request approval of those change orders at the next Board of Trustees’ meeting.”

Listed below are the change orders submitted to the Purchasing Manager for the period of January 15, 2024, through February 15, 2024.

## FINANCIAL IMPACT

Change orders less than \$50,000:

- Tank Decommission (Sunset, Coll, Loop), Demo of 1-foot concrete slab in Coll Tank., Hunter Demolition and Wrecking Corp., Change order No. 1, **a Cost increase of \$4,197.50.**
- Goodwin Lane Water Main, Out of Owner's contingency: net deduct (\$39,250.08) for NBU-requested alignment change and tie-in at Veiled Court, Removed \$248,150 in work no longer needed, added \$208,899.20 to accomplish requested changes, Cash Construction Company Inc., Change order No. 3, **No cost increase.**
- McKenzie WRF Expansion, Electronic message board on Elley Ln, added impact days from January that exceeded the contract allowable per month, MGC Contractors, Inc., Change Order No. 3, **Cost increase of \$21,006.00.**

- I-35 Water Line (Downtown), From Owner's contingency - Merriweather tie-in 1, sampling stations, line B tie-in change, driveway restoration (decorative), Pesado Construction Company, Change order No. 1, **No cost increase**.
- Garden Street Bridge Water Line (Aging), Concrete spall repair, sodding, curb replacement, credits for pavement repair, gate valve, and partial credit back on CO 2 for message boards, JM Pipeline, LLC, Change order No. 3, **Cost increase of \$13,605.00**.
- Solms Lift Station Expansion, Used \$47,072 remaining in Owners, plus Board for additional 20' gate, electrical canopy redesign, slab changes (\$0), and the access road leading to the new gate, Pesado Construction Company, Change order No. 2, a **Cost increase of \$34,024.48**.

Change orders more than \$50,000:

- None reported during this period.

## **LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

## **EXHIBITS**

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None





## **FINANCIAL IMPACT**

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The total value of new contracts added from February 15<sup>th</sup> to March 15<sup>th</sup> is \$593,525.00.

## **LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

## **EXHIBITS**

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1. Exhibit A – Report for Water Engineering Contracts
2. Exhibit B – Report for Electric Engineering Contracts

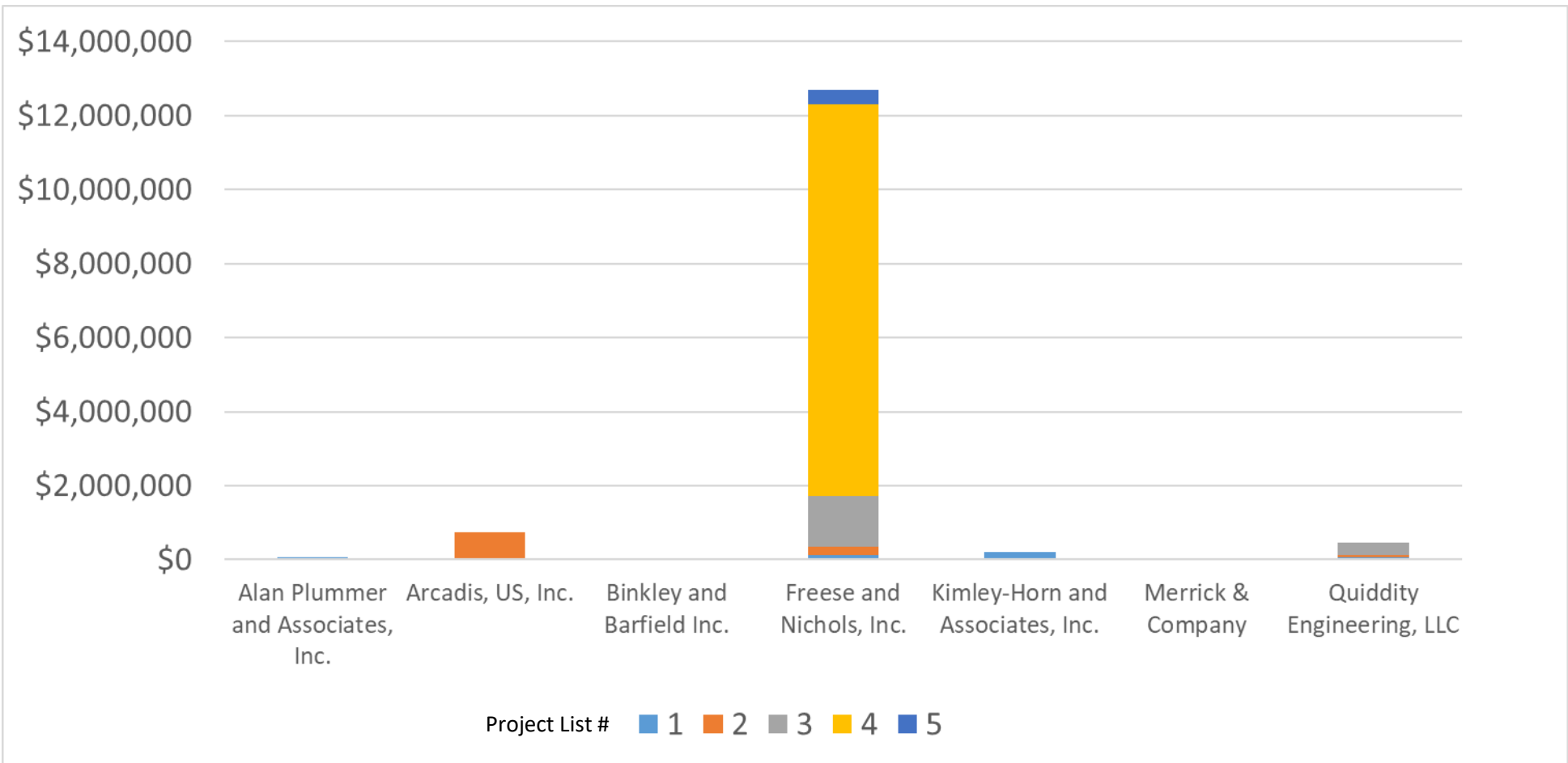
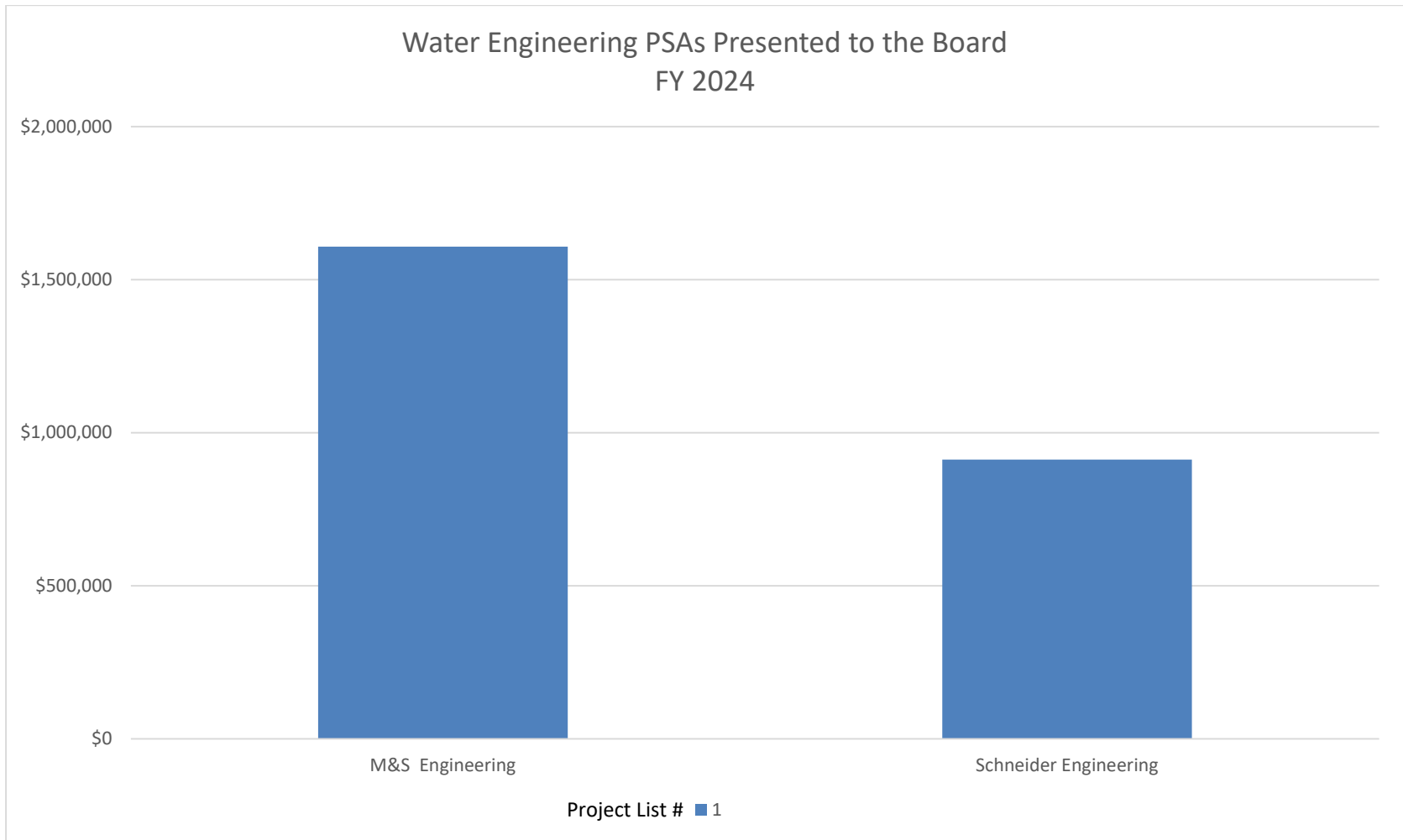


Exhibit A – Report for Water Engineering Contracts March 2024

Item 3.

Project List #	Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
1	Castell Ave Rehabilitation (CNB)	Binkley and Barfield Inc.	\$ 50,892.00	8/31/2023	Engineering	Amendment	9/1/2023
1	Solms Lift Station Expansion	Merrick & Company	\$ 30,988.00	8/31/2023	Engineering	Amendment	9/1/2023
1	Well 4 to Grandview Pump Station and Discharge Line Upgrades	Freese and Nichols, Inc.	\$ 108,850.00	8/31/2023	Engineering	Amendment	9/7/2023
1	Kuehler WRF Access Road - Courtyard Drive	Quiddity Engineering, LLC	\$ 66,410.00		Engineering	Amendment	10/3/2023
2	South Kuehler Interceptor Phase 1	Quiddity Engineering, LLC	\$ 52,780.00	9/28/2023	Engineering	Amendment	10/3/2023
1	24-Inch McQueeney Road Parallel Water Line (Downtown)	Alan Plummer and Associates, Inc.	\$ 70,000.00	9/28/2023	Engineering	Amendment	10/3/2023
2	FM 306 Pump Station & Discharge Line	Freese and Nichols, Inc.	\$ 228,917.00	9/28/2023	Engineering	Amendment	10/3/2023
3	San Antonio St Rehabilitation Phase 3 (CNB)	Quiddity Engineering, LLC	\$ 341,540.00		Engineering	PSA	11/3/2023
3	Water Tank Rehabilitations	Freese and Nichols, Inc.	\$ 1,380,592.00	10/26/2023	Engineering	PSA	11/13/2023
1	Water Resource Plan	Arcadis, US, Inc.	\$ -	12/14/2023	Engineering	Amendment	12/22/2023
2	Aquifer Strg & Recovery Project	Arcadis, US, Inc.	\$ 744,898.00	12/14/2023	Engineering	Amendment	12/22/2023
4	Staff Augmentation	Freese and Nichols, Inc.	\$ 10,578,296.00	12/14/2023	Engineering	PSA	12/22/2023
5	Trinity Expansion Treatment Plant	Freese and Nichols, Inc.	\$ 394,525.00	1/25/2024	Engineering	Amendment	2/21/2024
1	I-35 Interceptor Upgrade	Kimley-Horn and Associates, Inc.	\$ 199,000.00	1/25/2024	Engineering	Amendment	2/21/2024



Project List #	Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
1	Electric Distribution Projects	M&S Engineering	\$ 1,607,590.00	8/31/2023	Engineering		9/1/2023
2	Substation and transmission Design FY 2024	Schneider Engineering	\$ 912,000.00	8/31/2023	Engineering		9/1/2023



**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Jesse Luna      **Reviewed by:** David Hubbard  
Purchasing Manager      Chief Administrative Officer

**Submitted by:** David Hubbard      **Approved by:** Ryan Kelso  
Chief Administrative Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Approve the Electric Line of Business Alternative Procurements from February 15, 2024, through March 15, 2024

## BACKGROUND

Section 252.022(c) of the Texas Local Government Code provides that a municipally owned electric utility may define, by resolution, an alternative procurement procedure for the purchase of goods and services related to the electric utility. On June 28, 2018, the Board of Trustees approved the NBU Purchasing Policy, by resolution, which defined a procedure for procurement of goods and services for NBU's electric line of business. The Purchasing Policy was later revised and approved on October 31, 2019. Among other conditions, the Purchasing Policy requires NBU staff to notify the Board of Trustees of any procurement over \$250,000 that uses the electric line of business procurement procedure.

Listed below are the procurements, in excess of \$250,000, submitted to the Purchasing Manager for the period of February 15, 2024, through March 15, 2024, using the electric line of business alternative procurement process.

## FINANCIAL IMPACT

Electric Line of Business purchases more than \$250,000:

- Inventory Materials, Maddox Industrial Transformers, Solomon Corporation, Stuart C Irby Co., , Cost of \$317,785.04, See Exhibit A, Quote E1747, for reference  
(Note: This procurement was executed on February 9<sup>th</sup>, 2024, and should have been reported as part of the March board report)
- Inventory Materials, KBS Electrical Distributor, Sun Enterprises, Cost of \$265,550.00, See Exhibit B, Quote E1750, for reference

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

**EXHIBITS**

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1. Exhibit A – Quote E1747
2. Exhibit B – Quote E1750

Item 4.

Item	class no.	Description	Qty	UOM	MADDOX	IRBY	SOLOMON
					104718	076200	098766
1	285-108-00017	PADMOUNT SWITCHGEAR DEADFRONT SS ENCLOSURE 25KV -MD209	2	EA		\$41,544.69	
		<b><u>(FEDERAL PACIFIC # PSE-9-54222-AS2-CC-E3-F4-HR)</u></b>	TOTAL			\$83,089.38	
			DELIVERY			32-34 WKS	
2	285-084-00005	TRANSFORMER PD MT 150KVA 3PH W/TAPS 120/208	1	EA			\$14,955.00
		<b><u>(PER NBU SPECS)</u></b>	TOTAL				\$14,955.00
			DELIVERY				12-14 WKS
3	285-084-00016	TRANSFORMER PD MT 1500KVA 3PH W/TAPS 277/480	1	EA	\$45,341.60		
		<b><u>(PER NBU SPECS)</u></b>	TOTAL		\$45,341.60		
			DELIVERY			2-4 WKS	
4	285-084-00049	TRANSFORMER PD MT 1000KVA 3PH W/TAPS 277/480	1	EA	\$32,072.00		
		<b><u>(PER NBU SPECS)</u></b>	TOTAL		\$32,072.00		
			DELIVERY			2-4 WKS	
5	285-084-00058	TRANSFORMER PD MT 225KVA 3PH W/TAPS 120/208	2	EA	\$18,858.73		
		<b><u>(PER NBU SPECS)</u></b>	TOTAL		\$37,717.46		
			DELIVERY			2-4 WKS	
6	285-084-00059	TRANSFORMER PD MT 225KVA 3PH W/TAPS 277/480	1	EA	\$13,809.60		
		<b><u>(PER NBU SPECS)</u></b>	TOTAL		\$13,809.60		
			DELIVERY			2-4 WKS	
7	285-084-00019	TRANSFORMER PD MT 75KVA 1PH NO TAPS 120/240	12	EA			\$6,145.00
		<b><u>(PER NBU SPECS)</u></b>	TOTAL				\$55,305.00
			DELIVERY				17-19 WKS
8	285-084-00021	TRANSFORMER PD MT 100KVA 1PH NO TAPS 120/240	2	EA			\$7,780.00
		<b><u>(PER NBU SPECS)</u></b>	TOTAL				\$15,560.00
			DELIVERY				17-19 WKS



Item 4.

Item	class no.	Description	Qty	UOM	SUN ENT.	KBS
					101608	036825
1	285-076-00003	STAND. ST. LIGHT ALUM. 28' W/ARM	50	EA	\$1,039.00	
		<b><u>MUST INCLUDE 1"X4"X36" ANCHOR BOLT, WITH 2 HEX NUTS, 2 WASHERS AND 1 LOCK WASHER</u></b>	TOTAL		\$51,950.00	
			DELIVERY		12-14 WKS	
2	280-080-00013	4/0 PRIMARY UD WIRE 220 MIL. 1/3 NEUTRAL	42500	FT		\$5.52
		<b><u>(2500 FT. PER WOOD REEL - PER NBU SPECS)</u></b>	TOTAL			\$234,600.00
			DELIVERY			8-9 WKS



**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Nancy Pappas      **Reviewed by:** Dawn Schriewer  
 Managing Director,  
 Headwaters at the Comal      Chief Financial Officer

**Submitted by:** Laura Rivers      **Approved by:** Ryan Kelso  
 Chief of Staff      Chief Executive Officer

**RECOMMENDED ACTION:** Approve the Appointment of Elizabeth Bowerman as a Community Member of the Headwaters at the Comal Board of Directors

## **BACKGROUND**

In accordance with the Headwaters at the Comal’s (“Headwaters”) First Amended and Restated Bylaws, approved by the New Braunfels Utilities (“NBU”) Board of Trustees on February 23, 2023, the Headwaters Board structure consists of a seven-member Board comprised of four (4) NBU employees and three (3) community members. The community members to serve on the Headwaters Board are to be recommended by the Headwaters board and appointed by the Board of Trustees.

On Tuesday, March 26, 2024, the Headwaters Board unanimously agreed to nominate Elizabeth Bowerman as a community member for official appointment by the NBU Board of Trustees.

## **FINANCIAL IMPACT**

None

## **LINK TO STRATEGIC PLAN**

## **Stewardship**

## **EXHIBITS**

1. Headwaters at the Comal First Amended and Restated Bylaws

## FIRST AMENDED AND RESTATED BYLAWS

### FOR THE HEADWATERS AT THE COMAL

#### ARTICLE 1 – NAME, PURPOSES, POWERS, AND OFFICES

##### 1.1 Name

The name of this corporation is The Headwaters at the Comal (the “Corporation” or the “Headwaters”).

##### 1.2 Purposes

The Corporation is organized and shall be operated exclusively for scientific, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provisions of any subsequent federal revenue law (the “Code”), including, but not limited to, the making of gifts and grants in a manner consistent with the requirements for organizations described in Section 501(c)(3) of the Code, and to conduct, accomplish, and carry on its objectives, functions, and purposes or any part thereof set forth in the governing documents of the Corporation as amended from time to time.

Within the scope of the foregoing purposes and not by limitation thereof, the Corporation is organized and operated as a place that establishes a relationship between the community and its natural resources, in order to demonstrate the regeneration and protection of water and ecological resources and be an educational tool for the New Braunfels community and the many expected visitors. The assets and property of the Corporation are hereby pledged for use in performing its exempt purposes.

The Corporation is additionally organized to promote, encourage, and foster any other similar charitable, scientific, or educational activities; to accept, hold, invest, and reinvest and administer any gifts, legacies, bequests, devises, funds, and property of any sort or nature, and to use, expend, or donate its assets, and all income therefrom, for and to devote the same to, the foregoing purposes of the Corporation; and to do any and all lawful acts and things which may be necessary, useful, suitable, or proper for the furtherance of accomplishment of the purposes of this Corporation. Provided however, no act may be performed which would violate section 501(c)(3) of the Code as it now exists or as it may hereafter be amended.

##### 1.3 Powers

The Corporation is a Texas nonprofit corporation and has all the powers, duties, authorizations and responsibilities as provided by the Texas Business Organizations Code (“TBOC”); provided that the Corporation shall neither have nor exercise any power, nor engage directly or indirectly in any activity, that would invalidate its status as a Corporation that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Code.

##### 1.4 Offices

The principal business office of the Corporation in the State of Texas shall be 333 E. Klingemann, New Braunfels, Texas 78130. The Corporation may have such other offices as the Board of Directors (also referred to as “Headwaters Board”) may determine or as the affairs of the Corporation may require from time to time.

## 1.5 Registered Office

The Corporation shall comply with the requirements of the TBOC and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Headwaters Board may change the registered office and the registered agent as provided in the TBOC.

## ARTICLE 2 – NO MEMBERS

### 2.1 Membership

The Corporation shall have no “members” as that term is used in the TBOC. The Corporation is a Board of Director-managed organization, as described in Article 3. The Corporation may, nevertheless, use the word “members” to describe persons having such status and privileges as may be prescribed herein or as determined by the Headwaters Board. Such “members” shall have no voting or other legal or equitable right in the Corporation.

## ARTICLE 3 – BOARD OF DIRECTORS

### 3.1 General Powers

The activities, property, and affairs of the Corporation shall be managed by its Headwaters Board. The Headwaters Board may exercise all such powers of the Corporation and do all such lawful acts and things as are permitted by law, by the Certificate of Formation, or by these Bylaws, unless otherwise expressly provided herein.

### 3.2 Number and Qualifications

The Headwaters Board shall consist of at least three (3) directors. The initial directors shall be those persons named as directors in the Certificate of Formation. Decreasing the number of directors will not shorten the term of any incumbent director.

There shall be two classes of directors.

(a) Class A. Class A shall consist of four (4) employees of New Braunfels Utilities *recommended by the CEO of New Braunfels Utilities and appointed by the New Braunfels Utilities Board of Trustees*.

(b) Class B. Class B shall consist of three (3) community members *recommended by the Headwaters Board and appointed by the New Braunfels Utilities Board of Trustees*.

### 3.3 Term of Office

The initial directors of the Corporation shall be those persons named in the Certificate of Formation as the initial directors, and they shall hold office until their successors are chosen and qualified.

Thereafter, the Class A directors will serve until a successor director is appointed.

Class B directors shall hold office for a three-year term and until such director's successor is chosen and qualified, or until such director's earlier death, resignation, retirement, disqualification or removal from office. There shall be staggered terms of office for Class B directors so that approximately one-third of the Class B directors shall be selected each year.

### 3.4 Selection of Directors

Class A directors shall *be recommended by the CEO of New Braunfels Utilities and appointed by the New Braunfels Utilities Board of Trustees.*

Class B directors shall *be recommended by the Headwaters Board and appointed by the New Braunfels Utilities Board of Trustees.*

### 3.5 Duties of Directors

Directors will perform their duties in good faith, with ordinary care, and in a manner they reasonably believe to be in the best interest of the Corporation. Ordinary care is care that prudent persons in similar positions would exercise under similar circumstances. In the performance of any duty imposed or power conferred on directors, they may in good faith rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by a variety of persons, including officers and employees of the Corporation, professional advisors, or experts such as accountants or attorneys. A director is not relying in good faith if the director has knowledge concerning a matter in question that renders reliance unwarranted.

### 3.6 Vacancies

**Class A vacancy.** Any vacancy occurring in the Headwaters Board resulting from the death, resignation, retirement, disqualification, or removal from office of a Class A director shall be filled *by the New Braunfels Utilities Board of Trustees based on a recommendation from the CEO of New Braunfels Utilities.*

**Class B Vacancy.** Any vacancy occurring in the Headwaters Board resulting from the death, resignation, retirement, disqualification, or removal from office of a Class B director shall be filled *by the New Braunfels Utilities Board of Trustees based on a recommendation from the Headwaters Board.*

### 3.7 Removal

Any director may be removed, either for or without cause, by the affirmative vote of a majority of the directors present at any meeting of the Headwaters Board at which a quorum is present, if notice of the intention to act upon such matter shall have been given in the notice of such meeting and if such notice is provided to the director proposed to be removed; provided, however, once the Headwaters Board votes to remove a director, the Headwaters Board must provide such recommendation to the New Braunfels Utilities Board of Trustees to consider for approval before the removal becomes effective.

Regardless of any vote by the Headwaters Board, any director may be removed, either for or without cause, by the affirmative vote of a majority of the trustees present at any meeting of the New Braunfels Utilities Board of Trustees at which a quorum is present, if notice of the intention to act upon such matter shall have been given in the notice of such meeting and if such notice is provided to the director proposed to be removed.

### 3.8 Resignation

Any director may resign at any time by delivering written notice to the Secretary or President of the Headwaters Board and communicated within one (1) business day to the CEO of the New Braunfels Utilities and the New Braunfels Utilities Board of Trustees. Such resignation shall take effect upon receipt or, if later, at the time specified in the notice.

### **3.9 Directors' Compensation**

Directors will not receive any salaries or other compensation for their services from the Corporation, but, by resolution of the Headwaters Board, may be reimbursed for any actual expenses incurred in the performance of their duties for the Corporation, as long as a majority of disinterested directors approve the reimbursement. The Corporation will not loan money or property to, or guarantee the obligation of, any director.

## **ARTICLE 4 – NOTICES**

### **4.1 Notice**

At least three (3) days' written notice must be given to all directors of any meeting of the Headwaters Board. Notice of meetings may be given by electronic transmission (i.e., e-mail) if all directors individually and collectively consent in writing. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to a meeting not properly called.

## **ARTICLE 5 – MEETINGS**

### **5.1 Regular & Special Meetings**

The Headwaters Board will hold at least one meeting a year.

Regular meetings of the Headwaters Board will be held at such times and places as may be selected by resolution adopted by the Headwaters Board and communicated by written notice to all directors. Except as otherwise provided by law, by the Certificate of Formation, or by these Bylaws, any and all business may be transacted at any regular meeting.

Special meetings of the Headwaters Board may be called by or at the request of the Headwaters Board President or a majority of directors. A person or persons authorized to call special meetings of the Headwaters Board may select any place as the place for holding a special meeting. The person calling a special meeting will notify the Secretary of the Headwaters Board of the information required to be included in the notice of the meeting. The Secretary of the Headwaters Board will give notice to the directors as required in the Bylaws.

### **5.2 Quorum and Manner of Acting**

A majority of the number of directors then in office will constitute a quorum for the transaction of business at any meeting of the Headwaters Board.

The directors present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough directors leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of directors required to constitute a quorum. If a quorum is present at no time during a meeting, a majority of the directors present may adjourn and reconvene the meeting one time without further notice.

### **5.3 Proxy Voting Prohibited**

Proxy voting is not permitted.

#### **5.4 Written Consent of Directors**

Any action required or permitted to be taken at any meeting of the Headwaters Board or any committee may be taken without a meeting if a consent in writing setting forth the action to be taken is signed by the number of directors or officers whose vote would be necessary to take action at a meeting at which all such persons entitled to vote were present and voted, as the case may be. Such consent must be filed with the minutes of proceedings of the Headwaters Board or of the committee. Such consent shall have the same force and effect as a vote at a meeting where such directors or officers were present and voted and may be stated as such in any document.

#### **5.5 Electronic Meetings**

Subject to the provisions of applicable law and these Bylaws regarding notice of meetings, directors or members of any committee designated by the Headwaters Board may, unless otherwise restricted by statute, by the Certificate of Formation or by these Bylaws, participate in and hold any meeting of the Headwaters Board or committee by using conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every person voting at the meeting by means of remote communications is sufficiently identified and a record must be kept of any vote or other action taken. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

#### **5.6 Minutes**

At meetings of the Headwaters Board, business shall be transacted in such order as the Headwaters Board may determine from time to time. In the event the Secretary of the Headwaters Board is unavailable, the Headwaters Board President shall appoint a person to act as Secretary at each meeting. The Secretary of the Headwaters Board, or the person appointed to act as Secretary, shall prepare minutes of the meetings, which shall be delivered to the Corporation to be placed in the minute books of the Corporation.

### **ARTICLE 6 – COMMITTEES**

#### **6.1 Committees of Directors**

The Headwaters Board may establish one or more committees, may delegate specified authority to a committee, and may appoint or remove members of a committee. A committee shall include one or more directors and may include persons who are not directors. If the Headwaters Board delegates any of its authority to a committee, the majority of the committee shall consist of directors.

#### **6.2 Advisory Boards or Committees**

Advisory boards or committees not having and exercising the authority, responsibility or duties of the Headwaters Board in the management of the Corporation may be designated by a resolution adopted by the directors. Except as otherwise provided in such resolution, members of each such advisory board or committee need not be directors of the Corporation. The Headwaters Board President shall appoint the members of such advisory boards or committees. Any committee

member may be removed by the Headwaters Board President whenever in the Headwaters Board President's judgment the best interests of the Corporation shall be served by such removal.

## **ARTICLE 7 – OFFICERS**

### **7.1 Appointed Officers**

On an annual basis, following a recommendation from the CEO of New Braunfels Utilities, the New Braunfels Utilities Board of Trustees shall appoint the President of the Headwaters Board.

The Headwaters Board may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and assistant officers and agents as it shall from time to time deem necessary, who shall exercise such powers and perform such duties as shall be set forth in these Bylaws or determined from time to time by the Headwaters Board.

### **7.2 Elected Officers**

The elected officers of the Corporation shall include a Secretary and may include one or more Vice Presidents and/or a Treasurer, as may be determined from time to time by the Headwaters Board. Any two (2) or more offices may be held by the same person, except that the President and Secretary shall not be the same person.

### **7.3 Election**

All officers, except the President, will be elected by the Headwaters Board, so far as is practicable, at each annual meeting of the Headwaters Board.

### **7.4 Term of Office; Removal; Filling of Vacancies**

Officers shall hold a one-year term. An officer may be re-elected or re-appointed to serve consecutive terms of office. Each elected or appointed officer of the Corporation shall hold office until such officer's successor is chosen and qualified in such officer's stead or until such officer's earlier death, resignation, retirement, disqualification or removal from office.

Any officer, except for the President, of the Headwaters Board may be removed at any time by the affirmative vote of a majority of the Headwaters Board. The President of the Headwaters Board may be removed at any time by the New Braunfels Utilities Board of Trustees. If any office except the President becomes vacant for any reason, the vacancy shall be filled by the Headwaters Board. If the office of the President becomes vacant for any reason, the vacancy shall be filled by the New Braunfels Utilities Board of Trustees based on a recommendation from the CEO of New Braunfels Utilities.

### **7.5 President**

The President shall be the chief executive officer of the Corporation; shall preside at all meetings of the directors; shall be an ex-officio member of all standing committees; and shall have general and active management of the business of the Corporation.

### **7.6 Secretary**

The Secretary shall keep the minutes of the meetings of the Headwaters Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; keep custody of the corporate records of the Corporation; keep a register of the post office address of each director which shall be furnished to the Secretary by such directors; and in general perform all duties incident to the office of Secretary



and such other duties as from time to time may be assigned by the President or the Headwaters Board.

### **7.7 Vice President**

In the absence of the President or in the event of the President's inability or refusal to act, the Vice President, if any, (or in the event there be more than one Vice President, Vice Presidents in the order of their election) shall perform the duties of and be subject to all the restrictions of the President. Any Vice President shall perform such other duties as from time to time may be assigned by the President or by the Headwaters Board.

### **7.8 Treasurer**

The Treasurer, if any, shall keep correct and complete books and records of account and make the reports as the Headwaters Board shall require; shall receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Headwaters Board; and, in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Headwaters Board.

### **7.9 Additional Powers and Duties**

In addition to the foregoing specially enumerated duties, services and powers, the several elected and appointed officers of the Corporation shall perform such other duties and services and exercise such further powers as may be provided by law, the Certificate of Formation or these Bylaws, or as the Headwaters Board may from time to time determine or as may be assigned by any competent superior officer.

## **ARTICLE 8 – STAFF**

### **8.1 Staff**

New Braunfels Utilities (“NBU”) shall appoint a staff, including an Executive Director (currently named Managing Director until formal action is taken by the Headwaters Board to change such title by resolution or written agreement), and/or a management company to serve at the Headwaters Board's discretion and to carry out whatever tasks the Headwaters Board from time-to-time resolves.

### **8.2 Executive Director and/or Management Company**

The Executive Director and/or management company (“Management”) shall be compensated and/or paid a fee as set by NBU. The Headwaters Board may provide input as to performance metrics and evaluation of staff as requested by NBU; provided, however, that, if Management is employed by NBU, then NBU shall be solely responsible for all decisions as it relates to staff evaluation, hiring, promotion, discipline, and other matters in connection therewith. Subject to such supervisory powers as are vested in the Headwaters Board, Management shall supervise, direct, and control the business of the Corporation and actively manage the Corporation's business, and shall have such other powers and duties as may be prescribed by the Headwaters Board or by these Bylaws. Management may engage in negotiations involving commitments of the resources of the Corporation or the acceptance of money or resources by the Corporation in furtherance of the purposes of the Corporation as set out in the Certificate of

Formation and these Bylaws. Management shall generally be expected to attend all meetings of the Headwaters Board, yet Management does not have a vote on the Headwaters Board.

## **ARTICLE 9 – OPERATIONS**

### **9.1 Contracts**

The Headwaters Board may authorize any officer or officers, or agent or agents, of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. The Headwaters Board shall be required to obtain NBU approval for any contracts that affect or pertain to real property owned by NBU or staff employed by NBU.

### **9.2 Disbursement of Funds**

Management may dispense with the funds of the Corporation in accordance with the annual budget approved by the Headwaters Board and the purposes of the Corporation as set out in the Certificate of Formation and these Bylaws.

Financial transactions with the value of \$5,000 or more that are not in the annual budget shall require majority approval of the Headwaters Board.

Notwithstanding the above, all checks of more than \$5,000 disbursing funds from any of the Corporation's accounts shall require the signatures of Management and at least one of the following officers who is an authorized signer: President, Vice President, Secretary, or Treasurer.

### **9.3 Records**

The Corporation will keep correct and complete records of account and will also keep minutes of the proceedings of the Headwaters Board meetings and Committees. The Corporation will keep at its principal place of business the original or a copy of these Bylaws, including any amendments to date certified by the Secretary of the Corporation.

### **9.4 Conflicts of Interest**

The Corporation shall adopt a conflict of interest policy in the form attached hereto as Schedule A.

### **9.5 Dividends Prohibited**

No part of the net income of the Corporation shall inure to the benefit of any private individual and no dividend shall be paid and no part of the income of the Corporation shall be distributed to its directors or officers.

The Corporation may reimburse its directors as provided in Section 3.9.

### **9.6 Loans to Officers and Directors Prohibited**

The Corporation will not make loans to its officers and directors, and any directors voting for or assenting to the making of any such loan, and any officer participating in the making thereof, shall be jointly and severally liable to the Corporation for the amount of such loan until repayment thereof.

### **9.7 Fiscal Year**

The fiscal year of the Corporation will be January 1 to December 31.

## **9.8 Invalid Provisions**

If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall remain valid and operative.

## **ARTICLE 10 – INDEMNIFICATION**

### **10.1 Right to Indemnification**

The Corporation shall indemnify any person who was, is, or is threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person (i) is or was a director, officer, or committee member of the Corporation or (ii) while a director, officer, or committee member of the Corporation, is or was serving at the request of the Corporation as a director, officer, committee member, partner, or other enterprise, to the fullest extent that a corporation may grant indemnification to a director under the TBOC as the same exists or may hereafter be amended. TO THE EXTENT PERMITTED BY THEN-APPLICABLE LAW, THE GRANT OF MANDATORY INDEMNIFICATION TO ANY PERSON PURSUANT TO THIS ARTICLE SHALL EXTEND TO PROCEEDINGS INVOLVING THE NEGLIGENCE OF SUCH PERSONS. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the TBOC as the same exists or may hereafter be amended. As used herein, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrate, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

### **10.2 Reimbursement**

If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Corporation within one-hundred and eighty (180) days after a written claim has been received by the Corporation, the claimant may at any time thereafter, provided within the applicable statute of limitations, bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to be paid also the reasonable expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the TBOC, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Headwaters Board or any committee thereof, special legal counsel, or members, if any) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Corporation (including its Board or any committee thereof, special legal counsel, or members, if any) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible.

### **10.3 Right to Indemnity**

In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of his heirs, executors, administrators, and personal representatives.

## **10.4 Insurance**

The Corporation shall purchase and maintain insurance on behalf of any person who is serving the Corporation against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the Corporation would have the power to indemnify him against that liability under these Bylaws or by statute. Notwithstanding the foregoing, no person shall be indemnified pursuant to the provisions of this Article and no insurance may be maintained on behalf of any person if such indemnification or maintenance of insurance would subject the Corporation or such person to income or excise tax under the Code, including any tax asserted under Chapter 42 of the Code. The Corporation may additionally indemnify any person covered by the grant of mandatory indemnification contained above to such further extent as is permitted by law and may indemnify any other person to the fullest extent permitted by law. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of members, if any, or directors, agreement, or otherwise.

## **ARTICLE 11 – AMENDMENTS TO BYLAWS**

### **11.1 Powers to Amend**

These Bylaws may be amended or repealed, or new bylaws may be adopted at any annual or special meeting of the Headwaters Board at which a quorum is present by the affirmative vote of a majority of the directors present at the meeting, provided notice of the proposed amendment, repeal or adoption be contained in the notice of such meeting; and provided further, that the foregoing notice requirement shall not prohibit the directors from adopting the proposed amendment, effecting the proposed repeal or adopting the proposed new bylaws, as the case may be, in a modified form which is not identical to that described or set forth in the notice of such meeting. Any amendment, repeal, or adoption of the Bylaws must also be approved by the New Braunfels Utilities Board of Trustees.

## **ARTICLE 12 –DISSOLUTION**

### **12.1 Distribution of Assets**

The Corporation pledges its assets for use in performing the Corporation’s charitable functions. In the event the Corporation is dissolved, after all liabilities and obligations of the Corporation are paid or provision is made therefore, the Headwaters Board shall distribute remaining assets of the Corporation as they shall determine but only for tax-exempt purposes to such organization or organizations organized and operated exclusively for charitable or educational purposes and which are exempt under Section 501(c)(3) of the Code. Any of such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county which the principal office of the Corporation is then located, to one or more organizations exempt under Section 501(c)(3) of the Code in a manner which best accomplishes the purposes of the Corporation. No director or officer of the Corporation and no private individual will be entitled to share in the distribution of any assets of the Corporation in the event of its dissolution.

### **12.2 Decision Making Authority**

The Headwaters Board shall have the sole and exclusive right to vote and make decisions regarding or in any way involving the dissolution, merger, and/or consolidation of the Corporation

and decisions regarding the sale of substantially all of the Corporation's assets, provided any such decision is approved by the New Braunfels Utilities Board of Trustees.

### CERTIFICATION

I, the undersigned duly elected and acting Secretary of the Corporation hereby certify that the foregoing Bylaws were adopted as of the Corporation as of the 1st day of March, 2023, that the same constitute the Bylaws of said nonprofit corporation, and that the Bylaws have not been modified, amended or rescinded as of such date.

IN WITNESS WHEREOF, I have signed this certification effective as of March 1, 2023.



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Leonard Dougal  
Secretary of the Headwaters Board of Directors

## SCHEDULE A. CONFLICT OF INTEREST POLICY

### ARTICLE 1 - PURPOSE

The purpose of the Conflict of Interest Policy (“Policy”) is to protect The Headwaters of the Comal’s (the “Corporation”) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director, or key employee of the Corporation that might result in a possible excess benefit transaction. This Policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

### ARTICLE 2 - DEFINITIONS

#### **2.1. Interested Person**

Any director, principal officer, or member of a committee with powers delegated by the Corporation’s Board of Directors (the “Headwaters Board”), who has a direct or indirect financial interest, as defined below, is an interested person.

#### **2.2. Financial Interests**

Financial interests include, but are not limited to:

- a. An ownership, investment interest, or compensation arrangement with any entity with which the Corporation has a transaction or arrangement;
- b. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
- c. A potential ownership, investment interest, or compensation arrangement with any entity or individual with which the Corporation is negotiating a transaction or arrangement, including a commission or fee, share of the proceeds, the prospect of promotion or profit, or any other form of financial reward.

**2.3.** Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. Compensation, however, does not include any salary or benefits paid by New Braunfels Utilities to any director in exchange for employment services rendered.

**2.4.** A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the Headwater Board decides that a conflict of interest exists.

### ARTICLE 3 – PROCEDURES

#### **3.1. Duty to Disclose**

In connection with the actual or potential conflict of interest, an interested person must disclose the existence of his financial interest and all material facts to the directors and members of committees with Headwaters Board-delegated powers considering the proposed transaction or arrangement and shall abstain from voting on such matters.

#### **3.2. Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested party shall leave the Headwaters Board or committee meeting

while the determination of a conflict of interest is discussed and voted upon. The remaining Headwaters Board or committee members shall decide if a conflict of interest exists.

### **3.3. Procedures for Addressing the Conflict of Interest**

- a. An interested person may make a presentation at the Headwaters Board or committee meeting, but after such presentation, he shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
- b. The President or Chair of a committee shall appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement, if appropriate.
- c. After exercising due diligence, the Headwaters Board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Headwaters Board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation. The Corporation shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

### **3.4. Violations of the Conflict of Interest Policy**

- a. If the Headwaters Board or committee has reasonable cause to believe that a person has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the Headwaters Board or committee determines that the person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action, including, but not limited to, removal from the Headwaters Board.

## **ARTICLE 4 – RECORDINGS AND PROCEEDINGS**

**4.1.** The minutes of the Headwaters Board and committees with Headwaters Board-delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Headwaters Board's or committee's decision as to whether a conflict of interest in fact existed; and
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.



## **ARTICLE 5 – COMPENSATION**

**5.1** A voting member of the Headwaters Board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

**5.2** A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

**5.3** No voting member of the Headwaters Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

## **ARTICLE 6 – ANNUAL STATEMENT**

**6.1** Each director, officer, and committee member with Board-delegated powers shall annually sign a statement that affirms that such person:

- a. Has received a copy of the Policy;
- b. Has read and understands the Policy;
- c. Has agreed to comply with the Policy; and
- d. Understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

## **ARTICLE 7 – PERIODIC REVIEWS**

**7.1** To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.
- c. When conducting the periodic reviews, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Headwaters Board of its responsibility for ensuring periodic reviews are conducted.

## Conflict of Interest Annual Disclosure Statement

By signing the form below, I agree to ALL the statements below:

- I serve in of the following function(s) for the Corporation: Director, Board Advisor, Staff, Volunteer, Contractor, or \_\_\_\_\_ (specify other).
- I have received a copy of the Conflict of Interest Policy.
- I have READ and UNDERSTAND the Conflict of Interest Policy and know that I can directly contact the Corporation’s Executive Director or Board Chairman on matters that may pertain to a “real or perceived” conflict of interest.
- I agree to comply with this Conflict of Interest Policy.
- I understand that the corporation is a nonprofit corporation with 501(c)(3) tax exempt status, and that the Corporation, in order to maintain its federal tax-exemption, that is must engage primarily in activities that accomplish one or more of its tax-exempt purposes;

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

### ACCEPTANCE OF NOTICE BY EMAIL

I agree to accept meeting notice and other Headwaters Board materials via email at the email address listed below. I agree to meet electronically should the meeting notice include the electronic contact information.

\_\_\_\_\_  
Director’s Email Address, Date



**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Adam Willard, P.E.  
Chief Engineer of Water Systems      **Reviewed by:** Michael Short, P.E.  
Director of Water Services and Compliance

**Submitted by:** Michael Short, P.E.  
Director of Water Services and Compliance      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Skyblue Utilities, Inc. for the Construction of the Infrastructure Replacement Package 1 Project

## **BACKGROUND**

On December 8, 2023, New Braunfels Utilities (“NBU”) issued a request for bids for the Infrastructure Replacement Package 1 Project, which includes (i) construction of approximately 2,100 linear feet (LF) of 8-inch wastewater main along Spur Street, South Plum, South Grape, Rosedale Avenue, and adjacent to address 3567 IH 35 North; (ii) removal or abandonment of existing wastewater manholes and mains (iii) stormwater pollution prevention; (iv) removal and reconnection of water services; (v) traffic control; (vi) site restoration and (vii) all other appurtenances necessary to complete the Project (the “Project”). The Project will replace infrastructure that has decayed to a level that it no longer meets service requirements.

On January 25, 2024, NBU received two (2) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of Skyblue Utilities, Inc. (“Skyblue”) for the Project. Skyblue was the lowest responsible bidder and submitted a base bid of \$810,231.45, Additive Alternate Number 1 of \$217,847.49, and Additive Alternate Number 2 of \$207,490.27.

NBU staff requests that the Board of Trustees approve the Construction Contract Agreement (the “Contract”) with Skyblue for the Project.

This item is being presented to the Board because the total amount of the Contract exceeds \$250,000.

## **FINANCIAL IMPACT**

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The total financial impact of the Contract with Skyblue for the Project is \$1,235,569.21. The Project is budgeted within the fiscal year 2024 through fiscal year 2026 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency in the amount of \$100,000, which is approximately 8% of the total contract amount, will be added to the project construction budget. The total Contract amount plus contingency is \$1,335,569.21.

## **LINK TO STRATEGIC PLAN**

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### **Infrastructure and Technology**

## **EXHIBITS**

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1. Construction Contract with Skyblue
2. Letter of Recommendation from HMT Engineering and Surveying
3. Bid Tab – (RFB 24-0029)

Bid Tab	
<b><i>Bidder</i></b>	<b><i>Total Cost</i></b>
Skyblue Utilities, Inc.	\$1,235,569.21
Spiess Construction Co, Inc.	\$1,965,030.00

**THIS AGREEMENT** (the “Agreement” or the “Contract”) is between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **SKYBLUE UTILITIES, INC.**, a Texas corporation (the “Contractor”).

NBU and the Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

**ARTICLE 1 - WORK**

**1.01** The Contractor shall complete all Work as specified or indicated in the Contract Documents as listed below:

- Contract Agreement and the related Exhibits;**
- Standard General Conditions of the Contract;**
- Special Conditions;**
- Technical Specifications;**
- Payment Bond;**
- Performance Bond;**
- Civil Site Construction Plans of Infrastructure Replacement Package 1 (3567 IH 35 ACCESS) for New Braunfels Utilities prepared by HMT Engineering & Surveying dated August 14, 2023;**
- Civil Site Construction Plans of Infrastructure Replacement Package 1 (Rosedale Avenue) for New Braunfels Utilities prepared by HMT Engineering & Surveying dated August 14, 2023;**
- Civil Site Construction Plans of Infrastructure Replacement Package 1 (Spur St., S. Plum Ave., & S. Grape Ave.) for New Braunfels Utilities prepared by HMT Engineering & Surveying dated August 14, 2023; and**
- Infrastructure Replacement Package 1 – Technical Specifications for New Braunfels Utilities prepared by HMT Engineering & Surveying dated August 17, 2023.**

**1.02** The Work is generally described as follows:

**The Project is anticipated to include the following items within its scope (i) construction of approximately 2,100 linear feet (LF) of 8-inch wastewater main along Spur Street, South Plum, South Grape, Rosedale Avenue, and adjacent to address 3567 IH 35 North; (ii) removal or abandonment of existing wastewater manholes and mains; (iii) stormwater pollution prevention; (iv) removal and reconnection of water services; (v) traffic control; (vi) site restoration; and (vii) all other appurtenances necessary to complete the Project.**

**ARTICLE 2 - THE PROJECT**

**2.01** The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**Infrastructure Replacement Package 1**

**ARTICLE 3 - ENGINEER**

**3.01** The Project has been designed by:

**Christopher P. Van Heerde  
HMT Engineering and Surveying  
290 S. Castell Avenue, Suite 100  
New Braunfels, TX 78130  
830-625-8555**

(the “Engineer”), who is to act as NBU’s representative, assume all duties and responsibilities, and have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 - CONTRACT TIMES**

**4.01** *Time of the Essence*

A. Time limits stated in the Contract Documents are of the essence of the Contract. In all aspects of the Work, including any time limits for Milestones, Substantial Completion, and Final Completion, time is of the essence of the Contract. Additionally, time limits stated in the Project Schedule are of the essence. By executing this Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**4.02** *Days to Achieve Substantial Completion and Final Payment*

A. The Work shall be substantially complete within **one hundred and fifty (150) calendar days from the Notice to Proceed date** and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

**4.03** *Damages*

- A. The Contractor shall achieve Substantial Completion of the entire Work within **150** calendar days from the Notice to Proceed date, subject to and adjustments of the Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between NBU and the Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a material breach of this Agreement.
- B. Should the Contractor default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, NBU may withhold, deduct, or recover from the Contractor all costs and damages for compensable delay caused by the Contractor from the Contract Price. Such costs shall include any professional or consultant’s fees (including but not limited to fees for attorneys, architects, engineers, and construction managers), and all other costs, expenses, and damages actually incurred by NBU as a result of such delay. NBU’s delay damages may be incidental to and not directly associated with the Project.
- C. Timely final completion is an essential condition of this Agreement. The Contractor agrees to achieve final completion of the Work within 30 days of the designated or extended Substantial Completion date. The date of Substantial Completion shall be fixed by this Agreement, unless modified by Change Order, and memorialized by a Certificate of Substantial Completion as provided in the General Conditions.

**4.04** *Special Damages*

- A. In addition to damages for delay addressed in Section 4.03, the Contractor shall reimburse NBU for (i) any fines or penalties imposed on NBU as a direct result of the Contractor’s failure to attain Substantial Completion according to the Contract Times and (ii) the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Section 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After the Contractor achieves Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, the Contractor shall reimburse NBU for the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and

administrative services needed after the time specified in Section 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

- C. The remedies contained in this Article 4 are not exclusive and shall be cumulative to other remedies provided to NBU in the event of default or breach by the Contractor.

**ARTICLE 5 - CONTRACT PRICE**

**5.01** NBU shall pay the Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in the Contractor’s Bid Form, attached hereto as Exhibit B.

**ARTICLE 6 - PAYMENT PROCEDURES**

**6.01** *Submittal and Processing of Payments*

- A. The Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Engineer as provided in the General Conditions.

**6.02** *Progress Payments; Retainage*

- A. NBU shall make progress payments on account of the Contract Price on the basis of the Contractor’s Applications for Payment within 30 days of NBU’s acceptance of the payment application:
  - 1. Prior to Substantial Completion, NBU shall make progress payments in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the Engineer may determine or NBU may withhold, including but not limited to damages, in accordance with Section 14.02 of the General Conditions:
    - a. 95% (percent) of Work completed.
    - b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

**6.03** *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Section 14.07 of the General Conditions, NBU shall pay the remainder of the Contract Price, including any retainage held, as recommended by the Engineer as provided in said Section 14.07 of the General Conditions.

**ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS**

**7.01** To induce NBU to enter into this Agreement, the Contractor makes the following representations:

- A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. The Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface,

subsurface, and Underground Facilities) at or contiguous to the Site that may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

- E. The Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. The Contractor is aware of the general nature of work to be performed by NBU and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. The Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 8 - MISCELLANEOUS**

**8.01**    *Terms*

- A. Terms used in this Agreement will have the meanings stated in the Standard General Conditions of the Contract.

**8.02**    *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically, but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents. Should an assignment occur, the terms of this provision survive and control any further assignment by an assignee.

**8.03**    *Successors and Assigns*

- A. NBU and the Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

**8.04**    *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon NBU and the Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.



**8.05** *Governing Law*

A. The Contract shall be governed by the law of the State of Texas without regard to its conflict of law principles.

**8.06** *Venue*

A. This Agreement is entered into and performed in Comal County, Texas, and the Contractor and NBU agree that exclusive and mandatory venue for any legal action related to this Agreement shall be in the District Courts of Comal County, Texas.

**8.07** *Prohibition on Contracts with Companies Boycotting Israel*

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended.

B. The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

**8.08** *Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited*

A. The Contractor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

B. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Contractor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

**8.09** *Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia*

A. If the Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Contractor represents the following:

1. it is not owned by or the majority of stock or other ownership interest in the Contractor is not held or controlled by:

- a. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
  - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
2. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.
- B. The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. “Affiliate,” with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

**8.10** *Prohibition on Contracts with Companies Boycotting Energy Companies*

- A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2276 of the Texas Government Code, as amended.
- B. The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

**8.11** *Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries*

- A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.
- B. The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

**8.12** *Texas Public Information Act*

- A. The Contractor recognizes that this Project is publicly owned, and NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to NBU, to cooperate with NBU for

any particular needs or obligations arising out of NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to NBU's audit rights.

- B. This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.
- C. The Contractor must
  - 1. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement;
  - 2. promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of NBU; and
  - 3. on completion of the Agreement, either:
    - a. provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
    - b. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**8.13** *Electronic Signatures*

- A. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

**ARTICLE 9 - INSURANCE**

**9.01** *Evidence of the Contractor's Insurance*

Before any Work at the Site may commence, Contractor shall deliver to NBU the certificates of insurance and policy endorsements pages for all insurance policies required to be provided by the Contractor in accordance with the Insurance Rider that is Exhibit A to this Agreement.

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IN WITNESS WHEREOF, NBU and the Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to NBU and the Contractor. All portions of the Contract Documents have been signed or identified by NBU and the Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Agreement).

NBU:  
\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Ryan Kelso

Title: Chief Executive Officer

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If NBU is a corporation, attached evidence of authority to sign. If NBU is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of NBU-Contractor Agreement.)


SKYBLUE UTILITIES, INC.:

By: Guillermina Sanchez M.

Printed Name: Guillermina Sanchez M.

Title: President

[CORPORATE SEAL]

Attest: 

Title: Vice President

Address for giving notices:

PO Box 1001,

Kingsland, TX 78639

License No.: \_\_\_\_\_

(Where Applicable)

Agent for service or process:

\_\_\_\_\_  
(If the Contractor is a corporation or a partnership, attach evidence or authority to sign.)

**Exhibit A to Contract Agreement**  
**Owner’s Insurance Requirements of Contractor**

**1. Specific Insurance Requirements**

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

<b>Insurance</b>	<b>Coverage/Limits</b>	<b>Other Requirements</b>
Commercial General Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Occurrence</li> <li>▪ \$2,000,000 General Aggregate</li> <li>▪ \$2,000,000 Products/Completed Operations Aggregate</li> <li>▪ \$1,000,000 Personal And Advertising Injury</li> <li>▪ Designated Construction Project(s) General Aggregate Limit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CG 00 01</li> <li>▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10101 or an equivalent.</li> <li>▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties’ insurance being excess, secondary and non-contributing.</li> <li>▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers’ compensation state.</li> <li>▪ The following exclusions/limitations (or their equivalent(s), are prohibited:                             <ul style="list-style-type: none"> <li>○ Contractual Liability Limitation CG 21 39</li> <li>○ Amendment of Insured Contract Definition CG 24 26</li> <li>○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95</li> <li>○ Any Classification limitation</li> <li>○ Any Construction Defect Completed Operations exclusion</li> <li>○ Any endorsement modifying the Employer’s Liability exclusion or deleting exception to it</li> <li>○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage</li> <li>○ Any Habitational or Residential exclusion applicable to the Work</li> <li>○ Any “Insured vs. Insured” exclusion except Named Insured vs. Named Insured</li> <li>○ Any Punitive, Exemplary or Multiplied Damages exclusion</li> </ul> </li> </ul>

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		○ Any Subsidence exclusion
Business Auto Liability	Amount of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$1,000,000 Combined Single Limit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CA 00 01</li> <li>▪ Arising out of any auto (Symbol 1), including owned, hired and non-owned</li> </ul>
Workers' Compensation and Employer's Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ Statutory Limits</li> <li>▪ \$1,000,000 Each Accident and Disease</li> <li>▪ Alternate Employer endorsement</li> </ul>	<ul style="list-style-type: none"> <li>▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page</li> <li>▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.</li> <li>▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.</li> </ul>
Excess Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$5,000,000 Each Occurrence</li> </ul>	<ul style="list-style-type: none"> <li>▪ Coverage shall "follow form" over underlying policies listed herein.</li> </ul>
Professional Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li><del>▪ \$1,000,000 Each Claim</del></li> <li><del>▪ \$2,000,000 Annual Aggregate</del></li> <li><del>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Claim.</del></li> <li><del>▪ Such insurance shall cover all services rendered by the Contractor and its consultants under the Agreement, including but not limited to design or design/build services.</del></li> <li><del>▪ Policies written on a Claims Made basis shall be maintained for at least two years beyond termination of the Agreement.</del></li> </ul>	<ul style="list-style-type: none"> <li><del>▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement.</del></li> <li><del>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:</del> <ul style="list-style-type: none"> <li><del>○ bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors</del></li> <li><del>○ habitational or residential operations</del></li> <li><del>○ mold and/or microbial matter and/or fungus and/or biological substance</del></li> </ul> </li> <li><del>▪ Any retroactive date must be effective prior to beginning of services for the</del></li> </ul>

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		<p><del>Owner.</del></p> <ul style="list-style-type: none"> <li><del>▪ Policies written on a Claims Made basis shall have an extended reporting period of at least two years beyond termination of the Agreement. Contractor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.</del></li> </ul>
<p>Contractors Pollution Liability</p>	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li><del>▪ \$1,000,000 Each Claim</del></li> <li><del>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Claim.</del></li> <li><del>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li><del>○ the full scope of the named insured's operations (on going and completed) as described within the scope of work for this Agreement</del></li> <li><del>○ loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall</del></li> <li><del>○ third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations;</del></li> <li><del>○ diminution of value and Natural Resources damages</del></li> <li><del>○ contractual liability</del></li> <li><del>○ claims arising from non owned disposal sites utilized in the performance of this Agreement.</del></li> </ul> </del></li> </ul>	<ul style="list-style-type: none"> <li><del>▪ The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured.</del></li> <li><del>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li><del>○ Insured vs. insured actions. However exclusion for claims made between insured within the same economic family are acceptable.</del></li> <li><del>○ impaired property that has not been physically injured</del></li> <li><del>○ materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval.</del></li> <li><del>○ property damage to the work performed by the contractor</del></li> <li><del>○ faulty workmanship as it relates to clean up costs</del></li> <li><del>○ work performed by subcontractors</del></li> </ul> </del></li> <li><del>▪ If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of contractor services relation to the Work.</del></li> <li><del>▪ The policy will offer an extended discovery or extended reporting clause of at least three (3) years.</del></li> <li><del>▪ Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least two (2) years after the property owner accepts the project or this contract is terminated. The purchase of an extended discovery period</del></li> </ul>

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		<p>or an extended reporting period on a Claims Made policy or the purchase of occurrence-based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.</p>
<p><b>Builders Risk</b></p>	<ul style="list-style-type: none"> <li>■ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence.</li> <li>■ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing.</li> <li>■ The policy must provide coverage for:             <ul style="list-style-type: none"> <li>○ Agreed Value <span style="float: right;">Included</span></li> <li>○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse <span style="float: right;">Included</span></li> <li>○ Debris removal additional limit <span style="float: right;">\$1,000,000</span></li> <li>○ Earthquake and Earthquake Sprinkler Leakage <span style="float: right;">\$5,000,000</span></li> <li>○ Flood <span style="float: right;">Included</span></li> <li>○ Freezing <span style="float: right;">Included</span></li> <li>○ Mechanical breakdown including hot &amp; cold testing <span style="float: right;">\$1,000,000</span></li> <li>○ Ordinance or law <span style="float: right;">\$ 25,000</span></li> <li>○ Pollutant clean-up and removal <span style="float: right;">Included</span></li> <li>○ Preservation of property <span style="float: right;">Included</span></li> <li>○ Theft <span style="float: right;">\$10,000</span></li> </ul> </li> <li>● Deductible shall not exceed <span style="float: right;">2% subject to \$50,000</span></li> <li>○ All Risks of Direct Damage, Per Occurrence, except <span style="float: right;">minimum \$100,000</span></li> </ul>	<ul style="list-style-type: none"> <li>■ Insureds shall include Owner Parties, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds.</li> <li>■ Such insurance shall cover:             <ul style="list-style-type: none"> <li>○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;</li> <li>○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;</li> <li>○ all property including materials and supplies on site for installation;</li> <li>○ all property including materials and supplies at other locations but intended for use at the site;</li> <li>○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and</li> <li>○ other Work at the site identified in the Agreement to which this Exhibit is attached.</li> </ul> </li> <li>● No protective safeguard warranty shall be permitted.</li> <li>● The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of:             <ul style="list-style-type: none"> <li>○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;</li> <li>○ occupancy, in whole or in part;</li> <li>○ the date on which release of</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>○ Named Storm</li> </ul>	\$100,000	<ul style="list-style-type: none"> <li><del>substantial completion is executed; or</del></li> <li><del>the date on which the insurable interests of Contractor in the Covered Property has ceased.</del></li> <li>● A waiver of subrogation provision shall be provided in favor of all insureds listed above.</li> </ul>
	<ul style="list-style-type: none"> <li>○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</li> <li>○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V</li> </ul>		

**2. General Insurance Requirements**

**A. Definitions. For purposes of this Agreement:**

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include the Builder and its subcontractors of any tier.
- iii. "Owner Parties" means (a) New Braunfels Utilities (collectively referred to as "Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Contract Documents.

**B. Policies.**

- i. Contractor shall maintain such Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall maintain such General Liability insurance in identical coverage, form and amount, including required endorsements, for at least ten (10) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:
  - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
  - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
  - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
  - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.

- iv. The Owner shall have the right to prohibit the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

**C. Limits, Deductibles and Retentions**

- i. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk.

**D. Evidence of Insurance.**

The Contractor shall furnish evidence of insurance to NBU that confirms all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU.

Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;
  - f. Amount of any deductible or self-insured retention in excess of \$25,000;
  - g. Designated Construction Project(s) General Aggregate Limit;
  - h. Primary and non-contributory status;
  - i. Waivers of subrogation; and
  - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
  - a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

**E. Contractor Insurance Representations to Owner Parties**

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or

waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance and offset all costs and expenses from the Contract Sum. Owner's exercise of this right shall not relieve or excuse Contractor from the obligation to obtain and maintain such insurance amounts and coverages.

- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Contract Agreement.

**F. Insurance Requirements of Contractor's Subcontractors**

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self-insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

**G. Use of the Owners Equipment**

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use.

**H. Release and Waiver**

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**

**Exhibit B – Contractor’s Bid Form**

**Exhibit B to Contract Agreement**  
**Bidding Requirements, Contract Forms & Conditions of the Contract**  
**BID FORM**

Item 6.

New Braunfels Utilities  
355 FM 306  
New Braunfels, TX 78130

**PROJECT:** Infrastructure Replacement Package 1

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with New Braunfels Utilities (“NBU”) in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all the terms and conditions of the Request for Bid, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to RFB evaluation for ninety (90) days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other Documents required by the Bidding Requirements within ten (10) days after the date of NBU’s Notice of Award.
3. In submitting this bid, BIDDER represents, as more fully set forth in the Agreement, that:
  - a) BIDDER has examined copies of all the Bidding Documents and of all addenda.
  - b) BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
  - c) BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies that pertain to the subsurface of physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of Work as BIDDER considers necessary for the performance or finishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.02 of the Standard General Conditions of the Contract; and no additional examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by BIDDER for such purposes.
  - d) BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumed responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by the BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.04 of the Standard General Conditions of the Contract.
  - e) BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
  - f) BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable by BIDDER.
  - g) The Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has no solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over NBU.

**Exhibit B to Contract Agreement**  
**Bidding Requirements, Contract Forms & Conditions of the Contract**  
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4. BIDDER will complete the Work for the following prices:

**Base Bid Items (Spur, Plum, Grape)**

<u>Item No.</u>	<u>Spec. No.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
1	-	Mobilization	LS	1	84,000.00	84,000.00
2	703	Traffic Control Plan	LS	1	18,000.00	18,000.00
3	632	Gravel Filter Bags	LF	30	9.60	288.00
4	604	Areas to be Reseeded and Restored (includes topsoil)	SY	350	18.00	6,300.00
5	TxDOT 340	Pavement to be Removed and Replaced	SY	900	60.00	54,000.00
6	TxDOT 531	Concrete Sidewalk to be Removed and Replaced	SY	10	144.00	1,440.00
7	-	Remove and Dispose of Existing Sewer Pipe and Laterals	LF	1500	18.00	27,000.00
8	-	Remove Existing Manhole	EA	6	1,200.00	7,200.00
9	510	Fill and Abandon Existing Sewer Pipe	LF	100	48.00	4,800.00
10	510	Cap and Abandon Existing Sewer Pipe	LS	1	60.00	60.00
11	CNB	Remove and Replace Existing Concrete Curb and Gutter	LF	120	84.00	10,080.00
12	510	Pressure Rated 8" PVC Sanitary Sewer Pipe (All depths, includes Excavation, Backfill, Bedding, and TV Inspection)	LF	60	287.37	17,242.20
13	510	8" PVC Sanitary Sewer Pipe (All depths, includes Excavation, Backfill, Bedding, and TV Inspection)	LF	1250	263.94	329,925.00
14	510	Concrete Encasement	LF	55	120.00	6,600.00
15	509	Trench Excavation Protection	LF	1310	6.00	7,860.00

**Exhibit B to Contract Agreement**  
**Bidding Requirements, Contract Forms & Conditions of the Contract**  
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<u>Item No.</u>	<u>Spec. No.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
16	510	6" Sanitary Sewer Services and Cleanouts	EA	13	7,525.66	97,833.58
17	506	Standard Sanitary Sewer Manholes with Concrete Collar	EA	6	11,322.89	67,937.34
18	506	Extra Depth Manhole	VF	1	761.33	761.33
19	SAWS 864	Temporary Bypass Pumping	LS	1	36,000.00	36,000.00
20	510	Remove and Relocate Existing Water Service	EA	5	4,800.00	24,000.00
21	SAWS 540.6	Construction Exits (Install/Remove)	SY	80	30.00	2,400.00
22	SAWS 540.9	Temporary Sediment Control Fence	LF	140	3.60	504.00
23	SAWS 540.10	Curb Inlet Gravel Filters	LF	10	600.00	6,000.00

**TOTAL BASE BID (Add Items 1 through 23):**

**\$ 810,231.45**

**Exhibit B to Contract Agreement**  
**Bidding Requirements, Contract Forms & Conditions of the Contract**  
**BID FORM**

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**Additive Alternate No. 1 Bid Items (Rosedale)**

<u>Item No.</u>	<u>Spec. No.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
24	-	Mobilization	LS	1	24,000.00	24,000.00
25	703	Traffic Control Plan	LS	1	6,000.00	6,000.00
26	642	Silt Fence	LF	150	3.60	540.00
27	604	Areas to be Reseeded and Restored (includes Topsoil)	SY	50	18.00	900.00
28	TxDOT 340	Pavement to be Removed and Replaced	SY	200	60.00	12,000.00
29	TxDOT 531	Sidewalk Removed and Replaced	LS	1	3,600.00	3,600.00
30	-	Remove and Dispose of Existing Sewer Pipe and Laterals	LF	100	24.00	2,400.00
31	-	Remove Existing Manhole	EA	2	1,200.00	2,400.00
32	510	Fill and Abandon Existing Sewer Pipe	LF	250	36.00	9,000.00
33	510	Pressure Rated 8" PVC Sanitary Sewer Pipe (All depths, Backfill, Bedding, and TV Inspection)	LF	40	293.37	11,734.80
34	510	8" PVC Sanitary Sewer Pipe (All depths, Backfill, Bedding, and TV Inspection)	LF	260	263.82	68,593.20
35	509	Trench Excavation Protection	LF	300	6.00	1,800.00
36	510	6" Sanitary Sewer Services and Cleanouts	EA	2	7,563.28	15,126.56
37	506	Standard Sanitary Sewer Manholes with Concrete Collar	EA	3	11,454.09	34,362.27
38	506	Extra Depth Manhole	VF	2	881.33	1,762.66
39	SAWS 864	Temporary Bypass Pumping	LS	1	9,600.00	9,600.00
40	510	Remove and Relocate Existing Water Service	EA	2	5,400.00	10,800.00



**Exhibit B to Contract Agreement**  
**Bidding Requirements, Contract Forms & Conditions of the Contract**  
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<u>Item No.</u>	<u>Spec. No.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
41	SAWS 540.6	Construction Exits (Install/Remove)	SY	80	30.00	2,400.00
42	SAWS 540.9	Temporary Sediment Control Fence	LF	230	3.60	828.00

**TOTAL ADDITIVE ALTERNATE NO. 1 (Add Items 24 through 42): \$** 217,847.49

**Exhibit B to Contract Agreement**  
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**Additive Alternate No. 2 Bid Items (3567 IH 35 North)**

<u>Item No.</u>	<u>Spec. No.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
43	-	Mobilization	LS	1	24,000.00	24,000.00
44	639	Rock Berm	LF	30	72.00	2,160.00
45	604	Areas to be Reseeded and Restored (includes Topsoil)	SY	350	18.00	6,300.00
46	-	Remove and Replace Existing Fence	LF	85	36.00	3,060.00
47	-	Remove and Dispose of Existing Sewer Pipe and Laterals	LF	490	24.00	11,760.00
48	-	Remove Existing Manholes	EA	2	1,200.00	2,400.00
49	510	8" PVC Sanitary Sewer Pipe (All depths, Backfill, Bedding, and TV Inspection)	LF	490	239.97	117,585.30
50	506	Standard Sanitary Sewer Manhole with Concrete Collar	EA	2	10,270.49	20,540.98
51	506	Extra Depth Manhole	VF	3	881.33	2,643.99
52	509	Trench Excavation Protection	LF	490	6.00	2,940.00
53	SAWS 864	Temporary Bypass Pumping	LS	1	7,200.00	7,200.00
54	SAWS 540.1	Rock Filter Dams (Install/Remove) (Type 1)	LF	30	72.00	2,160.00
55	SAWS 540.6	Construction Exit (Install/Remove)	SY	80	30.00	2,400.00
56	SAWS 540.9	Temporary Sediment Control Fence	LF	650	3.60	2,340.00

**TOTAL ADDITIVE ALTERNATE NO. 2 (Add items 43 through 56): \$** 207,490.27

**Exhibit B to Contract Agreement**  
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<b>TOTAL BASE BID</b>	\$ <u>810,231.45</u>
<b>TOTAL ADDITIVE ALTERNATE NO. 1:</b>	\$ <u>217,847.49</u>
<b>TOTAL ADDITIVE ALTERNATE NO. 2:</b>	\$ <u>207,490.27</u>
<b>TOTAL BASE BID + ADDITIVE ALTERNATES NO. 1 + ADDITIVE ALTERNATES NO. 2:</b>	\$ <u>1,235,569.21</u>

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to delay damages and special damages in the event of failure to complete the Work on time.
6. The following documents are attached to and made a condition of this Bid:
  - a) Required Bid security of five percent (5%) of the Bidder's maximum base bid price and in the form of approved Bid Bond.
  - b) List of BIDDER's primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
7. Communication concerning this Bid shall be addressed to:  
New Braunfels Utilities  
Purchasing Manager  
355 FM 306  
New Braunfels, TX 78130  
Phone: 830-608-8867  
Email: [Purchasing@NBUTexas.com](mailto:Purchasing@NBUTexas.com)
8. The terms used in this Bid that are defined in the Standard General Conditions of the Contract included as part of the Contract Documents have the meanings assigned to them in the Standard General Conditions of the Contract.
9. The undersigned acknowledges receipt of the following addenda:  
Addendum No. 1 dated \_\_\_\_\_ Received \_\_\_\_\_  
Addendum No. 2 dated \_\_\_\_\_ Received \_\_\_\_\_  
Addendum No. 3 dated \_\_\_\_\_ Received \_\_\_\_\_

Exhibit B to Contract Agreement  
Bidding Requirements, Contract Forms & Conditions of the Contract  
**BID FORM**

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Secretary, \*if bidder is a corporation  
(Jose Guillermo Rubio)

Skyblue Utilities, Inc.

Company Name of Bidder

Guillermina Sanchez M.

Authorized Signature

(Seal)



01/25/2024

Date

Guillermina Sanchez M.

Printed Name of Authorized Signature

Copy of Corporate Resolution and minutes with certificate of officer of bidder as to authority of signatory to bind bidder is to be signed and dated no earlier than one week before bid date, and attached to this document

PO Box 1001,

Kingsland, TX 78639

Address

(325) 388-2500

Telephone Number/Fax Number

**END OF DOCUMENT**



290 S. Castell Avenue, Ste 100  
New Braunfels, TX 78130  
TBPE-FIRM F-10961  
TBPLS FIRM 10153600

Michael Perry,  
Assistant Manager  
New Braunfels Utilities  
355 FM 306  
New Braunfels, TX 78130

Date: February 7, 2024

Re: Infrastructure Replacement Package 1 - Construction  
RFB #24-0029

Dear Mr. Perry,

Listed below is the summary of bids for the New Braunfels Utilities – Infrastructure Replacement Package 1 – Construction project. The apparent low bidder is Skyblue Utilities, Inc. Attached is the bid tabulation for the project.

Infrastructure Replacement Package 1- Construction Bids				
Company Name	Base Bid	Alternate No. 1	Alternate No. 2	Total Bid
Skyblue Utilities, Inc.	\$810,231.45	\$217,847.49	\$207,490.27	<b>\$1,235,569.21</b>
Spieß Construction Co, Inc.	\$1,214,670.00	\$542,0170.00	\$208,290.00	<b>\$1,965,030.00</b>

HMT Engineering and Surveying’s Opinion of Probable Construction Cost for the total bid, which includes the base bid, alternate number 1, and alternate number 2 was \$1,229,664.15.

We have reviewed Skyblue Utilities, Inc’s references and project experience. We have been informed that they have experience constructing wastewater lines to NBU Specification and have performed similar work in the City of Ingram and City of Temple to a high standard. Therefore, HMT recommends that NBU award the construction contract for this project to Skyblue Utilities, Inc. in the amount of \$1,235,569.21. Please call me if you have any questions or need any additional information.

Sincerely,

Chris Van Heerde, PE  
Managing Partner  
HMT Engineering & Surveying



**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Adam Willard, P.E.      **Reviewed by:** Michael Short, P.E.  
 Chief Engineer of Water      Director of Water Services and  
 Services      Compliance

**Submitted by:** Michael Short, P.E.      **Approved by:** Ryan Kelso  
 Director of Water Services and      Chief Executive Officer  
 Compliance

**RECOMMENDED ACTION:** Authorize Resolution #2024 -183 Approving (i) The Conveyance of 1.209 Acres Being Lot 1, Block 36, Veramendi Est No. 1 Subdivision From Veramendi PE-Brisbane, LLC To New Braunfels Utilities, together With The Elevated Storage Tank Located Thereon and an Access Easement For Ingress and Egress; (ii) Execution of Any and All Related Documents Associated with Closing the Transaction; and (iii) Other Matters In Connection Therewith

## **BACKGROUND**

NBU entered into a Utility Construction Cost Sharing Agreement (“CSA”) on February 25, 2013, with, among others, Word-Borchers Ranch Joint Venture (“Original Developer”) to address the conditions under which NBU would provide water and wastewater service to the Veramendi development. Original Developer owned the rights to purchase a 2,400-acre tract of land from Word-Borchers Ranch Real Estate Limited Partnership (“Word-Borchers LP”), which it proposed to develop as the Veramendi Development. The CSA was amended on three subsequent occasions.

1. *Water Tank Site.* Pursuant to Section 2 of the Third Amendment to the CSA, Original Developer agreed to convey a 1.209 acre tract of land platted as Lot 1, Block 36, VERAMENDI EST No. 1 (“Veramendi EST Property”) to NBU by special warranty deed following construction of a 1.5-million-gallon elevated storage tank and related infrastructure (collectively the “Infrastructure”) on the Veramendi EST Property. The Veramendi EST Property was conveyed from Word-Borchers LP to Veramendi PE – Brisbane, LLC on August 20, 2020, by special warranty deed recorded as Document No. 202006034952, Official Public Records, Comal County, Texas. A special warranty deed (“Deed”) conveying the Veramendi EST Property from Veramendi PE – Brisbane, LLC to NBU is enclosed for the Board’s review and consideration.

2. *Infrastructure.* Section 8 of the Third Amendment to the CSA further provided that the Infrastructure would be conveyed by two bills of sale (“Bills of Sale”), one to the Comal County Water Improvement District No. 1A (“Water District”) and the second from the Water District to NBU. The Infrastructure has

been constructed on the Veramendi EST Property and was accepted by NBU on May 20, 2022. The Bills of Sale conveying the Infrastructure to the Water District and from the Water District to NBU are enclosed for the Board's review and consideration.

3. *Easement.* The Veramendi EST Property does not have direct access to a public road. An Access Easement conveying an easement ("Easement") to NBU on, over, and across contiguous property owned by Word-Borchers LP for use as a means of access to and from Loop 337 is enclosed for the Board's review and consideration.

NBU staff requests that the Board approve the conveyance of the Property, Infrastructure, and Easement to NBU at closing by means of the form Deed, Bill of Sale, and Access Easement, or forms substantially similar thereto and authorize the CEO or his designee to execute any documents reasonably necessary to close the transaction and pay the necessary closing costs for the conveyance of the Property in an amount not to exceed \$7,000.

### **FINANCIAL IMPACT**

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The anticipated closing costs are estimated not to exceed \$7,000.00

### **LINK TO STRATEGIC PLAN**

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**Infrastructure and Technology**

### **EXHIBITS**

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1. Resolution #2024-183
2. Deed
3. Bills of Sale
4. Easement Agreement

R-2024-\_\_

**A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING (I) THE CONVEYANCE OF 1.209 ACRES BEING LOT 1, BLOCK 36, VERAMENDI EST NO. 1 SUBDIVISION FROM VERAMENDI PE-BRISBANE, LLC TO NEW BRAUNFELS UTILITIES, TOGETHER WITH THE ELEVATED STORAGE TANK LOCATED THEREON AND AN ACCESS EASEMENT FOR INGRESS AND EGRESS; (II) EXECUTION OF ANY AND ALL RELATED DOCUMENTS ASSOCIATED WITH CLOSING THE TRANSACTION; AND (III) OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, New Braunfels Utilities (“NBU”) is a Texas municipally owned utility that provides water, wastewater, and electricity to ratepayers in its service area;

WHEREAS, on February 25, 2013, Word-Borchers Ranch Joint Venture (the “Original Developer”) owned rights to acquire 2,400 acres of land in Comal County, Texas, owned by Word-Borchers Ranch Real Estate Limited Partnership (“Word-Borchers LP”), for the proposed development of a mixed-use community (the “Veramendi Development”);

WHEREAS, on February 25, 2013, NBU entered into a Utility Construction Cost Sharing Agreement (the “CSA”) with the Original Developer and Comal County Water Improvement District No. 1 (the “Water District”) to address certain conditions under which NBU would provide water and wastewater service to the Veramendi Development;

WHEREAS, Word-Borchers LP and the City of New Braunfels executed limited joinders to the CSA with NBU and the Original Developer to acknowledge and accept the terms and conditions of the CSA and consent to the CSA, respectively;

WHEREAS, NBU entered into a First Amendment to the CSA on July 23, 2015;

WHEREAS, on September 14, 2015, the Original Developer formed Veramendi Development Company, LLC (the “Developer”) and all of the assets and rights of the Original Developer were assigned to the Developer;

WHEREAS, on October 10, 2017, NBU entered into a Second Amendment to the CSA with the Developer and the Water District, in which NBU and the Water District acknowledged and agreed that the Developer assumed all of the rights and obligations of the Original Developer under the CSA;

WHEREAS, on April 22, 2020, NBU entered into a Third Amendment to the CSA (the “Third Amendment”) that requires the Developer to construct the Veramendi elevated storage tank and related infrastructure (collectively the “EST”) and convey that certain 1.209 ACRES BEING LOT 1, BLOCK 36, VERAMENDI EST NO. 1 SUBDIVISION (the “Property”) on which the EST was constructed to NBU by special warranty deed (“Deed”);



WHEREAS, the Third Amendment further provides that the EST will be conveyed by two bills of sale (“Bills of Sale”), one to the Water District and thereafter from the Water District to NBU;

WHEREAS, on August 20, 2020, Word-Borchers LP conveyed the Property together with all improvements to Veramendi PE-Brisbane LLC (the “Developer Phase Entity”) via special warranty deed;

WHEREAS, the Developer owns and holds real property in phase entities that the Developer wholly owns, governs, and controls;

WHEREAS, the Developer wholly owns, governs, and controls the Developer Phase Entity;

WHEREAS, the EST has been constructed and NBU notified the Developer of acceptance of the EST on May 20, 2022, via letter;

WHEREAS, the form Deed and Bills of Sale that the Developer Phase Entity is proposing to execute to convey the Property and the EST to NBU have been negotiated with the Developer Phase Entity and are attached hereto as Exhibit A and Exhibit B, respectively;

WHEREAS, the Developer Phase Entity is further proposing to deliver an access easement (“Access Easement”) from Word-Borchers LP to NBU on, over, and across contiguous property owned by Word-Borchers LP to enable NBU to access the Property from Loop 337;

WHEREAS, the form Access Easement has been negotiated with the Developer Phase Entity on behalf of Word Borchers LP and is attached hereto as Exhibit C; and

WHEREAS, NBU and the Developer Phase Entity are prepared to advance the closing of the conveyance of the Property, the EST, and the Access Easement to NBU upon approval of the NBU Board of Trustees.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES THAT:

SECTION 1. The Board of Trustees hereby approves the conveyance of the Property, EST, and Access Easement to NBU at closing by means of the form Deed, Bills of Sale, and Access Easement, or forms substantially similar thereto.

SECTION 2. The Chief Executive Officer of NBU or his designee is hereby authorized to execute any documents reasonably necessary to close the transaction and to pay the necessary closing costs for the conveyance of the Property in an amount not to exceed \$7,000.

SECTION 3. The recitals contained in the preamble hereof are found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board of Trustees.

SECTION 4. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 6. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board of Trustees hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 8. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

*[The remainder of this page is intentionally left blank.]*

PASSED, APPROVED, AND ADOPTED, this the 25th day of April 2024.

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Wayne Peters  
President, Board of Trustees  
New Braunfels Utilities

ATTEST:

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Ryan Kelso  
Secretary, Board of Trustees  
New Braunfels Utilities

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

**SPECIAL WARRANTY DEED**

Date: \_\_\_\_\_, 2024

Grantor: Veramendi PE – Brisbane, LLC, a Texas limited liability company

Grantor’s Mailing Address: 387 W. Mill Street, Suite 108  
New Braunfels, Comal County, Texas 78130

Grantee: New Braunfels Utilities, a Texas municipally owned utility

Grantee’s Mailing Address: P.O. Box 310289  
New Braunfels, Comal County, Texas 78131

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged

Property (including any improvements): BEING Lot 1, Block 36, VERAMENDI EST NO. 1, a subdivision in Comal County, Texas, according to the map or plat recorded in Document 202006031940, Map and Plat Records, Comal County, Texas.

Restrictions: For as long as Grantee or another governmental entity owns the Property, the Property shall be used for no other purpose than for an elevated water tank.

Reservations from Conveyance: (1) All rights in groundwater in, on or under the Property (but without affecting any right Grantor may have to receive water or sewer services from New Braunfels Utilities); (2) all oil and gas rights relating to the Property; and (3) any other mineral rights of any kind. Notwithstanding Grantor's reservation of the groundwater estate and mineral estate, or any other provision herein, Grantor does hereby forever waive and abandon any and all right or claim of any use of the surface of the Property whatsoever, including but not limited to all rights of ingress and/or egress, or any other use of the surface of the Property for any purpose related to exploring, drilling or otherwise developing or producing, storing, treating and/or transporting any portion of the groundwater, oil, gas or other minerals associated with the groundwater estate and/or mineral estate; provided, however, that (a) Grantor shall be entitled to explore for, develop and produce the groundwater estate by directional drilling from offsite surface locations on tracts other than the Property, so long as such directional drilling activities are located at least 150 feet

from the boundary of the Property and penetrate the Property sufficiently below the surface of the Property (and in no event at a depth of less than 500 feet below the surface) so as not to interfere with or disturb in any manner the use of the surface of the Property by Grantee or its successors or assigns, including the subsurface support of any improvements constructed or to be constructed on the Property; and (b) Grantor shall be entitled to explore for, develop and produce the mineral estate by directional drilling from offsite surface locations on tracts other than the Property, so long as such directional drilling activities are located at least 600 feet from the boundary of the Property and penetrate the Property sufficiently below the surface of the Property (and in no event at a depth of less than 500 feet below the surface) so as not to interfere with or disturb in any manner the use of the surface of the Property by Grantee or its successors or assigns, including the subsurface support of any improvements constructed or to be constructed on the Property. No use of the subsurface of the Property shall be allowed or authorized for the injection of any substance, gas, liquid or other fluid, including groundwater, saltwater or produced water, for any purpose, including for purposes of disposal or storage. The preceding sentence shall not be construed to prohibit Grantor from using the subsurface of the Property for storage of groundwater for Aquifer Storage and Recovery as permitted by the TCEQ so long as the injection well is located at least 600 feet from the boundary of the Property.

Exceptions to  
Conveyance and  
Warranty:

As described on **Exhibit A**

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

Taxes and assessments on the Property for the year 2024 will be prorated between Grantor and Grantee as of the date of the closing, and all taxes and assessments for the year 2024 and for subsequent years shall be paid by Grantee if Grantee is obligated to do so by applicable law.

Any and all easements on, over, under or affecting any portion of the Property in favor of Grantee or benefitting any real or personal property owned by Grantee will continue to remain valid and subsisting easements, in full force and effect and there will be no merger of title.

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

**GRANTOR**

**Veramendi PE – Brisbane, LLC**

By: **Veramendi Development Company, LLC**, its sole manager

By: **ASA Properties LLC**, its sole manager

By: \_\_\_\_\_  
Peter James, President

**STATE OF TEXAS** §

§

**COUNTY OF COMAL** §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Peter James, the President of ASA Properties LLC, a Texas limited liability company, as sole manager of Veramendi Development Company, LLC, a Texas limited liability company, as sole manager of Veramendi PE – Brisbane, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

**PERMITTED EXCEPTIONS**

1. Document No. 202006031940, Map and Plat Records, Comal County, Texas.
2. Strategic Partnership Agreement between the City of New Braunfels, Texas and the Comal County Water Improvement District No. 1, effective July 24, 2015, filed July 24, 2015, in Instrument No. 201506029553, Official Public Records of Comal County, Texas.
3. Development Agreement between City of New Braunfels and Word-Borchers Ranch Joint Venture for Proposed Mixed Use Development recorded July 24, 2015, in Instrument No. 201506029547, Official Public Records of Comal County, Texas. Said agreement modified by First Amendment recorded July 24, 2015, in Instrument No. 201506029548; Second Amendment recorded July 24, 2015, in Instrument No. 201506029549; Third Amendment recorded July 24, 2015, in Instrument No. 201506029550; Fourth Amendment recorded July 24, 2015, in Instrument No. 201506029551; Fifth Amendment recorded July 24, 2015, in Instrument No. 201506029552.
4. Utility Construction Cost Sharing Agreement for the Veramendi Development recorded July 24, 2015 in Instrument No. 201506029554, and amended in Instrument No. 201506029608, Instrument No. 201806007032, and Instrument No. 202006024105, Official Public Records of Comal County, Texas.
5. Reservation of all subterranean waters as set forth in Document No. 202006034952, Official Public Records of Comal County, Texas.
6. 20' access and Utility easement to New Braunfels Utilities as recorded in Volume 449, Page 77, Official Public Records, Comal County, Texas.
7. Electric Line Right-of-Way to New Braunfels Utilities recorded in Volume 451, Page 871, Official Public Records, Comal County, Texas.
8. Corrected Sewer Line Agreement to New Braunfels Utilities recorded in Volume 529, Page 566, Official Public Records, Comal County, Texas.
9. 5' service easement to the building structure along the service line to the service entrance as recited on plat recorded in Document No. 202006031940, Map and Plat Records, Comal County, Texas.
10. Subject property lies within the Comal County Water Improvement District No. 1B.
11. Subject property lies within the Edwards Water District.

**BILL OF SALE, CONVEYANCE AND ASSIGNMENT**

**STATE OF TEXAS           §**

**§**

**COUNTY OF COMAL       §**

This Bill of Sale, Conveyance and Assignment (“**Conveyance**”), effective as of the date set forth below (“**Effective Date**”), is made by and between COMAL COUNTY WATER IMPROVEMENT DISTRICT NO. 1A, a water control and improvement district created and operating pursuant to Chapters 49 and 51 of the Texas Water Code (“**Grantor**”), and NEW BRAUNFELS UTILITIES (“**Grantee**”), a municipally owned utility charged with exclusive management and control of the water and sewer systems of the City of New Braunfels (the “**City**”). The Grantor and the Grantee are referred to herein collectively as the “**Parties**” and singularly as “**Party.**”

**RECITALS**

A. Grantor was created by Senate Bill No. 2464, 81st Legislature of Texas, Regular Session, codified at Chapter 9038, Texas Special District Local Laws Code, effective June 19, 2009 (the “**Enabling Legislation**”), for the purpose of, among other things, providing water, sanitary sewer, drainage facilities, and roads to serve the land within its boundaries;

B. The Enabling Legislation requires Grantor to enter into a development agreement with a retail public utility owned by a municipality that addresses water and wastewater issues. The Enabling Legislation additionally provides that Grantor shall convey water and wastewater facilities to the retail public utility owned by the municipality upon completion of the facilities, free of all liens, claims, or encumbrances, in the form acceptable to the retail public utility;

C. Grantor has entered into that certain Utility Construction Cost Sharing Agreement, as amended, (the “**Utility Agreement**”) with Grantee and Veramendi Development Company LLC, successor in interest to Word-Borchers Ranch Joint Venture, wherein Grantee agrees to provide water and sewer service to customers within the property more particularly described on the plat, recorded in the real property records of Comal County, Texas, as Document No. 202006030614, Document No. 202006031940, Document No. 202106006261, Document No. 202106024851, Document No. 202206020496, Document No. 202306002383 and Document No. 202306002423 (the “**Property**”);

D. Upon satisfaction of the applicable Utility Agreement provisions and the applicable provisions of that certain Development Agreement between Grantor, the City, and Word-Borchers Ranch Joint Venture (the “**Development Agreement**”), the Grantor shall convey the water and wastewater facilities (the “**Water Facilities**”) to Grantee pursuant to Section 552.014, Texas Local Government Code, the Enabling Legislation, and Chapter 791 of the Texas Government Code;



E. In furtherance of the Utility Agreement and pursuant to 30 Texas Administrative Code § 293.69(h), the Grantee has waived any and all Texas Commission on Environmental Quality (“TCEQ”) requirements related to an inspection of the Water Facilities prior to the Grantee’s purchase of such Water Facilities;

F. Grantee acknowledges that it has performed an inspection and approval of the Water Facilities and its Chief Water Engineer has issued a Letter of Acceptance for the Water Facilities; and

G. Upon the terms and subject to the conditions of this Conveyance, the Enabling Legislation, the Utility Agreement and the Development Agreement, Grantor desires to sell, transfer, grant, bargain, deliver, convey and assign all of its right, title and interest in and to the Water Facilities within the Property to Grantee, and Grantee desires to accept such conveyance.

NOW, THEREFORE, for and in consideration of the payment of Ten and NO/100 Dollars (\$10.00) and other good and valuable consideration to Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor has BARGAINED, GRANTED, CONVEYED, SOLD AND DELIVERED, and by these presents does BARGAIN, GRANT, CONVEY, SELL AND DELIVER to Grantee all of its right, title and interest in and to the Water Facilities.

1. The assignment pursuant to this Conveyance is absolute. Grantee shall have all rights, if any, of Grantor in and to the property sold, assigned, transferred, granted, bargained, delivered, and conveyed hereunder. Notwithstanding anything to the contrary, the purpose of this Bill of Sale is solely to memorialize the transfer of ownership of the Water Facilities from Grantor to Grantee and Grantee’s acceptance of this Bill of Sale from Grantor shall not waive, modify, alter or reduce any of Grantor’s rights under that certain Utility Construction Cost Sharing Agreement for the Veramendi Project, dated February 25, 2013, as amended from time to time.

2. This Conveyance may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Any facsimile or .pdf copies hereof or signature thereon shall, for all purposes, be deemed originals.

3. This Conveyance may only be amended, modified, or supplemented by an agreement in writing signed by each Party.

TO HAVE AND TO HOLD all of Grantor’s right, title and interest, if any, and to the extent limited herein, in and to the Water Facilities unto Grantee, its successors and assigns forever.

[Signature Page Follows]

**GRANTOR:**

**Comal County Water Improvement District No. 1A**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Secretary, Board of Directors

**STATE OF TEXAS           §**

**§**

**COUNTY OF COMAL       §**

This instrument was acknowledged before me on \_\_\_\_\_, 2024 by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of the Board of Directors of Comal County Water Improvement District No. 1A.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas

**GRANTEE:**

**New Braunfels Utilities**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF TEXAS           §**

**§**

**COUNTY OF COMAL       §**

This instrument was acknowledged before me on \_\_\_\_\_, 2024 by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of the New Braunfels Utilities.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas

**BILL OF SALE, CONVEYANCE AND ASSIGNMENT**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF \_\_\_\_\_**   §

This Bill of Sale, Conveyance and Assignment (“**Conveyance**”), effective as of the date set forth below (“**Effective Date**”), is made by and between VERAMENDI PE – BRISBANE, LLC, a Texas limited liability company (“**Grantor**”), and COMAL COUNTY WATER IMPROVEMENT DISTRICT NO. 1A, (“**Grantee**”) a water control and improvement district created and operating pursuant to Chapters 49 and 51 of the Texas Water Code.

**RECITALS**

A.     Grantee was created by Senate Bill No. 2464, 81st Legislature of Texas, Regular Session, codified at Chapter 9038, Texas Special District Local Laws Code, effective June 19, 2009 (the “Enabling Legislation”), for the purpose of, among other things, providing water, sanitary sewer, drainage facilities, and roads to serve the land within its boundaries;

B.     The Enabling Legislation requires Grantee to enter into a development agreement with a retail public utility owned by a municipality that addresses water and wastewater issues. The Enabling Legislation additionally provides that Grantee shall convey water and wastewater facilities to the retail public utility owned by the municipality upon completion of the facilities, free of all liens, claims, or encumbrances, in the form acceptable to the retail public utility;

C.     Grantor is the owner or developer of the property which is more particularly described on the plat, recorded in the real property records of Comal County, Texas as Document No. 202006030614, Document No. 202006031940, Document No. 202106006261, Document No. 202106024851, Document No. 202206020496, Document No. 202306002383 and Document No. 202306002423, on the attached Exhibit “A” (the “Property”), located within the Grantee’s geographic boundaries;

D.     On October 7, 2016, Grantor and Grantee entered into that certain Facilities and Operating Costs Reimbursement Agreement (the “Reimbursement Agreement”), wherein Grantor has agreed to construct and subsequently convey to Grantee all of its right, title and interest in and to the water, wastewater (the “Water Facilities”), and stormwater facilities (the “Stormwater Facilities”) constructed within the Property, all of which are located in Comal County, Texas; and

E.     Grantee has entered into that certain Utility Construction Cost Sharing Agreement, as amended (the “Utility Agreement”), with the New Braunfels Utilities (“NBU”) and Veramendi Development Company LLC, wherein NBU agrees to provide water and sewer service to customers within the Property;

F.     Upon satisfaction of the applicable Utility Agreement provisions, the Grantee shall convey the water and wastewater infrastructure to NBU pursuant to Section 552.014, Texas Local Government Code and the Enabling Legislation;

G. In furtherance of the Utility Agreement, pursuant to 30 Texas Administrative Code § 293.69(h), and as evidenced in that certain Bill of Sale, Conveyance and Assignment entered into by Grantee and the New Braunfels Utilities (“NBU”) executed on even date herewith, NBU has waived any and all Texas Commission on Environmental Quality (“TCEQ”) requirements related to an inspection of the Water Facilities and Stormwater Facilities prior to the Grantee’s purchase of such Water Facilities and Stormwater Facilities; and

H. Upon the terms and subject to the conditions of this Conveyance, the Reimbursement Agreement, the Utility Agreement, and the Enabling Legislation, Grantor desires to sell, transfer, grant, bargain, deliver, convey and assign all of its right, title and interest in and to the Water Facilities and Stormwater Facilities within the Property to Grantee in exchange for Grantee’s obligation to seek approval from the TCEQ for reimbursement of the Water Facilities and Stormwater Facilities within the Property to the maximum extent permitted by law and at the earliest practicable time as defined in the Reimbursement Agreement, and Grantee desires to accept such conveyance.

NOW, THEREFORE, for and in consideration of the payment of Ten and NO/100 Dollars (\$10.00) and other good and valuable consideration to Grantor as stated in the Reimbursement Agreement, the receipt and sufficiency of which are hereby acknowledged, Grantor has BARGAINED, GRANTED, CONVEYED, SOLD AND DELIVERED, and by these presents does BARGAIN, GRANT, CONVEY, SELL AND DELIVER to Grantee all of its right, title and interest in and to the Water Facilities and Stormwater Facilities.

1. Grantee represents and warrants that all applicable approvals, inspections, and documentation required for Grantee to seek approval from TCEQ for reimbursement and for Grantee to reimburse Grantor as further detailed in the Reimbursement Agreement and required pursuant to TCEQ, the Reimbursement Agreement and the Utility Agreement have been performed, reviewed and/or accomplished.

2. Grantee acknowledges that the Bill of Sale, Conveyance and Assignment entered into by Grantee and NBU constitutes an agreement pursuant to Texas Local Government Code Section 552.014 and/or the Interlocal Cooperation Act. Grantee further represents and warrants that no other contracts are required to satisfy Grantee’s obligations pursuant to Grantor’s right of reimbursement.

3. The assignment pursuant to this Conveyance is absolute. Grantee shall have all rights, if any, of Grantor in and to the property sold, assigned, transferred, granted, bargained, delivered, and conveyed hereunder.

4. This Conveyance is being executed and delivered pursuant to, and shall be construed in accordance with, the Reimbursement Agreement. Notwithstanding any other provisions of this Conveyance to the contrary, nothing contained in this Conveyance shall in any way supersede, modify, replace, amend, change, rescind, expand, exceed or enlarge or in any way affect the provisions, including the covenants, agreements, conditions, rights, remedies, and obligations, set forth in the Reimbursement Agreement.

5. This Conveyance may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Any facsimile or .pdf copies hereof or signature thereon shall, for all purposes, be deemed originals.

6. This Conveyance may only be amended, modified, or supplemented by an agreement in writing signed by each Party.

7. Each party hereto hereby finds, determines and represents that the benefits provided to it and the obligations binding upon it constitute due consideration for its execution of this Conveyance. In particular, Grantor's commitment to convey the Water Facilities and Stormwater Facilities to the Grantee results in certain material benefits being provided to the Grantee and constitute adequate consideration for the Grantee's obligations to issue bonds from time to time, impose an ad valorem operation and maintenance tax, and reimburse the Grantor as required in the Reimbursement Agreement. Grantor hereby represents that the Grantee's commitment to reimburse it for monies expended pursuant to the Reimbursement Agreement constitutes adequate consideration for its commitment to perform its obligations hereunder.

TO HAVE AND TO HOLD all of Grantor's right, title and interest, if any, and to the extent limited herein, in and to the Water Facilities and Stormwater Facilities unto Grantee, its successors and assigns forever.

[Signature Page Follows]

EXECUTED to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**GRANTOR**

**Veramendi PE – Brisbane, LLC,  
a Texas limited liability company**

By: Veramendi Development  
Company, LLC, its sole manager

By: ASA Properties LLC,  
its sole manager

By: \_\_\_\_\_  
Peter James, President

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Peter James, the President of ASA Properties LLC, a Texas limited liability company, as sole manager of Veramendi Development Company, LLC, a Texas limited liability company, as sole manager of Veramendi PE – Brisbane, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

EXECUTED to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**GRANTEE:**

**Comal County Water Improvement District No.  
1A**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Secretary, Board of Directors

**STATE OF TEXAS       §**

**§**

**COUNTY OF COMAL    §**

This instrument was acknowledged before me on \_\_\_\_\_, 2024 by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of the Board of Directors of Comal County Water Improvement District No. 1A.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas



After Recording, Please Return To:

New Braunfels Utilities  
Attention: Easements & ROW  
263 Main Plaza  
New Braunfels, Texas 78130

**NEW BRAUNFELS UTILITIES ACCESS EASEMENT**

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

**Effective Date:** \_\_\_\_\_, 2024

**Grantor:** Word-Borchers Ranch Real Estate Limited Partnership,  
a Texas limited partnership

**Grantor's Mailing Address:** P.O. Box 310330  
New Braunfels, Texas 78131

**Grantee:** New Braunfels Utilities,  
a Texas municipally owned utility

**Grantee's Mailing Address:** 263 Main Plaza  
New Braunfels, Texas 78130

**Dominant Estate Property:** Lot 1, Block 36, VERAMENDI EST NO. 1, a subdivision in Comal County, Texas, according to the map or plat recorded in Document 202006031940, Map and Plat Records, Comal County, Texas.

**Easement Property:** The 0.197 of an acre of real property described and depicted in *Exhibit "A,"* attached hereto, located in Comal County, Texas.

**Easement Purpose:** For providing pedestrian and vehicular ingress and egress to and from the Dominant Estate Property, to and from State Highway Loop No. 337.

**Consideration:** Ten Dollars (\$10.00) and other good and valuable consideration.

**Grant of Easement:** Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Conveyance and Warranty, grants, sells and conveys to Grantee and Grantee's heirs, successors and assigns an easement over, under, upon and across the Easement Property for the Easement Purpose and for the benefit of the Dominant Estate Property together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"); to have and to hold the Easement in Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors and assigns to warrant and forever defend the title to the Easement to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the Reservations from Conveyance and Exceptions to Conveyance and Warranty.

**Exceptions to Conveyance and Warranty:** All matters of record to the extent validly existing and affecting the Easement Property.

**Reservation from Conveyance:** Subject to the limitations hereinafter provided, Grantor reserves the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Grantee for the Easement Purpose. If Grantee proposes to (i) use surfacing materials other than asphalt, caliche, or base material for parking and/or driveways or walkways over and across the Easement Property, or (ii) change the level of the surface of the Easement Property, Grantee must obtain prior written approval of the owner of surface of the Easement Property.

**Terms:** The following terms apply to this easement:

1. *Character of Easement.* The Easement is appurtenant to and runs with all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is for the benefit of Grantee and Grantee's heirs, successors, and assigns who at any time own the Dominant Estate Property or any interest in the Dominant Estate Property. The Easement is nonexclusive and irrevocable, provided that no other potable water or wastewater utility provider may use the Easement Property without the prior written consent of New Braunfels Utilities.
2. *Maintenance of Easement Property.* Grantee shall be solely responsible for maintaining the Easement Property in a safe and suitable condition for its use consistent with the Easement Purpose and agrees on behalf of Grantee, and each contractor, invitee or employer of Grantee that enters the Easement Property, that Grantor has no responsibility therefore. Grantee shall use and maintain the Easement Property in compliance with all applicable laws. Grantee accepts the Easement Property in its "AS IS WHERE IS" condition and is not relying on any representation or warranty from Grantor regarding the suitability or quality or condition of the Easement Property.
3. *Duration of Easement.* The duration of the easement is perpetual; provided, upon the recording of a plat approved by Grantee incorporating the Easement Property and Easement Purpose benefitting the Dominant Estate Property in the Official Public Records of Comal County, this instrument shall automatically expire and have no further effect and the recorded plat shall exclusively determine the rights of the parties.
4. *Easement Improvements.* In the event Grantor places surfacing materials or other permitted improvements over and across the Easement Property or portions thereof (the "**Grantor Improvements**"), Grantee and/or its assigns will use ordinary care to minimize damage to the Grantor Improvements. However, Grantee and/or its assigns will not be obligated to restore the Grantor Improvements except to the extent the negligent acts or omissions of Grantee and/or its assigns caused the damage to the Grantor Improvements.
5. *Binding Effect.* This agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.
6. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.
7. *Counterparts.* This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

8. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.
9. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of the other party or any agent of the other party, that are not in this agreement and any exhibits.
10. *Legal Construction.* If any provision in this agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
11. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

[SIGNATURES BEGIN ON NEXT PAGE]

**GRANTOR:**

**WORD-BORCHERS RANCH REAL ESTATE LIMITED PARTNERSHIP,**

a Texas limited partnership

By: **Word-Borchers Ranch Management Company, LLC**, a Texas limited liability company, its General Partner

By: \_\_\_\_\_  
Timothy Dean Word, III, Manager

By: \_\_\_\_\_  
Amber Word-Heisner, Manager

By: \_\_\_\_\_  
Marcia Borchers McGlothlin, Manager

By: \_\_\_\_\_  
Georgia Borchers Duettra, Manager

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was sworn, subscribed, and acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by Timothy Dean Word, III, Manager of Word-Borchers Ranch Management Company, LLC, as general partner of Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**GRANTOR:**

**WORD-BORCHERS RANCH REAL ESTATE LIMITED PARTNERSHIP,**

a Texas limited partnership

By: **Word-Borchers Ranch Management Company, LLC**, a Texas limited liability company, its General Partner

By: \_\_\_\_\_  
Timothy Dean Word, III, Manager

By: \_\_\_\_\_  
Amber Word-Heisner, Manager

By: \_\_\_\_\_  
Marcia Borchers McGlothlin, Manager

By: \_\_\_\_\_  
Georgia Borchers Duettra, Manager

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was sworn, subscribed, and acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by Amber Word-Heisner, Manager of Word-Borchers Ranch Management Company, LLC, as general partner of Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**GRANTOR:**

**WORD-BORCHERS RANCH REAL ESTATE LIMITED PARTNERSHIP,**  
a Texas limited partnership

By: **Word-Borchers Ranch Management Company, LLC,** a Texas limited liability company, its General Partner

By: \_\_\_\_\_  
Timothy Dean Word, III, Manager

By: \_\_\_\_\_  
Amber Word-Heisner, Manager

By: \_\_\_\_\_  
Marcia Borchers McGlothlin, Manager

By: \_\_\_\_\_  
Georgia Borchers Duettra, Manager

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was sworn, subscribed, and acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by Marcia Borchers McGlothlin, Manager of Word-Borchers Ranch Management Company, LLC, as general partner of Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**GRANTOR:**

**WORD-BORCHERS RANCH REAL ESTATE LIMITED PARTNERSHIP,**

a Texas limited partnership

By: **Word-Borchers Ranch Management Company, LLC**, a Texas limited liability company, its General Partner

By: \_\_\_\_\_  
Timothy Dean Word, III, Manager

By: \_\_\_\_\_  
Amber Word-Heisner, Manager

By: \_\_\_\_\_  
Marcia Borchers McGlothlin, Manager

By: \_\_\_\_\_  
Georgia Borchers Duettra, Manager

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

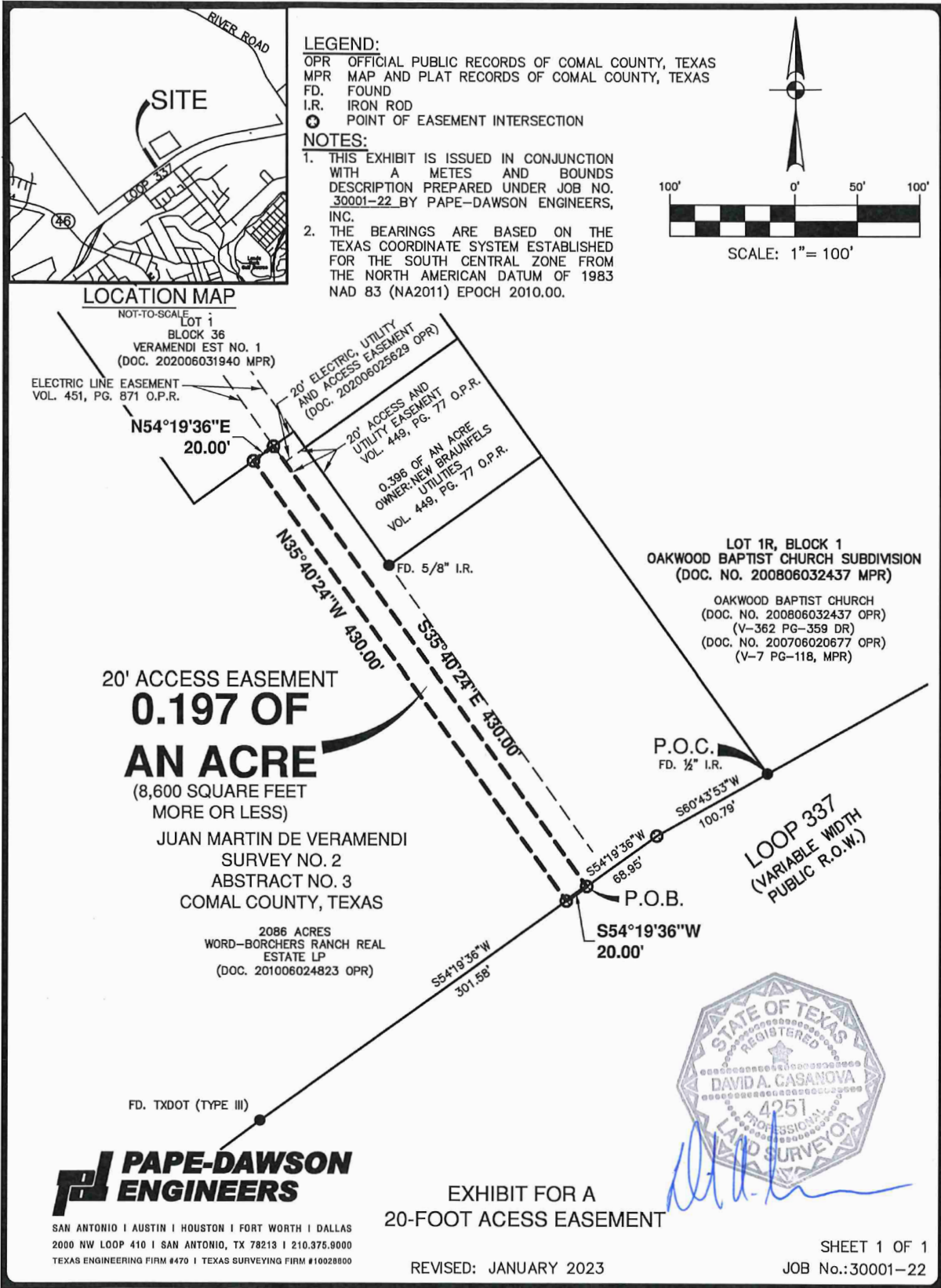
This instrument was sworn, subscribed, and acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by Georgia Borchers Duettra, Manager of Word-Borchers Ranch Management Company, LLC, as general partner of Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_





EXHIBIT "A"



Drawn: Jan 06, 2023, 10:25am User: lb: mh01mas File: N:\CVL\30001-22\30001-22 ESA0-0197 Ac.dwg

REFERENCE:



METES AND BOUNDS DESCRIPTION  
FOR  
20-FOOT ACCESS EASEMENT

A 0.197 of an acre, or 8,600 square feet more or less, easement located on a 2086 acre tract in a deed to Word-Borchers Ranch Real Estate, LP recorded in Document No. 201006024823 of the Official Public Records of Comal County, Texas out of the Juan Martin De Veramendi Survey No. 2, Abstract 3, Comal County, Texas. Said 0.197 of an acre easement being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00:

COMMENCING: At a found ½" iron rod with a cap on the northwest right-of-way line of Loop 337, a variable width right-of-way, at the southwest corner of Lot 1R, Block 1, Oakwood Baptist Church Subdivision recorded in Document No. 200806032437 of the Map and Plat Records of Comal County, Texas;

THENCE: S 60°43'53" W, along and with the northwest right-of-way line of said Loop 337, the southeast line of said 2086 acre tract, a distance of 100.79 feet to a point;

THENCE: S 54°19'36" W, continuing along and with the northwest right-of-way line of said Loop 337, the southeast line of said 2086 acre tract, a distance of 68.95 feet to the POINT OF BEGINNING of the herein described easement;

THENCE: S 54°19'36" W, continuing along and with the northwest right-of-way line of said Loop 337, the southeast line of said 2086 acre tract, a distance of 20.00 feet to a point, from which a found TxDot Monument "Type III" bears S 54°19'36" W, 301.58 feet;

THENCE: Departing the northwest right-of-way line of said Loop 337, over and across said 2086 acre tract the following bearings and distances:

N 35°40'24" W, a distance of 430.00 feet to a point;

N 54°19'36" E, a distance of 20.00 feet to a point;

Transportation | Water Resources | Land Development | Surveying | Environmental

telephone: 210-375-9000 address: 2000 NW LOOP 410 SAN ANTONIO, TX 78213 website: PAPE-DAWSON.COM

San Antonio | Austin | Houston | Fort Worth | Dallas | New Braunfels Texas Engineering Firm #470 Texas Surveying Firm #10028800

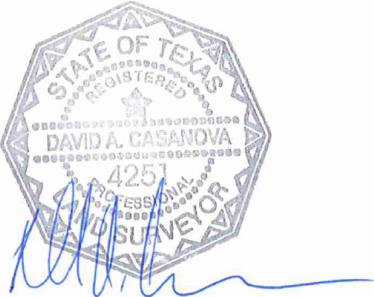
Exhibit "A" - Page 2 of 3

NBU EASEMENT # \_\_\_\_\_

0.197 of an Acre  
Job No. 30001-22  
Page 2 of 2

S 35°40'24" E, a distance of 430.00 feet to the POINT OF BEGINNING and containing 0.197 of an acre in Comal County, Texas. Said easement being described in conjunction with an exhibit prepared under job number 30001-22 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: September 26, 2022, Revised: January 5, 2023  
JOB NO. 30001-22  
DOC. ID. N:\CIVIL\30001-22\WORD\30001-22 ESAC-0.197 AC.docx





**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Adam Willard, P.E.      **Reviewed by:** Michael Short, P.E.  
 Chief Engineer of Water      Director of Water Services and  
 Systems      Compliance

**Submitted by:** Michael Short, P.E.      **Approved by:** Ryan Kelso  
 Director of Water Services      Chief Executive Officer  
 and Compliance

**RECOMMENDED ACTION:** Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Merrick & Company for the Design of the Solms Pump Station and Ground Storage Tank Project

## **BACKGROUND**

This Professional Services Agreement (the “Agreement”) with Merrick & Company (“Merrick”) provides project management services, preliminary engineering phase services, final design phase services, permitting services and coordination with stakeholders, field services, bid phase services, and construction phase services for the New Braunfels Utilities (“NBU”) Solms Pump Station and Ground Storage Tank Project (the “Project”). The Project will consist of a ground storage tank, pumps, a pump and electrical building, site improvements, and selective demolition of the existing Solms pump station site. This project will provide storage capacity to serve future growth and resolve pressure issues to ensure NBU stays within TCEQ-mandated pressure limits.

NBU staff requests that the Board of Trustees approve the Agreement with Merrick for the Project.

This item is being presented to the Board because the total amount of the Agreement exceeds \$500,000.

Upon completion of the final design, NBU staff will solicit a construction contract and anticipates bringing the construction contract to the Board for approval in October 2025. NBU staff plans to begin construction in November 2025 and completing construction by November 2027.

**FINANCIAL IMPACT**

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The total financial impact for the Agreement with Merrick for the Project is \$1,492,066, including supplemental services. The Project is budgeted within the fiscal year 2024 through fiscal year 2027 NBU Board approved Capital Improvements Projects Budget.

**LINK TO STRATEGIC PLAN**

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**Infrastructure and Technology****EXHIBITS**

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1. Professional Services Agreement with Merrick

## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **MERRICK & COMPANY**, a Colorado corporation authorized to transact business in the State of Texas (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Term of Agreement. This Agreement shall become effective the date on which the last party to this Agreement executes this Agreement and this Agreement shall not be binding until executed by all parties (the “Effective Date”). Once this Agreement is executed by both parties, this Agreement shall remain in effect until the completion date specified in Exhibit A, unless terminated as provided for in this Agreement. Subject to Section 271.904 of the Texas Local Government Code, as amended, Exhibit A shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks related to the Services (hereinafter defined).

Section 2. Scope of Services.

(A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The time limits for the Services stated in Exhibit A are of the essence of the Agreement. By executing this Agreement, the Professional confirms that the timeframe in Exhibit A is a reasonable period for performing the Services. The scope of work described in the Services constitutes the “Project.”

(B) The quality of Services provided hereunder shall be of the level of professional quality performed by professionals regularly rendering this type of service.

(C) The Professional shall perform the Services 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 NBU 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) Amount. The Professional shall be paid the amount set forth in Exhibit B as described herein.

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

(C) Reimbursable Expenses. Any and all reimbursable expenses related to the Project shall be described in the Services defined in Exhibit A and accounted for in the total compensation amount in Exhibit B. If these items are not specifically accounted for in both Exhibit A and Exhibit B, NBU shall not be required to pay such amounts unless otherwise agreed to in writing by both parties or unless agreed to pursuant to Section 4 of this Agreement.

#### Section 4. Changes to the Project Work; Additional Work.

(A) Changes to Work. The Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If NBU finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by NBU and such services shall be considered as additional work and paid for as specified under the following paragraph.

(B) Additional Work. NBU retains the right to make changes to the Services at any time by a written contract amendment. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by contract amendment before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Services described in Exhibit A and therefore constitutes additional work, the Professional shall promptly notify NBU of that opinion in writing. If NBU agrees that such work does constitute additional work, then NBU and the Professional shall execute a contract amendment for the additional work and NBU shall compensate the Professional for the additional work on the same basis of the rates for the Services contained in Exhibit B. If the changes deduct from the extent of the scope of work for the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by the Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by NBU shall be delivered to and become the property of NBU. 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 NBU without restriction or limitation on the further use of such materials; however, such materials are not intended or represented to be suitable for reuse by NBU or others. Any reuse of the materials related to the Services without prior verification or adaptation by the Professional for the specific purpose intended will be at NBU's sole risk and without liability to the Professional. Where applicable, the Professional shall retain all pre-existing proprietary rights in the materials provided to NBU but shall grant to NBU 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 the Professional's expense, have copies made of the documents or any other data furnished to NBU under or pursuant to this Agreement.

Section 6. Personnel. The Professional shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Professional agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Professional shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

Section 7. Licenses; Materials. The Professional shall maintain in current status all federal, state, and local licenses and permits required for the Professional to perform the Services and operate its business. NBU has no obligation to provide the Professional, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Professional.

Section 8. Professional's Seal; Standard of Care. To the extent the Professional has a professional seal, the Professional shall place such seal on all final documents and data furnished by the Professional to NBU. Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date on the title sheet of bound engineering reports, specifications, details, calculations or estimates, and each sheet of plans or drawings regardless of size or binding. As required by Section 271.904 of the Texas Local Government Code, as amended, all services provided under this Agreement will be performed with the professional skill and care ordinarily provided by competent engineers or architects, as applicable, practicing under the same or similar circumstances and professional license. The Professional shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as applicable. The plans, specifications, and data provided by the Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by NBU and the Professional. NBU acknowledges that the Professional does not have control over the methods or means of work or 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.

Section 9. Indemnification.

**(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND**



REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN “INDEMNIFIED PARTY”) FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS’ FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:

- i. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY THE PROFESSIONAL, ITS AGENT, EMPLOYEE, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- ii. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF PROFESSIONAL’S STANDARD OF CARE, BY THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- iii. CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- iv. DUE TO THE FAILURE OF THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL TO PAY THEIR CONSULTANTS OR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR
- v. OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.

**(B) REIMBURSEMENT OF NBU’S FEES IN DEFENSE OF CLAIMS.** TO THE EXTENT NBU INCURS ATTORNEY’S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST NBU THAT ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF THE PROFESSIONAL DESCRIBED IN THIS SECTION, THE PROFESSIONAL SHALL REIMBURSE NBU ITS REASONABLE ATTORNEY’S FEES IN

**PROPORTION TO THE PROFESSIONAL’S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.**

The obligations of the Professional under this Section shall survive the termination of this Agreement.

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU’s option.
- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional’s insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.

- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers’ Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.
- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional’s responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

(B) Required Insurance Coverage. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.

- i. Commercial General Liability. The Professional shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional’s owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers’ Compensation and Employer’s Liability Insurance. The Professional shall maintain Workers’ Compensation insurance to cover the Professional’s employees engaged in the performance of the Services under this Agreement and

shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

(C) Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to NBU.

#### Section 11. Termination.

(A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

(B) For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the nondefaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Professional for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.

(C) Non-Collusion. The Professional represents and warrants that the 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 NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration

to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

#### Section 12. Miscellaneous.

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

(B) Governing Law; Venue. This Agreement and all of the 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 Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.

(C) 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 satisfactory proof of compliance to NBU.

(D) Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.

(E) Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.

(F) Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

(H) 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. Any purported assignment in violation of this Section shall be null and void.

(I) Subcontractors. The Professional shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Professional.

(J) Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. 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. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(K) Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and

reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.

(L) Liens. All materials or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.

(M) Offset.

- i. Offset for Damages. In addition to all other remedies at law or equity, NBU may offset from any money due to the Professional any amount the Professional owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.
- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.

(N) Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities  
Attn: Director of Water Services  
263 Main Plaza  
New Braunfels, TX 78130

With copy to:

Purchasing Manager  
New Braunfels Utilities  
355 FM 306  
New Braunfels, TX 78130

If to the Professional:

Merrick & Company  
401 East Sonterra Blvd, Suite #250  
San Antonio, TX 78258



or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in the manner set forth in this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

(O) Confidentiality of Records. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

(P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall 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.

(Q) 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.

(R) 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.

(S) 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.

(T) Multiple 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.

(U) Exhibits. Except as specified in Subsection (V) of this Section, all exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

(V) Conflicting Terms. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern. The Exhibits are intended to detail the technical scope of services, fee schedule, and the term of the contract only and shall not dictate Agreement terms.

(W) 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.

(X) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(Y) Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, 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. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. 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.

Section 14. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written 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. Third, 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.

Section 15. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. The Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.

#### Section 16. Information Technology

(A) Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the Professional with non-exclusive, limited access to NBU's information technology infrastructure. The Professional understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Professional shall reasonably enforce such policies, standards, regulations and restrictions with all the Professional's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Professional's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Professional agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Professional. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

(B) Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically

provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

(C) Data Security. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Professional must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **TO THE EXTENT PERMITTED BY SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, ANY TIER OF SUBCONTRACTOR, OR ANY ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.**

(E) Survival. The obligations of the Professional under this Section shall survive the termination of this Agreement.

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 18. Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited. The Professional represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Professional and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 19. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. If the Professional is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Professional represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in the Professional is not held or controlled by:
  - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
  - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. “Affiliate,” with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

Section 20. Prohibition on Contracts with Companies Boycotting Energy Companies. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2276 of the Texas Government Code, as amended

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 21. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. The Professional hereby verifies that it and its parent company, wholly- or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 22. Texas Public Information Act. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU’s audit rights in Section 12(P).

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

The Professional must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Professional on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Professional; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Professional agrees that the Agreement can be terminated if the Professional knowingly or intentionally fails to comply with a requirement of that subchapter.

Section 23. Electronic Signatures. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

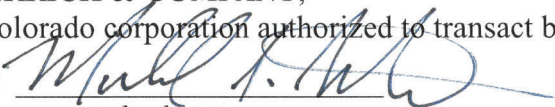
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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this the \_\_\_\_ day of \_\_\_\_\_, 2024.

**NBU:**  
**NEW BRAUNFELS UTILITIES,**  
a Texas municipally owned utility

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: Chief Executive Officer

**PROFESSIONAL:**  
**MERRICK & COMPANY,**  
a Colorado corporation authorized to transact business in the State of Texas

By:   
Name: Michael J. Martin  
Title: Sr. Vice President



## Exhibit A

### Scope of Services

The Professional shall provide all labor, material, and equipment necessary to provide project management services, preliminary engineering phase services, final design phase services, field services, permitting services and coordination with stakeholders, bid phase services, and construction phase services for the Solms Pump Station and Ground Storage Tank Project. The Solms Pump Station and Ground Storage Tank shall consist of a ground storage tank, pumps, a pump and electrical building, site improvements, and selective demolition of the existing Solms Pump Station site. The Project site is located near the intersection of Engle Road and southbound I-35 access road in New Braunfels, Texas (the "Project Site").

#### **I. SUMMARY OF PROJECT SERVICES**

##### **A. Water Pump Station**

1. The Services relate to a new 4.3 million gallons per day pump station, including canned vertical turbine pumps, motors, variable frequency drives, piping, valves, electrical equipment, new electric service, pump station building with toilet room, pump room, electrical equipment and control/supervisory control and data acquisition room. The pump station will include heating, ventilation, and air conditioning systems, architectural, structural, plumbing, fire protection if required, electrical, and instrumentation and controls as required.
2. Site improvements shall include site piping; valves; flowmeter(s); site power distribution; site lighting; fencing; grading and drainage; detention ponds, if required; internal service drive(s) and parking; site water and wastewater utilities; fire protection water lines, if required; potable water lines; communication connections; and field instrumentation.
3. The pump station building shall house electrical and control equipment in one, air-conditioned room. Pumps and associated piping shall be housed in a separate, ventilated and heated room, as the pump station building shall also include an air-conditioned toilet room. The pump room shall have adequate vertical clearance to remove pumps for maintenance and shall include an overhead crane or hoist to support pump removal. The exterior design of the pump station building shall compliment the new NBU headquarters building design as specified by NBU.
4. The pump station shall include back-up electric generating facilities with diesel fuel storage and containment structures and an automatic transfer switch.
5. The pump station shall include communication facilities, including fiber optic lines within the site. Radio communication is excluded from the scope.

6. The pump station shall include security facilities, including fencing, badge access control, and cameras.
7. No offsite facilities are included in the Scope of Services. “Offsite facilities” include, but are not limited to, incoming or outgoing pipelines, access drives, and utility service extensions, such as water, wastewater, electrical, gas, or fiber optic.

#### B. Water Storage Tank

1. The Project includes one (1) new 1.0 million gallon, wire-wound prestressed concrete ground storage tank, which shall be located on the same site as the pump station and shall include an NBU tank logo.

#### C. Demolition

1. The Project includes selective demolition of the existing Solms Pump Station and Ground Storage Tank site. Demolition shall include removal of the tank and other above-ground exterior equipment, equipment within vaults, and equipment within the existing pump building, with the exception of components required to maintain lighting, ventilation, and the toilet facility. Pumps and motors shall be salvaged. Structural assessment of the existing pump building is not included.

## II. SERVICES BY TASK

The Professional shall provide the Services in accordance with the tasks described herein, corresponding to the schedule set out in Table 1 below.

### Task 1. Project Management

1. The Professional shall provide the project management services described in this Section.
  - 1.1. **SCHEDULE.** The Professional shall develop a baseline design schedule using Microsoft Project for the Project and prepare updated design schedules for the Project on a monthly basis, on or before the 25<sup>th</sup> day of each month, for NBU to monitor progress and identify design submittal dates. Schedules shall be provided to the NBU project manager (“Project Manager”) in PDF format via email.
  - 1.2. **QUALITY CONTROL.** The Professional shall develop a quality assurance/quality control (“QA/QC”) program for the Project, which shall be explained in detail via a written document and provided to NBU’s Project Manager via email within thirty (30) days of notice to proceed (“NTP”).
  - 1.3. **PROGRESS REPORTS.** The Professional shall provide NBU with electronic monthly Project progress reports and submit written invoices on or before the 25<sup>th</sup> day of each month for the previous month’s work. Progress reports shall be provided to the NBU Project Manager via email.

- 1.4. MEETING AGENDA/MINUTES. The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the summary meeting minutes and action item log to NBU's Project Manager within one (1) week after meetings.
- 1.5. PROJECT CONTROLS. The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis, and management, including, but not limited to, the following:
  - 1.5.1. assigning a senior advisor to oversee quality assurance;
  - 1.5.2. developing an opinion of probable construction cost ("OPCC") using recent bid tabs from similar projects or vendor prices;
  - 1.5.3. using Microsoft Project or similar to manage the schedule; and
  - 1.5.4. coordinating communication with sub consultants through emails and meetings.
- 1.6. DESIGN COORDINATION MEETINGS. The Professional shall lead up to four (4) design coordination meetings. Each meeting shall be up to two (2) hours in length, either at NBU offices or virtual, as determined by NBU, and the Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the summary meeting minutes and action item log to NBU's Project Manager within one (1) week after the meeting. The meetings may occur at any point during the preliminary engineering or final design phases, as requested by NBU's Project Manager.

## **Task 2. Preliminary Engineering Phase**

2. Upon NBU providing NTP to the Professional, the Professional shall perform the preliminary engineering phase services described in this Section.
  - 2.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and summary meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
    - 2.1.1. project kick-off meeting with NBU (one (1) meeting);
    - 2.1.2. progress status meetings (up to four (4) meetings);
    - 2.1.3. preliminary engineering report ("PER") review meeting (8-hour full day workshop);
    - 2.1.4. meetings with the City of New Braunfels (up to two (2) meetings); and
    - 2.1.5. meetings with additional stakeholders, including the NBU headquarters team and NBU directors and executives (up to four (4) meetings).

- 2.2. PUMP STATION ANALYSIS. The Professional shall analyze the pump station design requirements as described in this Section.
- 2.2.1. The Professional shall determine pump station system requirements over the study period based on existing NBU model projections and system curves, determine system operations protocols in conjunction with NBU, and provide design data to NBU to support preparation of a hydraulic model of the pump station, pipeline, and related facilities.
  - 2.2.2. The Professional shall determine the preferred location of facilities based upon hydraulic conditions, ease of operations and site conditions.
  - 2.2.3. The Professional shall determine the electrical equipment required, create a layout of the required equipment, and provide a one-line diagram and overall process diagram for the pump station.
  - 2.2.4. The Professional shall determine the size and capacity of the pump stations, site piping, and related facilities, such as pump air valves, drains, etc.
  - 2.2.5. The Professional shall prepare a life cycle cost analysis of pipe diameter and number of pumps.
  - 2.2.6. The requirements for deliverables in this Section 2.2 are more specifically described in Section 2.6.
- 2.3. STORAGE TANK ANALYSIS. The Professional shall provide the following analysis for the storage tank:
- 2.3.1. determine the tank overflow elevation and head range;
  - 2.3.2. determine the length and size of piping and valves and include the type of materials;
  - 2.3.3. determine storage tank location;
  - 2.3.4. identify related site improvements;
  - 2.3.5. identify site piping improvements;
  - 2.3.6. determine if the tank will need a cathodic protection system; and
  - 2.3.7. perform a storm water and storage tank overflow analysis to include:
    - 2.3.7.1. evaluating for site drainage for pre-project and project condition runoff rates;
    - 2.3.7.2. preparing preliminary design/sizing of necessary onsite drainage improvements to accommodate increase in discharge due to additional

impervious cover;

2.3.7.3. verifying that offsite drainage infrastructure is adequately sized to convey site runoff without adversely impacting adjacent parcels or infrastructure. If offsite improvements are required, they shall be included in a recommendation for improvements but design of offsite improvements are not included; and

2.3.7.4. analyzing the maximum expected flow if the tank overflows and comparing the overflow flowrate to the storm water runoff and sizing the on-site infrastructure as required.

2.3.8. The requirements for deliverables in this Section 2.3 are more specifically described in Section 2.6.

#### 2.4. 30% DESIGN DOCUMENTS

2.4.1. The Professional shall perform up to two (2) site visits during the 30% preliminary design phase timeframe described in Table 1 to gather Project information.

2.4.2. The Professional shall collect and review existing data, reports, mapping, designs, and records from NBU. The Professional shall provide analyses of NBU's requirements for the Project, including planning, surveys, site evaluations, and comparative studies of prospective sites and solutions.

2.4.3. The Professional shall prepare 30% design drawings, including plan views of proposed infrastructure within the Project Site.

2.4.4. The Professional shall prepare exhibits showing visualizations of general site layout showing major features (tank with logo, building, fence, drive) and appearance from nearby roads.

2.4.5. The Professional shall prepare a Class 3 OPCC based on 30% design drawings.

2.5. PRELIMINARY ENGINEERING REPORT. The Professional shall prepare a PER that includes 30% design drawings and describes the scope of the Project for final design, right-of-way requirements, easement requirements, permitting, constructability, OPCC, and schedule. The PER shall include Project implementation, phasing, and packaging for the Project. PER shall also include visualizations of the tank with the NBU logo and building from up to four (4) perspectives to assist in the assessment and coordination with the co-located proposed headquarters building. The Professional shall submit a draft PER for NBU review and comment as well as a final PER incorporating NBU comments. NBU comments shall be collected in part during an 8-hour full-day review workshop. The final PER shall be submitted within 30 days of receiving final NBU comments.

- 2.6. DELIVERABLES. The Professional shall provide the following preliminary engineering phase deliverables to NBU during the 30% preliminary design phase timeframe described in Table 1:
- 2.6.1. pump station - a map with the pump station location, a piping diagram, and instrument diagram;
  - 2.6.2. storage tank - a map with the tank location, a lighting layout, and a security layout;
  - 2.6.3. draft and final PER and Class 3 OPCC – one (1) PDF electronic file; and
  - 2.6.4. 30% design drawings – one (1) PDF electronic file and one (1) electronic Zip-compressed Keyhole Markup Language (“KMZ”) file or shape (“SHP”) file.

### **Task 3. Final Design Phase**

3. Upon NBU’s written approval of the PER and 30% design documents, the Professional shall perform the final design phase services described in this Section.
- 3.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agenda and meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
- 3.1.1. 60% design review meeting (8-hour full-day workshop);
  - 3.1.2. 90% design review meeting (8-hour full day workshop);
  - 3.1.3. monthly design meetings (up to ten (10) meetings);
  - 3.1.4. meetings with property owners (up to two (2) meetings);
  - 3.1.5. meetings with franchise utilities (up to one (1) meetings);
  - 3.1.6. permitting meeting with City of New Braunfels (up to one (1) meeting); and
  - 3.1.7. meetings with additional stakeholders (up to two (2) meetings).
- 3.2. 60% DESIGN DOCUMENTS. The Professional shall prepare 60% drawings, specifications, and OPCC based on decisions made in the preliminary design phase. NBU shall provide the Professional easement requirements for each parcel via email to incorporate into the plans. Design documents shall include:
- 3.2.1. plan view and/or site layout of the proposed facilities;
  - 3.2.2. a lighting layout;
  - 3.2.3. an electrical one-line diagram;

- 3.2.4. a security layout;
  - 3.2.5. a profile view of water pipelines greater than 12 inches in diameter;
  - 3.2.6. mechanical drawings to include major design components of the tank and pump station;
  - 3.2.7. call outs for major design items;
  - 3.2.8. table of contents for required specifications provided by the Professional with the exception of NBU's standard specifications; and
  - 3.2.9. a Class 2 OPCC based on 60% drawings and specifications.
- 3.3. 90% DESIGN DOCUMENTS. Upon NBU's written approval of 60% design documents, the Professional shall prepare 90% drawings, specifications, and an OPCC. 90% design documents shall include:
- 3.3.1. call outs for design items on the plan sheets;
  - 3.3.2. complete specifications; and
  - 3.3.3. a Class 1 OPCC based on 90% drawings and specifications.
- 3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon NBU's written approval of 90% drawings and specifications, the Professional shall prepare 100% drawings, specifications, and an OPCC. 100% drawings and specifications shall include:
- 3.4.1. final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase;
  - 3.4.2. project files to include: .dwg, .mxd, and .kmz;
  - 3.4.3. preparation of the bid form; and
  - 3.4.4. a Class 1 OPCC based on 100% drawings and specifications.
- 3.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1:
- 3.5.1. 60% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 2 OPCC during the 60% preliminary design phase timeframe in Table 1;
  - 3.5.2. 90% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 1 OPCC during the 90% final design phase timeframe in Table 1; and

- 3.5.3. 100% design - the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 1 OPCC during the 100% final design phase timeframe in Table 1.

#### **Task 4. Field Services**

4. The Professional shall perform the field services described in this Section.

- 4.1. TOPOGRAPHIC SURVEY. NBU will provide a topographic, utility, and boundary survey, including setting benchmarks to the Professional. The extent of survey shall include areas offsite as required, such as extending to allow for drainage design. Benchmarks shall include a minimum of two (2) benchmarks within 1,000 feet of the Project Site.

- 4.1.1. The Professional shall locate up to ten (10) geotechnical borings and field locate the borings by survey to match the Project survey provided by NBU.

- 4.1.2. NBU shall coordinate right of entry (“ROE”) to private properties. NBU shall contact private property owners to ascertain permission to enter and perform field services within private properties. NBU shall coordinate with the Professional to provide the acquired ROE before field services begin.

- 4.2. GEOTECHNICAL DATA REPORT. The Professional shall conduct a geotechnical investigation to complete a Geotechnical Data Report (“GDR”) for the Project as described in this Section.

- 4.2.1. Field Exploration:

- 4.2.1.1. The Professional shall determine the required boring locations on the Project Site. The Professional shall provide a Project Site boring location map that shows the exploratory borings within the vicinity of the proposed improvements.

- 4.2.1.2. The Professional shall coordinate with NBU, the City of New Braunfels, and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.

- 4.2.1.3. The Professional shall drill exploratory borings for the proposed improvements according to the schedule provided below:

- 4.2.1.3.1. up to five (5) borings to a maximum depth of 50 feet below existing grade;

- 4.2.1.3.2. up to one (1) boring to a maximum depth of 20 feet below existing grade; and



- 4.2.1.3.3. up to four (4) borings to a maximum depth of 15 feet below existing grade.
  - 4.2.1.4. The borings conducted on the Project Site shall be advanced using standard rotary drilling equipment with continuous-flight augers or rotary wash methods. Subsurface samples shall be collected using a 2-inch diameter split-spoon sampler in conjunction with the standard penetration test ("SPT"). Intermittent 3-inch diameter Shelby tube samples shall be collected in between the SPTs.
  - 4.2.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.
  - 4.2.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.
  - 4.2.1.7. The Professional shall patch borings drilled through pavement with like material (asphalt, concrete) upon completion of backfilling.
  - 4.2.1.8. The Professional shall have personnel experienced in logging borings, directing the drilling, handling, and transporting the samples. The Professional shall provide visual classification of the subsurface stratigraphy in general and in accordance with the American Society for Testing and Materials, standard number D2488 and the Unified Soil Classification System during drilling and sampling.
- 4.2.2. The Professional shall perform laboratory testing to include the following:
- 4.2.2.1. testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials; and
  - 4.2.2.2. laboratory tests assigned for the specific subsurface materials encountered during exploration on the Project Site, but which are expected to include the following number and types of tests:
    - 4.2.2.2.1. Atterberg limits tests (up to a 6 tests);
    - 4.2.2.2.2. percent passing the #200 Sieve (up to 6 tests);
    - 4.2.2.2.3. sieve analysis (gradation) tests (up to 6 tests);
    - 4.2.2.2.4. moisture content tests (up to 6 tests); and
    - 4.2.2.2.5. unconfined compressive strength tests with unit weights (up to 6 tests).

4.2.3. The Professional shall prepare a GDR that includes the following information and recommendations, as applicable:

4.2.3.1. a summary of the field and laboratory sampling and testing program;

4.2.3.2. boring logs and laboratory testing results;

4.2.3.3. a review of general site conditions, including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered;

4.2.3.4. general discussion of expected construction-related issues; and

4.2.3.5. earthwork related recommendations for use during development of plans and specifications.

4.2.4. The Professional shall provide the final GDR electronically as a 100% design deliverable with the specifications.

4.3. ENVIRONMENTAL AND CULTURAL INVESTIGATION COORDINATION. Relevant environmental and cultural investigations shall be performed by NBU, and the applicable information provided by NBU to the Professional for use in the design.

4.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU in the timeframe described in Table 1 for the 100% final design phase:

4.4.1. GDR (electronic submission with 100% design specifications).

#### **Task 5. Permitting & Stakeholders**

5. The Professional shall coordinate with the stakeholders/agencies as described in this Section. The Professional shall pay for any initial application fees up to \$100.00 per application, with final permit fees paid by NBU.

5.1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”). The Professional shall prepare and submit permit applications to TCEQ for approval of all design documents. The permit applications include the following:

5.1.1. approval letter for pump station and tank.

5.2. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit permit applications to the City of New Braunfels to obtain permits for the following:

5.2.1. public infrastructure permit;

5.2.2. building permit;

- 5.2.3. electrical permit;
  - 5.2.4. floodplain permit;
  - 5.2.5. storm water pollution prevention plan;
  - 5.2.6. traffic control; and
  - 5.2.7. tree removal.
- 5.3. **DELIVERABLES.** The Professional shall provide the following deliverables to NBU in the timeframe described in Table 1 for the permitting phase:
- 5.3.1. TCEQ permit(s)/ approval(s) described in Section 5.1 - one (1) PDF electronic copy of each; and
  - 5.3.2. City of New Braunfels permits listed in Section 5.2 - one (1) PDF electronic copy each.

#### **Task 6. Bid Phase Services**

6. Upon completion of the final design, the Professional shall proceed with the bid phase services described in this Section.
- 6.1. **PREBID CONFERENCE.** The Professional shall attend a pre-bid conference administered by NBU. The Professional shall assist NBU with preparation of the agenda, provide NBU with a meeting summary, and coordinate conference responses with NBU. The Professional shall provide NBU with written responses to issues identified at the pre-bid conference and shall be in the form of addenda issued after the conference and prior to bid opening.
  - 6.2. **INTERPRET BID DOCUMENTS.** The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare up to four (4) addenda to the bid documents if necessary.
  - 6.3. **BID EVALUATION.** The Professional shall attend a bid-opening conference to be administered by NBU. The Professional shall assist NBU in the opening and analyzing the bids received for the Project. The bid evaluation includes researching contractor qualifications and up to three (3) references for up to two (2) bidders. The Professional shall recommend award of the contract or other actions, as appropriate, to be taken by NBU in the form of a letter of recommendation as specified in section 6.5.2.
  - 6.4. **CONFORMED CONSTRUCTION DOCUMENTS.** The Professional shall conform the construction documents by incorporating addenda items into the plans and specifications.

- 6.5. DELIVERABLES. The Professional shall deliver the following:
- 6.5.1 up to four (4) addenda between advertisement and bid opening - one (1) PDF electronic copy of each addenda to NBU and bidders;
  - 6.5.2 a letter of recommendation provided within (14) days after the bid opening - one (1) PDF electronic copy to NBU.
  - 6.5.3 conformed construction documents provided prior to construction notice to proceed - one (1) PDF electronic copy to NBU.

### **Task 7. Construction Phase Services**

7. Upon completion of the bid phase services, the Professional shall proceed with construction phase administration services described in this Section. The Professional shall provide general construction contract administration services described in this Section.

- 7.1. MEETINGS AND SITE VISITS. The Professional shall attend the following meetings and provide the following services for meetings and site visits:
- 7.1.1. a pre-construction conference with the contractor;
  - 7.1.2. up to a total of 52 bi-weekly construction progress meetings;
  - 7.1.3. up to a total of 24 monthly site visits during construction of the Project, to observe the progress and the quality of work and to determine if the work is proceeding in accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports for each site visit and notify NBU of non-conforming work performed by the contractor, observed on the site visits;
  - 7.1.4. conduct, with NBU's representatives, two (2) substantial completion walkthroughs and deficiency reviews of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare a list of deficiencies for correction by the contractor before recommendation of final payment;
  - 7.1.5. conduct one (1) final completion walkthrough of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make recommendation of final payment; and
  - 7.1.6. conduct with NBU's representatives one (1) warranty walkthrough one month prior to the end of the warranty period. The Professional shall prepare a list of warranty items for correction by the contractor.
- 7.2. SUBMITTAL MANAGEMENT. The Professional shall use FNiManager, a document

management system for construction documents.

- 7.2.1. SUBMITTAL REVIEW. The Professional shall review all contractor submittals for compliance with the contract documents to include the following:
  - 7.2.1.1. shop drawings and other technical submittals (up to 60);
  - 7.2.1.2. requests for information (up to 20);
  - 7.2.1.3. schedules (up to 24);
  - 7.2.1.4. certified test reports (up to 3);
  - 7.2.1.5. operation and maintenance manuals (up to 20); and
  - 7.2.1.6. miscellaneous submittals (up to 15).
- 7.3. CHANGE ORDERS. The Professional shall manage the field orders, change orders, requests for proposals, and contractor claim process for the Project as described in this Section.
  - 7.3.1. The Professional shall document construction changes required to implement modifications to the Project.
  - 7.3.2. The Professional shall prepare field order and change order documentation for up to five (5) field orders for minor alterations and up to 5 change orders.
  - 7.3.3. The Professional shall evaluate up to two (2) notices of contractor claims and make recommendations to NBU on the merit and value of the claim based on information submitted by the contractor or available Project documentation.
- 7.4. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for NBU and contractor during the course of construction pursuant to the schedule assumed herein.
- 7.5. PAY ESTIMATES. The Professional shall review and comment on monthly and final applications for payment to the contractor pursuant to the general conditions of the construction contract during the course of the construction project, pursuant to the schedule set out herein.
- 7.6. CLOSE-OUT DOCUMENTS
  - 7.6.1. RECORD DRAWINGS. The Professional shall prepare the record drawings based on the revised redline construction drawings and information furnished by the contractor reflecting changes in the Project made during construction. The Professional shall prepare one (1) set of record drawings at the completion of the

Project and submit to NBU via email within sixty (60) days of receipt of as-built drawings from the contractor or final completion.

7.6.2. ASSET INFORMATION. The Professional shall prepare a memorandum that provides the asset information listed below for all above-grade facilities for insurance purposes within thirty (30) days after substantial completion by the contractor. The asset information shall include the following:

- 7.6.2.1. address;
- 7.6.2.2. year built;
- 7.6.2.3. description;
- 7.6.2.4. square footage of the building;
- 7.6.2.5. building value; and
- 7.6.2.6. contents value.

7.6.3 ADDITION AND RETIREMENT SHEETS. The Professional shall prepare individual addition and retirement sheets for each piece of above-ground equipment, and one sheet each for below-ground water and/or wastewater piping. The Professional shall provide the addition and retirement sheets within thirty (30) days after substantial completion. Information on each sheet includes, but is not limited to, the following:

- 7.6.3.1. equipment identification;
- 7.6.3.2. location;
- 7.6.3.3. network structure;
- 7.6.3.4. warranty date;
- 7.6.3.5. manufacturer;
- 7.6.3.6. model;
- 7.6.4.7. serial number;
- 7.6.4.8. rated flow (if applicable); and
- 7.6.4.9. diameter (if applicable).

- 7.7. DELIVERABLES. The Professional shall provide the following deliverables to NBU:
- 7.7.1. one (1) project site visit memo per site visit, which must be submitted (i) in PDF format; (ii) on FNI Manager; and (iii) no later than three (3) days after each site visit;
  - 7.7.2. responses to contractor submittals, requests for information, and other documents within fourteen (14) days of receipt; and
  - 7.7.3. one (1) PDF electronic copy and one (1) georeferenced .dwg file of record drawings in accordance with NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor and provided to NBU within sixty (60) days of receipt of record drawings from the contractor or final completion.

### **SUPPLEMENTAL SERVICES**

Pursuant to Section 4(B) of this Agreement, the Professional shall seek prior written approval from NBU before commencing work on any Supplemental Services described in this Section. If NBU requests the Professional to perform the Supplemental Services, NBU and the Professional shall execute a supplemental services agreement or contract amendment, as appropriate, detailing the Supplemental Services to be performed and the completion date. The Supplemental Services shall only include Project specific professional engineering services contemplated by Chapter 2254 of the Texas Government Code. The Professional acknowledges the contract duration will not increase as result of engaging the Supplemental Services unless noted in the supplemental services agreement or contract amendment, as appropriate.

### **TIME OF COMPLETION**

The Professional is authorized to commence work on the Services upon execution of this Agreement and agrees to complete these Services in accordance with the schedule in Table 1.

**Table 1**

<b>Project Milestones</b>	<b>Start Date</b>	<b>End Date</b>
Notice to Proceed	5/1/2024	N/A
30% Preliminary Design Phase	5/1/2024	8/1/2024
60% Preliminary Design Phase	8/1/2024	2/1/2025
90% Final Design Phase	2/1/2025	5/1/2025
100% Final Design Phase	5/1/2025	6/1/2025
Permitting Phase	5/1/2025	9/1/2025
Bid Phase	7/1/2025	10/1/2025
Construction Phase	11/1/2025	11/1/2027



## Exhibit B

## Compensation

NBU agrees to pay the Professional for the Services and the Supplemental Services rendered under this Agreement in accordance with the tables below and made a part of this Agreement.

**Services**

NBU shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$1,242,066 as further described in the table below and made a part of this Agreement

<b>Task</b>	<b>Cost</b>
Task 1: Project Management	\$154,907
Task 2: Preliminary Design Phase	\$233,324
Task 3: Final Design Phase	\$496,332
Task 4: Field Services	\$46,000
Task 5: Permitting & Stakeholders	\$50,988
Task 6: Bid Phase	\$31,415
Task 7: Construction Phase	\$229,100
<b>Total</b>	<b>\$1,242,066</b>

**Supplemental Services**

NBU shall pay the Professional for the Supplemental Services performed throughout the Term of this Agreement in an amount not to exceed \$250,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.



## **LINK TO STRATEGIC PLAN**

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### **Customers and Community**

#### **Stewardship**

#### **Financial Excellence**

### **EXHIBITS**

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1. DIR-TSO-4099-Contract
2. DIR-TSO-4099-Appendix-A-Standard-Terms-and-Conditions
3. DIR-TSO-4099-Appendix-B-HUB-Subcontracting-Plan
4. DIR-TSO-4099-Appendix-C-Pricing-Index-per-Amendment-4
5. NBU – Revised Service Agreement
6. DIR-TSO-4099-RFO-DIR-TSO-TMP-414
7. DIR-TSO-4099-Amendment-1
8. DIR-TSO-4099-Amendment-2
9. DIR-TSO-4099-Amendment-3
10. DIR-TSO-4099-Amendment-4
11. DIR-TSO-4099-Amendment-5
12. Quote Revised Service Agreement 3.22.24
13. Gartner Service Description for CFO Team Leader
14. Gartner Service Description for CFO Advisor Teams

Vendor Contract No. \_\_\_\_\_

STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR SERVICES

Gartner, Inc.

1. **Introduction**

**A. Parties**

This Contract for Services ("Contract") is entered into between the State of Texas ("State"), acting by and through the Department of Information Resources ("DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and *Gartner, Inc.* ("Vendor"), with its principal place of business at 56 Top Gallant Road, Stamford CT, 06902.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-414, on August 8, 2017, for IT Research and Advisory Subscription Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-414 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Service Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-414, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-414, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. **Term of Contract**

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with three (3) optional one-year renewals. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. **Service Offerings**

Services available under this Contract are limited to IT Research and Advisory Subscription Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services

Vendor Contract No. \_\_\_\_\_

awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-1647  
Facsimile: (512) 475-4759  
Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

Phillip A. Cummings  
Contracts Counsel  
Gartner, Inc.  
1201 Wilson Blvd 17th Floor;  
Arlington VA 22209  
Phone: (703) 387 - 5619  
Facsimile: (800) 446-3597  
Email: [phillip.cummings@gartner.com](mailto:phillip.cummings@gartner.com)

**7. Service Agreement**

**A)** Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

Vendor Contract No. \_\_\_\_\_

**B) Conflicting or Additional Terms**

In the event that conflicting or additional terms in Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

**8. Authorized Exceptions to Contract and any Appendices.**

**A. Appendix A, Section 4, Intellectual Property Matters, B. Ownership,** is hereby amended and replaced in its entirety as follows:

**B. Ownership**

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all

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Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday thru Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

Ownership of Prior Rights by Customer – All tangible and intangible property including the Intellectual Property Rights therein, which are owned by Customer prior to the execution of any Statement of Work (e.g. copyrights, trademarks, etc.) shall to be exclusively owned by the Customer and Vendor shall have no ownership thereof and no rights thereto other than the limited, non-exclusive right to use such property for purposes set forth in a Statement of Work and only for the duration of such Statement of Work which is hereby granted to Vendor by Customer.

Ownership of Prior Rights by Vendor – All tangible and intangible property including the Intellectual Property Rights therein, which is owned by Vendor prior to the execution of any Statement of Work (e.g. pre-existing tools, processes, methodologies, proprietary research data and proprietary databases) (hereinafter “Pre-existing Vendor IP”) shall continue to be exclusively owned by the Vendor and Customer shall have no ownership thereof and no rights thereto other than the limited, non-exclusive right to use such Pre-existing Vendor IP for internal business use, solely for purposes set forth in a Statement of Work.

Ownership of Pre-Existing Right Embodied in Deliverables – Ownership Where Pre-Existing Rights become embodied in Works. To the extent any pre-existing rights or property of either party are embodied or contained in the Works, each party shall retain ownership of its pre-existing rights and property (e.g. Vendors pre-existing tools, processes, methodologies, proprietary research data, and proprietary databases) (hereinafter “Pre-existing Vendor IP”) shall continue to be exclusively owned by Vendor and Customer shall have no ownership thereof, and no rights thereto other than the limited, non-exclusive right to use such Pre-existing Vendor IP for internal business use, solely for purposes set forth in a Statement of Work, which is hereby granted by Vendor.

- B. Appendix A, Section 9, Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions,** is hereby amended and replaced in its entirety as follows:

**2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any intentional, willful, reckless, negligent or otherwise wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY

Vendor Contract No. \_\_\_\_\_

GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- C. **Appendix A, Section 9, Vendor Responsibilities, K. Limitation of Liability**, is hereby amended and replaced in its entirety as follows:

**K. Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the greater of three (3) times the total amount paid to Vendor for the Statement of Work or Task Order that gave rise to the claim under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action or \$1,000,000. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind.



Vendor Contract No. \_\_\_\_\_

This Contract is executed to be effective as of the date of last signature.

Gartner, Inc.

Authorized By: /Signature on File/

Name: Phillip A. Cummings

Title: Sr. Director Contracts Counsel

Date: 3/29/2018

The State of Texas, acting by and through the Department of Information Resources

Authorized By: /Signature on File/

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 4/6/2018

Office of General Counsel: DB 4/6/2018



# **Department of Information Resources**

## **Appendix A**

### **Standard Contract Terms and Conditions**

#### **Cooperative Contracts**

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The following terms and conditions shall govern the conduct of DIR and Successful Respondent during the term of the Contract.

## **1 CONTRACT SCOPE**

Successful Respondent shall provide the products and/or services specified in the Contract for purchase by Customers. Terms used in this document shall have the meanings set forth below in Section [3 Definitions](#).

## **2 NO QUANTITY GUARANTEES**

The Contract is not exclusive to Successful Respondent. Customers may obtain services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and/or services will be procured through the Contract.

## **3 DEFINITIONS**

### **3.1 Compliance Check**

An audit of Successful Respondent's compliance with the Contract which may be performed by a third-party auditor, DIR Internal Audit department, DIR contract management staff, or their designees.

### **3.2 Contract**

The DIR Contract between DIR and Successful Respondent into which this Appendix A is incorporated.

### **3.3 CPA**

Refers to the Texas Comptroller of Public Accounts.

### **3.4 Customer**

Any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001:

- A. A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- B. A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- C. Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;



- D. A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- E. A local workforce development board created under Section 2308.253, Texas Government Code;
- F. A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- G. The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- H. A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- I. A nonprofit organization that provides affordable housing.

### 3.5 Business day

Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

### 3.6 DIR

Refers to the Texas Department of Information Resources.

### 3.7 Effective Date

Refers to the effective date of the Contract as set forth therein.

### 3.8 Invoice

Refers to a Customer approved instrument submitted by Successful Respondent for payment of services.

### 3.9 Purchase Order

Refers to Customer's fiscal form or format, contract with Successful Respondent, or other document used by Customer to authorize the purchase of products or services from Successful Respondent under the Contract, including but not limited to a formal written purchase order, procurement card, electronic purchase order, or another authorized instrument.

### 3.10 State

Refers to the State of Texas.

### 3.11 Statement of Work (SOW)

Means a document entered into between Customer and Successful Respondent describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Successful Respondent is to provide Customer, issued pursuant to the Contract.

### 3.12 Subcontracting Plan

Refers to **Appendix B**, Successful Respondent's Historically Underutilized Business Subcontracting Plan.

### 3.13 Successful Respondent

Refers to the party identified as either "Successful Respondent" or "Vendor" in Section 1.1 of the Contract.



### 3.14 Third-Party Provider

Refers to an agent, affiliate, subcontractor, vendor, reseller, manufacturer, publisher, distributor, order fulfiller or other person or entity designated or directed by Successful Respondent to provide products or services to a Customer in performance of, related to, or in support of a Purchase Order issued under the Contract.

## 4 GENERAL PROVISIONS

### 4.1 Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and Successful Respondent. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

### 4.2 Modification of Contract Terms and/or Amendments

- A. The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Successful Respondent.
- B. DIR may amend the Contract upon thirty (30) calendar days written notice to Successful Respondent without the need for Successful Respondent's written consent: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.
- C. Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Successful Respondent may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- D. Customer(s) and Successful Respondent will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract.

### 4.3 Invalid Term or Condition

- A. To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a Contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.
- B. If one (1) or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent

jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

#### 4.4 Assignment

- A. DIR may assign the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- B. A Customer may assign a Purchase Order issued under the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- C. Successful Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the DIR. Any attempted assignment in violation of this provision is void and without effect.

#### 4.5 Survival

All applicable Statements of Work that were entered into between Successful Respondent and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Successful Respondent shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than three (3) years. In all instances of termination or expiration and no later than five (5) days after termination or expiration or upon DIR request, Successful Respondent shall provide a list, in accordance with the format requested by DIR (i.e., Excel, Word, etc.), of all surviving Statements of Work and Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Statements of Work and Purchase Orders. Rights and obligations under the Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee and any and all payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality; and indemnification will remain in effect.

#### 4.6 Choice of Law

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. In any litigation where any state agency is a party, and subject to the requirements of Chapter 2260, Texas Government Code, the exclusive venue of any such suit arising under the Contract is fixed in the state courts of Travis County, Texas. If litigation does not involve any state agency, then venue is fixed in the state courts of the Texas county where the Customer is primarily situated, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency. Regardless of any provision anywhere in the Contract, no state agency or other Customer in any manner waives any defense or immunity whatsoever.

#### 4.7 Limitation of Authority

Successful Respondent shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in the Contract; no other authority,



power or use is granted or implied. Successful Respondent may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

#### 4.8 Proof of Financial Stability

Either DIR or Customer may require Successful Respondent to provide proof of financial stability prior to or at any time during the Contract term.

#### 4.9 Data Location

Regardless of any other provision of the Contract or its incorporated or referenced documents, all of the data for State of Texas Customers shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise; however, Successful Respondent shall notify DIR promptly after such request is made. For all Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. **NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE CONTIGUOUS US-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.**

#### 4.10 Independent Contractor

**SUCCESSFUL RESPONDENT AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THE CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT SUCCESSFUL RESPONDENT IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR, OR THE STATE OF TEXAS.**

## 5 INTELLECTUAL PROPERTY MATTERS

### 5.1 Intellectual Property Matters Definitions

#### 5.1.1 "Work Product"

Means any and all deliverables produced by Successful Respondent for Customer under a Statement of Work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Effective Date, including but not limited to any:

- (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, configurations, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works),
- (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin,
- (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how,
- (iv) domain names,
- (v) any copies, and similar or derivative works to any of the foregoing,

- (vi) all documentation and materials related to any of the foregoing,
- (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and
- (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with the Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit:
  - a. by any Successful Respondent personnel or Customer personnel, or
  - b. any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

#### 5.1.2 "Intellectual Property Rights"

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:

- i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;
- ii) any work of authorship, including any copyrights, moral rights or neighboring rights;
- iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin;
- iv) domain name registrations; and
- v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

#### 5.1.3 "Third Party IP"

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Order or Statement of Work issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract or a Purchase Order or Statement of Work issued under the Contract.

#### 5.1.4 "Successful Respondent IP"

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Successful Respondent:

- i) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the services or Work Product, or



- ii) after the Effective Date if such tangible or intangible items or things were independently developed by Successful Respondent outside Successful Respondent's provision of services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

## 5.2 Ownership

As between Successful Respondent and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Successful Respondent. Successful Respondent specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Successful Respondent hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Successful Respondent acknowledges that Successful Respondent and Customer do not intend Successful Respondent to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Successful Respondent, to all Successful Respondent materials, premises, and computer files containing the Work Product. Successful Respondent and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Successful Respondent.

## 5.3 Further Actions

Successful Respondent, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Successful Respondent's signature due to the dissolution of Successful Respondent or Successful Respondent's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Successful Respondent hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Successful Respondent's agent and Successful Respondent's attorney-in-fact to act for and in Successful Respondent's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Successful Respondent, provided however that no such grant of right to Customer is applicable if Successful Respondent fails to execute any document due to a good faith dispute by Successful Respondent with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Successful Respondent shall

cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

#### **5.4 Waiver of Moral Rights**

Successful Respondent hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Successful Respondent may now have or which may accrue to Successful Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Successful Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

#### **5.5 Confidentiality**

All documents, information and materials forwarded to Successful Respondent by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Successful Respondent under Section [5.8 Successful Respondent License to Use](#). Hereunder, Successful Respondent shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

#### **5.6 Injunctive Relief**

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Successful Respondent acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

#### **5.7 Return of Materials Pertaining to Work Product**

Upon the request of Customer, but in any event upon termination or expiration of the Contract, or a Statement of Work, Successful Respondent shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Successful Respondent or furnished by Customer to Successful Respondent, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Successful Respondent by Customer or by anyone else that pertain to the Work Product.



### 5.8 Successful Respondent License to Use

Customer hereby grants to Successful Respondent a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the services to Customer. Except as provided in this Section, neither Successful Respondent nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

### 5.9 Third-Party Underlying and Derivative Works

- A. To the extent that any Successful Respondent IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the services, Successful Respondent hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to
  - i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Successful Respondent IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and
  - ii) authorize others to do any or all of the foregoing. Successful Respondent agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party IP.
- B. On request, Successful Respondent shall provide Customer with documentation indicating a third party's written approval for Successful Respondent to use any Third Party IP that may be embodied or reflected in the Work Product.

### 5.10 Agreement with Third Party Providers

Successful Respondent agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any Third Party Providers, prior to their providing such services or Work Product pursuant to the Contract, and that Successful Respondent shall maintain such written agreements at all times during performance of the Contract, which are sufficient to support all performance and grants of rights by Successful Respondent. Copies of such agreements shall be provided to the Customer promptly upon request.

### 5.11 License to Customer

Successful Respondent grants to Customer, at no additional charge, a world-wide, non-exclusive, perpetual, irrevocable, royalty free right and license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Successful Respondent IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Successful Respondent IP remain in Successful Respondent.

### 5.12 Successful Respondent Development Rights

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in the Contract shall preclude Successful Respondent from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Successful Respondent wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Successful Respondent and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

## 6 TERMS AND CONDITIONS APPLICABLE TO STATE AGENCY PURCHASES ONLY

- A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes 1 TAC 206, 1 TAC 213, and in the Worldwide Web Consortium WCAG 2.0 AA technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations. Successful Respondent hereby represents, certifies, and warrants that it and its products and services comply with all relevant accessibility laws and standards.
- i) Upon request, and prior to a DIR Customer purchase, Successful Respondent must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such completed ACRs already exist, and there have been no changes to the product/service since the time of the original document completion.
  - ii) If Successful Respondent claims that a proposed product or family of products is exempt from accessibility requirements, it must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.
  - iii) Upon request, and prior to a DIR customer purchase for IT development services, Successful Respondent must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Successful Respondent's capability or ability to produce accessible electronic and information resources.
  - iv) Additionally, Successful Respondent must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to



planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

- v) Upon request, and prior to a Customer purchase for COTS products, or IT development services, Successful Respondent must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.
- vi) Also upon request, Successful Respondent must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to: executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

**B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)**

- i) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).
- ii) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.
- iii) Successful Respondent agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Section.

## **7 CONTRACT FULFILLMENT AND PROMOTION**

### **7.1 Service, Sales and Support of the Contract**

Successful Respondent shall provide service, sales, and support resources to serve all Customers. It is the responsibility of Successful Respondent to sell, market, and promote products and services available under the Contract. Successful Respondent shall use best efforts to ensure that potential Customers are made aware of the existence of the Contract. All contracts for and sales to Customers for products and services available under the Contract shall be in accordance with the Contract.

### **7.2 Internet Access to Contract and Pricing Information**

**A. Successful Respondent Webpage**

Within thirty (30) calendar days from the Effective Date, Successful Respondent will establish and maintain a webpage specific to the services awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Successful Respondent's website. Successful Respondent must use a web hosting service that provides a dedicated internet protocol (IP) address. Successful Respondent's website must have a Secure Sockets Layer (SSL) certificate and Customers must access Successful Respondent's website using Hyper Text Transfer Protocol Secure (HTTPS) and it will encrypt all communication between Customer browser and website. The webpage must include:

- i) a list with description of products and/or services awarded;
- ii) Successful Respondent contact information (name, telephone number and email address);
- iii) instructions for obtaining quotes and placing Purchase Orders;
- iv) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- v) a link to the DIR "Cooperative Contracts" webpage;
- vi) the DIR logo in accordance with the requirements of Section 7.9; and
- vii) any other information that the Contract indicates is required to be included on the webpage.

- B. If Successful Respondent does not meet the webpage requirements listed above, DIR may cancel the Contract without penalty.

### **7.3 Accurate and Timely Contract Information**

Successful Respondent warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained, and displayed in an objective and timely manner. Successful Respondent, at its own expense, shall correct any non-conforming or inaccurate information posted at Successful Respondent's website within ten (10) business days after written notification by DIR.

### **7.4 Webpage Compliance Checks**

Periodic Compliance Checks of the information posted for the Contract on Successful Respondent's website will be conducted by DIR. Upon request by DIR, Successful Respondent shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

### **7.5 Webpage Changes**

Successful Respondent hereby consents to a link from the DIR website to Successful Respondent's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Successful Respondent with subsequent notice of link suspension, termination or removal. Successful Respondent shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.



## 7.6 Use of Access Data Prohibited

If Successful Respondent stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Successful Respondent for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Successful Respondent shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

## 7.7 Responsibility for Content

Successful Respondent is solely responsible for administration, content, intellectual property rights, and all materials at Successful Respondent's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

## 7.8 Services Warranty and Return Policies

Successful Respondent will adhere to Successful Respondent's then-currently published policies concerning product and service warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated customers for like products and services.

## 7.9 DIR and Customer Logos

Successful Respondent may use a Customer's logo only upon prior written approval of such Customer. Successful Respondent may use the DIR logo in the promotion of the Contract to Customers with the following stipulations:

- A. the logo may not be modified in any way,
- B. when displayed, the size of the DIR logo must be equal to or smaller than Successful Respondent's logo,
- C. the DIR logo is only used to communicate the availability of services under the Contract to Customers, and
- D. any other use of the DIR logo requires prior written permission from DIR.

## 7.10 Successful Respondent Logo

If DIR receives Successful Respondent's prior written approval, DIR may use Successful Respondent's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. Use of the logo may be on the DIR website or on printed materials. Any use of Successful Respondent's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Successful Respondent's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Successful Respondent.

## 7.11 Trade Show Participation

At DIR's discretion, Successful Respondent may be required to participate in no more than two (2) DIR sponsored trade shows each calendar year. Successful Respondent understands and agrees that participation, at Successful Respondent's expense, includes providing a manned booth display or similar presence. DIR will provide four (4) months advance notice of any required participation. Successful Respondent must display the DIR logo at all trade shows that potential Customers will attend. DIR

reserves the right to approve or disapprove of the location or the use of the DIR logo in or on Successful Respondent's booth.

### 7.12 Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Successful Respondent will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include administrative requirements for reporting and administrative fee payments. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

### 7.13 Performance Review Meetings

Successful Respondent shall attend periodic meetings to review Successful Respondent's performance under the Contract at DIR's request. The meetings will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

### 7.14 DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Successful Respondent shall provide DIR with a detailed report of a representative sample of products or services sold under the Contract. The report shall contain: product or service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR Customers can procure the products or services.

## 8 PURCHASE ORDERS, INVOICES, AND PAYMENTS

### 8.1 Purchase Orders

All Customer Purchase Orders will be placed directly with Successful Respondent. Accurate Purchase Orders shall be effective and binding upon Successful Respondent when accepted by Successful Respondent.

### 8.2 Invoices

- A. Invoices shall be submitted by Successful Respondent directly to Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to Successful Respondent. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.
- B. Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices, and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the products and services by the Customer.
- C. The DIR Administrative Fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.



### 8.3 Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Successful Respondent. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.

### 8.4 Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under the Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under the Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Successful Respondent upon request.

### 8.5 Travel Expense Reimbursement

Pricing for services provided under the Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under the Contract. The DIR Administrative Fee is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

## 9 CONTRACT ADMINISTRATION

### 9.1 Contract Managers

DIR and Successful Respondent will each provide a contract manager (“Contract Manager”) to support the Contract (respectively, the “DIR Contract Manager” and “Successful Respondent Contract Manager”). Information regarding each Contract Manager will be posted on the internet website designated for the Contract. DIR reserves the right to require a change in Successful Respondent Contract Manager if Successful Respondent Contract Manager is not, in the sole opinion of DIR, adequately serving the needs of the State.

#### 9.1.1 DIR Contract Manager

The DIR Contract Manager’s duties include but are not limited to:

- A. monitoring compliance and management of the Contract,
- B. advising DIR of Successful Respondent’s performance under the Contract, and
- C. periodic verification of pricing and monthly reports submitted by Successful Respondent.

#### 9.1.2 Successful Respondent Contract Manager

Successful Respondent Contract Manager’s duties shall include but are not limited to:

- A. supporting the marketing and management of the Contract,
- B. facilitating dispute resolution between Successful Respondent and Customers, and
- C. advising DIR of Successful Respondent's performance under the Contract.

## 9.2 Reporting and Administrative Fees

### 9.2.1 Reporting Responsibility

- A. Each month, Successful Respondent shall report all products and services purchased under the Contract. Successful Respondent shall file monthly reports to include monthly sales reports, subcontract reports, and pay the DIR Administrative Fees in accordance with the due dates specified in this Section.
- B. DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this Section, including but not limited to, Compliance Checks of Successful Respondent's applicable Contract books. Successful Respondent will provide all required documentation at no cost.

### 9.2.2 Detailed Monthly Report

- A. Using the Vendor Sales Report (VSR) portal, Successful Respondent shall provide DIR with a monthly report in the format required by DIR detailing sales activity under the Contract for the previous month period. This included months in which there are no sales. Reports may be submitted between the first (1st) and the fifteenth (15th) of each month and are due no later than the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. Per transaction, the monthly report shall include, at a minimum, the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated DIR Administrative Fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to Successful Respondent for correction in accordance with this Section.
- B. Successful Respondent shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in Contract termination.

### 9.2.3 Historically Underutilized Businesses Subcontract Reports

- A. Successful Respondent shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- B. Reports shall be due in accordance with the CPA rules.



#### 9.2.4 DIR Administrative Fee

- A. The DIR Administrative Fee shall be paid by Successful Respondent to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review monthly sales reports, close the sales period, and notify Successful Respondent of the amount of the DIR Administrative Fee no later than the fourteenth (14th) calendar day of the month following the date of the reported sale. Successful Respondent shall pay the amount of the DIR Administrative Fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Successful Respondent reports January sales no later than February 15th; DIR closes January sales and notifies Successful Respondent of the amount of the DIR Administrative Fee by March 14th; Successful Respondent submits payment of the DIR Administrative Fee for January sales by March 25th.
- B. DIR may change the amount of the DIR Administrative Fee upon thirty (30) calendar days written notice to Successful Respondent without the need for an amendment to the Contract.
- C. To preserve the DIR Administrative Fee in place at the time of the sale of product or service, the calculation of the DIR Administrative Fee is based on the Purchase Order date for each sale.
- D. Successful Respondent shall reference the Contract number, reporting period, and DIR Administrative Fee amount on any remittance instruments.

#### 9.2.5 Accurate and Timely Submission of Reports

- A. Successful Respondent shall submit reports and DIR Administrative Fee payments accurately and timely in accordance with the due dates specified in this Section. Successful Respondent shall correct any inaccurate reports or DIR Administrative Fee payments within three (3) business days upon written notification by DIR. Successful Respondent shall deliver any late reports or late DIR Administrative Fee payments within three (3) business days upon written notification by DIR. If Successful Respondent is unable to correct inaccurate reports or DIR Administrative Fee payments or deliver late reports and DIR Administrative Fee payments within three (3) business days, Successful Respondent shall contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- B. Should Successful Respondent fail to correct inaccurate reports or cure the delay in timely and accurate delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right at DIR's expense to require an independent third-party audit of Successful Respondent's records as specified in Section [9.3 Records and Audit](#). DIR will select the auditor (and all payments to auditor will require DIR approval).
- C. Failure to timely submit three (3) reports or DIR Administrative Fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Successful Respondent's Contract.

### 9.3 Records and Audit

- A. Acceptance of funds under the Contract by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Successful Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Successful Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Successful Respondent and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- B. Successful Respondent shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract, whichever is later. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- C. Successful Respondent shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the Compliance Checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking, and/or copying such books and records.
- D. Successful Respondent shall provide copies and printouts requested by DIR without charge. DIR shall use best efforts to provide Successful Respondent ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Successful Respondent's records. Successful Respondent's records, whether paper or electronic, shall be made available during regular office hours. Successful Respondent personnel familiar with Successful Respondent's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Successful Respondent shall provide adequate office space to DIR staff during the performance of Compliance Check. If Successful Respondent is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.



- E. For procuring State Agencies whose payments are processed by the CPA, the volume of payments made to Successful Respondent through the CPA and the administrative fee based thereon shall be presumed correct unless Successful Respondent can demonstrate to DIR's satisfaction that Successful Respondent's calculation of DIR's administrative fee is correct.

#### 9.4 Contract Administration Notification

- A. Prior to execution of the Contract, Successful Respondent shall provide DIR with written notification of the following:
- i) Successful Respondent Contract Manager's name and contact information,
  - ii) Successful Respondent sales representative name and contact information, and
  - iii) name and contact information of Successful Respondent personnel responsible for submitting reports and payment of DIR Administrative Fees.
- B. Upon execution of the Contract, DIR shall provide Successful Respondent with written notification of the DIR Contract Manager's name and contact information.

### 10 SUCCESSFUL RESPONDENT RESPONSIBILITIES

#### 10.1 Indemnification

##### 10.1.1 Indemnities by Successful Respondent

- A. Successful Respondent shall defend, indemnify, and hold harmless DIR, the State of Texas, and Customers, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, resulting from, or related to:
- i) any acts or omissions of Successful Respondent, its employees, or Third Party Providers in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
  - ii) any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
  - iii) any breach, disclosure, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Successful Respondent in connection with the Contract, including DIR data, Customer data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract; and
  - iv) tax liability, unemployment insurance or workers' compensation or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.
- B. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED

DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. FOR NON-STATE AGENCY CUSTOMERS, THE DEFENSE SHALL BE COORDINATED BY CUSTOMER'S LEGAL COUNSEL. SUCCESSFUL RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER AND TO DIR OF ANY SUCH CLAIM.

#### 10.1.2 Infringements

If Successful Respondent becomes aware of an actual or potential claim of an Infringement, or Customer provides Successful Respondent with notice of an actual or potential claim of an Infringement, Successful Respondent may (or in the case of an injunction against Customer, shall), at Successful Respondent's sole expense: (i) procure for Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

#### 10.2 Property Damage

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF SUCCESSFUL RESPONDENT, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, SUCCESSFUL RESPONDENT SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY SUCCESSFUL RESPONDENT NINETY (90) CALENDAR DAYS AFTER THE DATE OF SUCCESSFUL RESPONDENT'S RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

#### 10.3 Taxes/Worker's Compensation/Unemployment Insurance

Successful Respondent agrees and acknowledges that during the existence of the Contract, Successful Respondent shall be entirely responsible for the liability and payment of Successful Respondent's and its employees' taxes of whatever kind, arising out of the performances in the Contract. Successful Respondent agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. Successful Respondent agrees and acknowledges that Successful Respondent and its employees, representatives, agents, and subcontractors shall not be entitled to any state benefit or benefit of another governmental entity Customer. Customer, DIR, and/or the State shall not be liable to Successful Respondent, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee or employee of another governmental entity Customer.



#### 10.4 Successful Respondent Certifications

- A. Successful Respondent represents and warrants that, in accordance with Section 2155.005, Texas Government Code, neither Successful Respondent nor the firm, corporation, partnership, or institution represented by Successful Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Successful Respondent.
- B. Successful Respondent hereby certifies, represents, and warrants, on behalf of Successful Respondent that:
- i) it has not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
  - ii) it is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under Section 231.006, Texas Family Code, and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
  - iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
  - iv) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;
  - v) under Section 2155.004, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
  - vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Successful Respondent, which if determined adversely to Successful Respondent, will have a material adverse effect on the ability to fulfill its obligations under the Contract;
  - vii) Successful Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration, nor is Successful Respondent subject to any Federal Executive Orders issued banning certain entities or countries.
  - viii) as of the Effective Date, it is not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
  - ix) in the performance of the Contract, Successful Respondent shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Section 2155.4441, Texas Government Code;

- x) all equipment and materials to be used in fulfilling the requirements of the Contract are of high-quality and consistent with or better than applicable industry standards, if any. All works and services performed pursuant to the Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- xi) to the extent Successful Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Successful Respondent is otherwise owed under the Contract may be applied toward any debt Successful Respondent owes the State of Texas until the debt is paid in full;
- xii) it is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- xiii) the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that Successful Respondent will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify Successful Respondent shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- xiv) under Section 2155.006 and Section 2261.053, Texas Government Code, it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xv) it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Successful Respondent acknowledges the applicability of Section 2155.444 and Section 2155.4441, Texas Government Code, in fulfilling the terms of the Contract;
- xvi) Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Section 556.005 or Section 556.008, Texas Government Code;
- xvii) in accordance with Section 2271.002, Texas Government Code, by signature hereon, Successful Respondent does not boycott Israel and will not boycott Israel during the term of the Contract;
- xviii) in accordance with Section 2155.0061, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xix) in accordance with Section 2252.152, Texas Government Code, it is not identified on a list prepared and maintained under Section 2270.0201 (previously 806.051) or Section 2252.153, Texas Government Code;
- xx) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract;
- xxi) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it (A) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (B) will not discriminate during the term of the contract against a firearm entity or firearm trade association;

- xxii) under Section 161.0085, Texas Health and Safety Code, Successful Respondent is not ineligible to receive the Contract;
  - xxiii) if Successful Respondent is required to make a certification pursuant to Section 2274.0101, Texas Government Code, (A) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Respondent is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; (B) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Successful Respondent is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; and (C) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure;
  - xxiv) if the services to be provided under a Purchase Order include cloud computing services, Successful Respondent shall comply with the requirements of the Texas Risk and Authorization Management Program (“TX-RAMP”), as provided by 1 TAC §§ 202.27 and 202.77, and the TX-RAMP Program Manual (“Program Manual”). Successful Respondent shall maintain program compliance and certification throughout the term of such Purchase Order, including providing all quarterly and ongoing documentation required by the Program Manual and any other continuous monitoring documentation or artifacts required by the Customer issuing such Purchase Order. Upon request from DIR or the Customer issuing such Purchase Order, Successful Respondent shall provide all documents and information necessary to demonstrate Successful Respondent’s compliance with TX-RAMP; and
  - xxv) all information provided by Successful Respondent is current, accurate, and complete.
- C. During the term of the Contract, Successful Respondent shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Successful Respondent covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations, and warranties and any changes thereto.
- D. In addition, Successful Respondent understands and agrees that if Successful Respondent responds to certain Customer pricing requests, then, in order to contract with the Customer, Successful Respondent may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

### 10.5 Ability to Conduct Business in Texas

Successful Respondent shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas in accordance with Texas Business Organization Code, Title 1, Chapter 9. Upon request by DIR, Successful Respondent shall provide all



documents and other information necessary to establish Successful Respondent's authorization to do business in the State of Texas and the validity of Successful Respondent's existence under the laws of its state of organization.

### 10.6 Equal Opportunity Compliance

Successful Respondent agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State of Texas in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Successful Respondent agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Successful Respondent under the Contract. If Successful Respondent is found to be not in compliance with these requirements during the term of the Contract, Successful Respondent agrees to take appropriate steps to correct these deficiencies. Upon request, Successful Respondent will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

### 10.7 Use of Subcontractors

If Successful Respondent uses any subcontractors in the performance of the Contract, Successful Respondent must make a good faith effort in the submission of its HUB Subcontracting Plan (HSP) in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised HSP approved by DIR's HUB Office shall be required before Successful Respondent can engage additional subcontractors in the performance of the Contract. A revised HSP approved by DIR's HUB Office shall be required before Successful Respondent can remove subcontractors currently engaged in the performance of the Contract. Successful Respondent shall remain solely responsible for the performance of its obligations under the Contract.

### 10.8 Responsibility for Actions

- A. Successful Respondent is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Successful Respondent nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- B. Successful Respondent, for itself and on behalf of its subcontractors, shall report to the DIR Contract Manager within five (5) business days any change to the information contained in the Certification Statement of **Exhibit A** of the RFO or Section [10.4, Successful Respondent Certifications](#) of this Appendix A to the Contract. Successful Respondent covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

### 10.9 Confidentiality

- A. Successful Respondent acknowledges that DIR and Customers that are governmental bodies as defined by Section 552.003, Texas Government Code, are subject to the Texas Public Information Act. Successful Respondent also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

- B. Under the terms of the Contract, DIR may provide Successful Respondent with information related to Customers. Successful Respondent shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

#### **10.10 Security of Premises, Equipment, Data and Personnel**

- A. Successful Respondent or Third-Party Providers may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to a Customer. Successful Respondent and Third-Party Providers shall preserve the safety, security, and the integrity of such personnel, premises, equipment, and other property, including data, information, files, and materials belonging to Customer, in accordance with the instruction of Customer and to the degree in which Successful Respondent or such Third-Party Provider protects its own information. Successful Respondent shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by Successful Respondent or a Third-Party Provider. If Successful Respondent or Third-Party Provider fails to comply with Customer's security requirements, then Customer may immediately terminate the Purchase Order and related Service Agreement.
- B. If a Purchase Order is subject to Section 2054.138, Texas Government Code, Successful Respondent shall meet the security controls required by such Purchase Order, and shall periodically provide to the Customer evidence that Successful Respondent meets such required security controls.

#### **10.11 Background and/or Criminal History Investigation**

Prior to commencement of any services, background and/or criminal history investigation of Successful Respondent's employees and Third-Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Successful Respondent conduct such background checks. Should any employee or Third-Party Provider of Successful Respondent who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or Third-Party Provider in question.

#### **10.12 Limitation of Liability**

- A. For any claim or cause of action arising under or related to the Contract, to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages.
- B. Successful Respondent and a Customer may include in a Purchase Order a term limiting Successful Respondent's liability for damages in any claim or cause of action arising under or related to such Purchase Order; provided that any such term may not limit Successful Respondent's liability below two-times the total value of the Purchase Order. Such value includes all amounts paid and amounts to be paid over the life of the Purchase Order to Successful Respondent by such Customer as described in the Purchase Order.
- C. Notwithstanding the foregoing or anything to the contrary herein, any limitation of Successful Respondent's liability contained herein or in a Purchase Order shall not apply to: claims of bodily



injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under the Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

### 10.13 Overcharges

Successful Respondent hereby assigns to DIR any and all of its claims for overcharges associated with the Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

### 10.14 Prohibited Conduct

Successful Respondent represents and warrants that, to the best of its knowledge as of the date of this certification, neither Successful Respondent nor any subcontractor, firm, corporation, partnership, or institution represented by Successful Respondent, nor anyone acting for Successful Respondent or such subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the RFO directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

### 10.15 Required Insurance Coverage

- A. As a condition of the Contract, Successful Respondent shall provide the listed insurance coverage within five (5) business days of execution of the Contract if Successful Respondent is awarded services which require that Successful Respondent's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, Successful Respondent shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to such Customer within five (5) business days following the execution of the Purchase Order. Successful Respondent may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. If Successful Respondent's services under the Contract will not require Successful Respondent to perform work on Customer premises, or to use vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Successful Respondent may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing the Certification of Off-Premise Customer Services in the form provided by DIR, which shall serve to meet the insurance requirements.
- B. All required insurance must be issued by companies that have an A rating and a minimum Financial Size Category Class of VII from AM Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as additional insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Successful Respondent thereunder. The minimum acceptable insurance provisions are as follows:



### 10.15.1 Commercial General Liability

Commercial General Liability must include \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- A. Blanket contractual liability coverage for liability assumed under the Contract;
- B. Independent Contractor coverage;
- C. State of Texas, DIR, and Customer listed as an additional insured; and
- D. Waiver of Subrogation.

### 10.15.2 Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code) and minimum policy limits for Employers' Liability of \$1,000,000 per accident, \$1,000,000 disease PER EMPLOYEE and \$1,000,000 per disease POLICY LIMIT.

### 10.15.3 Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- A. Waiver of subrogation;
- B. Additional insured.

### 10.16 Use of State Property

Successful Respondent is prohibited from using a Customer's equipment, location, or any other resources of a Customer, DIR, or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Successful Respondent using a Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Successful Respondent to such Customer immediately upon demand by such Customer. Such use shall constitute breach of contract and may result in termination of the Contract, the Purchase Order, and other remedies available to DIR and Customer under the Contract and applicable law.

### 10.17 Immigration

- A. Successful Respondent shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under the Contract.
- B. Pursuant to Chapter 673, Texas Government Code, Successful Respondent shall, as a condition of the Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- i) all persons 1) to whom the E-Verify system applies, and 2) who are hired by Successful Respondent during the term of the Contract to perform duties within Texas; and
  - ii) all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of the Contract and assigned by the subcontractor to perform work pursuant to the Contract.
- C. Successful Respondent shall require its subcontractors to comply with the requirements of this Section and Successful Respondent is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Successful Respondent and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

#### 10.18 Public Disclosure

No public disclosures or news releases pertaining to the Contract shall be made by Successful Respondent without prior written approval of DIR.

#### 10.19 Product and/or Services Substitutions

Substitutions are not permitted without the prior written consent of DIR or Customer.

#### 10.20 Secure Erasure of Hard Disk Managed Services Products and/or Services

Successful Respondent agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase, destroy, or render unreadable data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Purchase Order for such products and/or services, in accordance with 1 TAC 202 or NIST 800-88.

#### 10.21 Deceptive Trade Practices; Unfair Business Practices

- A. Successful Respondent represents and warrants that neither Successful Respondent nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- B. Successful Respondent certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

#### 10.22 Drug Free Workplace Policy

Successful Respondent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 280, Subpart F182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.



### 10.23 Public Information

- A. Pursuant to Section 2252.907, Texas Government Code, Successful Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- B. Each State government entity should supplement the provision set forth in Section A, above, with the additional terms agreed upon by the parties regarding the specific format by which Successful Respondent is required to make the information accessible by the public.
- C. Successful Respondent represents and warrants that it will comply with the requirements of Section 552.372(a), Texas Government Code, where applicable. Except as provided by Section 552.374(c), Texas Government Code, the requirements of Subsection J, Chapter 552, Texas Government Code, may apply to the Contract or certain Purchase Orders, and Successful Respondent agrees that the Contract or such Purchase Orders can be terminated if Successful Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

### 10.24 Successful Respondent Reporting Requirements

Successful Respondent shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109, requiring computer technicians to report images of child pornography.

### 10.25 Cybersecurity Training

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Successful Respondent, or a subcontractor, officer, or employee of Successful Respondent, will have access to a state computer system or database, then Successful Respondent shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency or institution of higher education. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the Contract and during any renewal period. Successful Respondent shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

## 11 CONTRACT ENFORCEMENT

### 11.1 Enforcement of Contract and Dispute Resolution

- A. Successful Respondent and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, (iii) except as provided in Sec. 2251.051 Texas Government Code, Successful Respondent shall continue performance while the dispute is being resolved, and (iv) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- B. Disputes arising between a Customer and Successful Respondent shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with the above. DIR shall not be a party to any such dispute unless DIR, Customer, and Successful Respondent agree in writing.

- C. State agencies are required by rule (34 TAC §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.00.

## 11.2 Termination

### 11.2.1 Termination for Non-Appropriation

#### 11.2.1.1 Termination for Non-Appropriation by Customer

Customers may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Successful Respondent will be provided ten (10) calendar days written notice of intent to terminate. In the event of such termination, Customer will not be in default or breach under the Purchase Order or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

#### 11.2.1.2 Termination for Non-Appropriation by DIR

DIR may terminate the Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Successful Respondent will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

### 11.2.2 Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Successful Respondent becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Successful Respondent becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Successful Respondent is found by DIR to be ineligible to hold the Contract under Subsection (b) of Section 2155.006, Texas Government Code. Successful Respondent shall be provided written notice in accordance with Section 14.1, Notices, of intent to terminate.

### 11.2.3 Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days' written notice.



## 11.2.4 Termination for Cause

### 11.2.4.1 Contract

Either DIR or Successful Respondent may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

### 11.2.4.2 Purchase Order

Customer or Successful Respondent may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Successful Respondent fails to comply with confidentiality, privacy, security requirements, environmental, or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

## 11.2.5 Immediate Termination or Suspension

DIR may immediately suspend or terminate the Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Successful Respondent (whether or not such potential violations directly impact the provision of goods or services under the Contract). In such case, Successful Respondent may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to Successful Respondent within five (5) business days after the suspension or termination. Successful Respondent may provide a response and request an opportunity to present its position. DIR or Customer will review Successful Respondent's presentation but is under no obligation to provide formal response.

### 11.2.6 Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract in accordance with Section [4.5](#).

### 11.2.7 Successful Respondent Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay all amounts due for products or services ordered prior to the effective expiration or termination date and ultimately accepted.

## 11.3 Force Majeure

DIR, Customer, or Successful Respondent may be excused from performance under the Contract or a Purchase Order for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order (each such event, an “Event of Force Majeure”), provided that the party experiencing such Event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party’s control to ensure performance and to shorten the duration or impact of the Event of Force Majeure. The party suffering an Event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this Section, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by such Customer that Successful Respondent will not be able to deliver services in a timely manner to meet the business needs of such Customer.

## 12 NON-SOLICITATION OF STATE EMPLOYEES

Successful Respondent shall not solicit, directly or indirectly, any employee of DIR who is associated with the Contract for a period of ninety (90) calendar days following the expiration or termination of the Contract. Further, Successful Respondent shall not solicit, directly or indirectly, any employee of a Customer who is associated with a Purchase Order for a period of ninety (90) calendar days following the expiration or termination of such Purchase Order.

## 13 WARRANTY

Customers may provide written notice to Successful Respondent of errors, inaccuracies, or other deficiencies in products or services provided by Successful Respondent under a Purchase Order within thirty (30) calendar days or receipt of an invoice for such products or services. Successful Respondent shall correct such error, inaccuracy, or other deficiency at no additional cost to Customer.

## 14 NOTIFICATION

### 14.1 Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals, and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three (3) business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in the Contract or to such other address as such party shall have notified the other party in writing.

### 14.2 Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

## 15 CAPTIONS

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

<END OF APPENDIX A>





# HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

➤ If you will be awarding **all** of the subcontracting work you have to offer under the contract to **only** Texas certified HUB vendors, complete:

- Section 1 - Respondent and Requisition Information
- Section 2 a. - Yes, I will be subcontracting portions of the contract.
- Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
- Section 2 c. - Yes
- Section 4 - Affirmation
- GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you **do not** have a **continuous contract**\* in place for more than five (5) years **meets or exceeds** the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 - Respondent and Requisition Information
- Section 2 a. - Yes, I will be subcontracting portions of the contract.
- Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- Section 2 c. - No
- Section 2 d. - Yes
- Section 4 - Affirmation
- GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you **do not** have a **continuous contract**\* in place for more than five (5) years **does not meet or exceed** the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 - Respondent and Requisition Information
- Section 2 a. - Yes, I will be subcontracting portions of the contract.
- Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- Section 2 c. - No
- Section 2 d. - No
- Section 4 - Affirmation
- GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment, including transportation and delivery, complete:

- Section 1 - Respondent and Requisition Information
- Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- Section 3 - Self Performing Justification
- Section 4 - Affirmation

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.





# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

**- - Agency Special Instructions/Additional Requirements - -**

*In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract\* in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

[Empty box for Agency Special Instructions/Additional Requirements]

**SECTION-1 RESPONDENT AND REQUISITION INFORMATION**

- a. Respondent (Company) Name: Gartner Inc. State of Texas VID #: 1043099750100  
 Point of Contact: Phillip A. Cummings Phone #: +1 703 387 5619  
 E-mail Address: phillip.cummings@gartner.com Fax #: +1 800 446 3597
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: 29 MAR 2018  
(mm/dd/yyyy)

Enter your company's name here: Gartner Inc. Requisition #: \_\_\_\_\_ Item 9.

**SECTION-2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods, services, transportation and delivery will be subcontracted**. Note: In accordance with 34 TAC §20.11., a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods, services, transportation and delivery. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- **Yes** (If **Yes**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



Enter your company's name here: Gartner Inc.

Requisition #: \_\_\_\_\_

Item 9.

**SECTION 2 RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

*\*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: Gartner Inc.

Requisition #: \_\_\_\_\_

Item 9.

**SECTION-3 SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

If you responded "No" to SECTION 2, Item a, in the space provided below explain how your company will perform the entire contract with its own employees, supplies, materials and/or equipment, to include transportation and delivery.

Gartner Research is written solely by 950 analysts employed by Gartner to ensure that Gartner maintains our independent, objective and nonbiased research. Gartner has over 8,500 employees, including over 1400 analysts and consultants. Since our research model and methodologies are extremely unique and proprietary it is not possible to subcontract out any of the work associated with these services.

We have a sales team dedicated to supporting TX DIR. We understand the needs and processes of TX DIR, and we know how to provide tremendous value to TX DIR customers from our experience with multiple DIR contracts.

**SECTION-4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

	<b>Phillip A. Cummings</b>	Contracts Counsel	<b>03/29/2018</b>
Signature on File	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
<small>Signature</small>			

**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.







# HSP Good Faith Effort - Method B (Attachment B)

Item 9.

Enter your company's name here: Gartner Inc. Requisition #: \_\_\_\_\_

**IMPORTANT:** If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

**SECTION B-1: SUBCONTRACTING OPPORTUNITY**

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

**SECTION B 2: MENTOR PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

**SECTION B 3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscblsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No



# HSP Good Faith Effort - Method B (Attachment B) Cont.

Item 9.

Enter your company's name here: Gartner Inc. Requisition #: \_\_\_\_\_

## SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcmbllsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide **written** justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.





# HUB Subcontracting Opportunity Notification Form

Item 9.

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

<b>SECTION: A PRIME CONTRACTOR'S INFORMATION</b>	
Company Name: <u>Gartner Inc.</u>	State of Texas VID #: <u>1043099750100</u>
Point-of-Contact: <u>Phillip A. Cummings</u>	Phone #: <u>+1 703 387 5619</u>
E-mail Address: <u>phillip.cummings@gartner.com</u>	Fax #: <u>+1 800 446 3597</u>

<b>SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</b>	
Agency Name: _____	Phone #: _____
Point-of-Contact: _____	Bid Open Date: <u>29 MAR 2018</u>
Requisition #: _____	(mm/dd/yyyy)

## SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).*

*(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

### 2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:  - Not Applicable

4. Bonding/Insurance Requirements:  - Not Applicable

5. Location to review plans/specifications:  - Not Applicable

## Attachment 2.1 - DIR Customer Price

Item 9.

**State of Texas DIR Appendix C - Amendment 4**

Prices for each annual term applies to orders received during the effective dates specified for each annual term unless indicated otherwise on the schedule. Delivery start date of service(s) order shall be no later than the first of the month following the expiration of the pricing. To be eligibility for these rates, purchasing entity must be a States of Texas government entity, public sector entity, or a nonprofit wholly owned and operated by government.

**The Customer Pricing listed herein for 01 FEB 2022 thru 31 JAN 2023 and 01 FEB 2023 thru 31 JAN 2024 (i.e. out-year pricing) are maximum not to exceed rates.** The actual price an eligible client will pay for the renewal of any existing Service during the out-year(s) or the issuance of a new order during an out-year will be consistent with the then current Gartner Public Sector pricing plus any applicable administrative fee(s) or the rates herein, whichever is less, for the Service(s) ordered. Please check with account representative for actual pricing before purchasing.

Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	*Feb 1, 2023 to Jan 31, 2024
<b>SECTION 1.0.1 - Team Plus Solution Research Services</b>			
<b>Global CIO Team Plus<sup>1</sup> - Invitation Only</b>			
Global CIO	190,227	209,250	230,175
Divisional CIO	142,167	156,384	172,023
Global IT Leader	142,167	156,384	172,023
<b>Global IT Leadership Team Plus<sup>1</sup> - Invitation Only</b>			
Global Team Leader	129,975	142,973	157,271
Global Partner Member - Check with your Gartner account executive for available domains.	118,590	130,449	143,494
Advisor Member	45,139	49,653	54,619
<b>Executive Programs Leadership Team Plus for Global Enterprises<sup>1</sup></b>			
Leader	141,159	155,275	170,803
IT Executive (may purchase IT Leadership Team Plus Members)	141,159	155,275	170,803
Global Partner - Check with your Gartner account executive for available domains. (may purchase Enterprise IT Leadership Team Plus Members)	122,016	134,218	147,640
Delegate Leader - <b>Renewal Only<sup>6</sup></b> (may purchase IT Leadership Team Plus Members)	52,192	57,412	63,154
Advisor Leader (may purchase IT Leadership Team Plus Members)	38,288	42,117	46,329
Cross Function Member	27,608	30,369	33,406
<b>Executive Programs Leadership Team Plus<sup>1</sup></b>			
Leader	97,834	107,618	118,380
IT Executive Member or IT Executive Leader (IT Executive Leader must purchase IT Leadership Team Plus Members)	97,834	107,618	118,380
Partner Member or Partner Leader - Check with your Gartner account executive for available domains. (Partner Leader must purchase Enterprise IT Leadership Team Plus Members)	89,472	98,420	108,262
Partner Member or Partner Leader - <b>Renewing Subscriber<sup>6</sup></b> - For license purchase <b>before Feb-01-2020</b> with continuous renewal. (Partner Leader must purchase Enterprise IT Leadership Team Plus Member	83,829	92,212	101,434

## Attachment 2.1 - DIR Customer Price

Item 9.

Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
Delegate Member or Delegate Leader - <b>Renewal Only</b> <sup>6</sup> (Delegate Leader must purchase IT Leadership Team Plus Members)	52,192	57,412	63,154
Advisor Member or Advisor Leader (Advisor Leader must purchase IT Leadership Team Plus Members)	38,288	42,117	46,329
Cross Function Member	27,608	30,369	33,406
<b>Enterprise IT Leaders Initiative Team</b> <sup>1</sup> - <b>Renewal Only</b> <sup>6</sup> – For license purchase <b>before Feb-01-2022</b> with continuous renewal.			
Leader	86,348	94,983	104,482
Advisor Member	45,139	49,653	54,619
<b>Enterprise IT Leadership Team Plus for Global Enterprise</b> <sup>1</sup>			
Global Team Leader - Check with your Gartner account executive for available domains.	110,026	123,230	138,018
Global Team Leader - <b>Renewing Subscriber</b> <sup>6</sup> – For license purchase <b>before Feb-01-2021</b> with continuous renewal.	100,655	110,721	121,794
Global Advisor Team Leader (may purchase Enterprise IT Leadership Team Plus Members)	34,862	38,349	42,184
Advisor Member	34,862	38,349	42,184
Cross Function Member	21,159	23,275	25,603
<b>Enterprise IT Leadership Team Plus</b> <sup>1</sup>			
Leader - Check with your Gartner account executive for available domains.	82,519	92,422	103,513
Leader - <b>Renewing Subscriber</b> <sup>6</sup> – For license purchase <b>Feb-01-2020 to Jan-31-2021</b> with continuous renewal.	75,466	83,013	91,315
Leader - <b>Renewing Subscriber</b> <sup>6</sup> – For license purchase <b>before Feb-01-2020</b> with continuous renewal.	70,832	77,916	85,708
Advisor Member	34,862	38,349	42,184
Cross Function Member	21,159	23,275	25,603
<b>IT Leadership Team Plus</b> <sup>1</sup>			
Leader	34,862	38,349	42,184
Advisor Member	34,862	38,349	42,184
Cross Function Member	21,159	23,275	25,603
<b>SECTION 1.0.2 - Team Plus Solution with Industry Research Services</b>			
<b>Global CIO Team Plus with Industry (one industry)</b> <sup>2</sup> - <b>Invitation Only</b>			
Global CIO	198,288	218,117	239,929
Divisional CIO	155,265	170,792	187,872
Global IT Leader	155,265	170,792	187,872



## Attachment 2.1 - DIR Customer Price

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Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Global IT Leadership Team Plus with Industry (one industry) <sup>2</sup> - Invitation Only</b>			
Global Team Leader	143,074	157,382	173,121
Global Partner Member - Check with your Gartner account executive for available domains	130,378	143,416	157,758
Advisor Member	49,673	54,641	60,106
<b>Executive Programs Leadership Team Plus with Industry for Global Enterprises <sup>2</sup> (one industry)</b>			
Leader	155,366	170,903	187,994
IT Executive (may purchase Industry Advisory Services Leadership Team Plus Members)	155,366	170,903	187,994
Global Partner - Check with your Gartner account executive for available domains. (may purchase Enterprise IT Leadership Team Plus with Industry Members)	134,308	147,739	162,513
Delegate Leader - <b>Renewal Only</b> <sup>6</sup> (may purchase Industry Advisory Services Leadership Team Plus Members)	59,346	65,281	71,810
Advisor Leader (may purchase Industry Advisory Services Leadership Team Plus Members)	46,046	50,651	55,717
Cross Function Member	30,731	33,805	37,186
<b>Executive Programs Leadership Team Plus with Industry <sup>2</sup> (one industry)</b>			
Leader	106,398	117,038	128,742
IT Executive Member or IT Executive Leader (IT Executive Leader must purchase Industry Advisory Services Leadership Team Plus Members)	106,398	117,038	128,742
Partner Member or Partner Leader - Check with your Gartner account executive for available domains. (Partner Leader must purchase Enterprise IT Leadership Team Plus with Industry Members)	99,144	109,059	119,965
Partner Member or Partner Leader - <b>Renewing Subscriber</b> <sup>6</sup> - For license purchase <b>before Feb-01-2020</b> with continuous renewal. (Partner Leader must purchase Enterprise IT Leadership Team Plus with Industry Members)	92,998	102,298	112,528
Delegate Member or Delegate Leader - <b>Renewal Only</b> <sup>6</sup> (Delegate Leader must purchase Industry Advisory Services Leadership Team Plus Members)	59,346	65,281	71,810
Advisor Member or Advisor Leader (Advisor Leader must purchase Industry Advisory Services Leadership Team Plus Members)	46,046	50,651	55,717
Cross Function Member	30,731	33,805	37,186
<b>Enterprise IT Leaders Initiative Team with Industry <sup>2</sup> (one industry) - <b>Renewal Only</b> <sup>6</sup></b> - For license purchase <b>before Feb-01-2022</b> with continuous renewal.			
Leader	96,524	106,177	116,795
Advisor Member	53,804	59,185	65,104

## Attachment 2.1 - DIR Customer Price

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Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	*Feb 1, 2023 to Jan 31, 2024
<b>Enterprise IT Leadership Team Plus with Industry for Global Enterprises <sup>2</sup> (one industry)</b>			
Global Team Leader - Check with your Gartner account executive for available domains.	121,109	135,643	151,921
Global Team Leader - <b>Renewing Subscriber <sup>6</sup></b> - For license purchase <b>before Feb-01-2020</b> with continuous renewal.	110,832	121,916	134,108
Global Advisor Team Leader (may purchase Enterprise IT Leadership Team Plus with Industry Team Members)	41,713	45,885	50,474
Advisor Member	41,713	45,885	50,474
Cross Function Member	25,492	28,042	30,847
<b>Enterprise IT Leadership Team Plus with Industry <sup>2</sup> (one industry)</b>			
Leader - Check with your Gartner account executive for available domains.	92,393	103,481	115,899
Leader - <b>Renewing Subscriber <sup>6</sup></b> - For license purchase <b>Feb-01-2020 to Jan-31-2021</b> with continuous renewal.	84,535	92,989	102,288
Leader - <b>Renewing Subscriber <sup>6</sup></b> - For license purchase <b>before Feb-01-2020</b> with continuous renewal.	79,295	87,225	95,948
Advisor Member	41,713	45,885	50,474
Cross Function Member	25,492	28,042	30,847
<b>Industry Advisory Services Leadership Team Plus <sup>2</sup> (one industry)</b>			
Leader	41,713	45,885	50,474
Advisor Member	41,713	45,885	50,474
Cross Function Member	25,492	28,042	30,847
<b>SECTION 1.1.1 - Team Solution Research Services</b>			
<b>Executive Programs Leadership Team <sup>1</sup></b>			
Leader	86,186	94,805	104,286
IT Executive Member or IT Executive Leader (IT Executive Leader must purchase IT Leadership Team Members)	86,186	94,805	104,286
Partner Member or Partner Leader - Check with your Gartner account executive for available domains. (Partner Leader must purchase Enterprise IT Leadership Team Members)	73,365	80,702	88,773
Partner Member or Partner Leader - <b>Renewing Subscriber <sup>6</sup></b> - For license purchase <b>before Feb-01-2020</b> with continuous renewal. (Partner Leader must purchase Enterprise IT Leadership Team Members)	70,030	77,033	84,737
Delegate Member or Delegate Leader - <b>Renewal Only <sup>6</sup></b> (Delegate Leader must purchase IT Leadership Team Members)	46,177	50,795	55,875
Advisor Member or Advisor Leader (Advisor Leader must purchase IT Leadership Team Members)	33,511	36,863	40,550
Cross Function Member	23,365	25,702	28,273
Role Member	16,280	17,908	19,699

## Attachment 2.1 - DIR Customer Price

Item 9.

Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Executive Programs Leadership Team Essentials <sup>1</sup> - Limited Availability <sup>3</sup></b>			
Leader	86,186	94,805	104,286
Essentials Member - Limited Availability <sup>3</sup>	9,098	10,008	11,009
<b>Enterprise IT Leadership Team <sup>1</sup></b>			
Leader - Check with your Gartner account executive for available domains.	68,013	76,175	85,316
Leader - <b>Renewing Subscriber <sup>6</sup></b> - For license purchase <b>Feb-01-2020 to Jan-31-2021</b> with continuous renewal.	65,767	72,344	79,579
Leader - <b>Renewing Subscriber <sup>6</sup></b> - For license purchase <b>before Feb-01-2020</b> with continuous renewal.	61,343	67,478	74,226
Advisor Member	30,552	33,608	36,969
Cross Function Member	17,969	19,766	21,743
Role Member	11,301	12,432	13,676
Essentials Member	9,098	10,008	11,009
<b>IT Leadership Team <sup>1</sup></b>			
Leader	30,552	33,608	36,969
Advisor Member	30,552	33,608	36,969
Cross Function Member	17,969	19,766	21,743
Role Member	11,301	12,432	13,676
Essentials Member	9,098	10,008	11,009
<b>SECTION 1.1.2 - Team Solution with Industry Research Services</b>			
<b>Executive Programs Leadership Team with Industry <sup>2</sup> (one industry)</b>			
Leader	97,633	107,397	118,137
IT Executive Member or IT Executive Leader (IT Executive Leader must purchase Industry Advisory Services Leadership Team Members)	97,633	107,397	118,137
Partner Member or Partner Leader - Check with your Gartner account executive for available domains. (Partner Leader must purchase Enterprise IT Leadership Team with Industry Members)	90,781	99,860	109,846
Partner Member or Partner Leader - <b>Renewing Subscriber <sup>6</sup></b> - For license purchase <b>before Feb-01-2020</b> with continuous renewal. (Partner Leader must purchase Enterprise IT Leadership Team with Industry Members)	85,139	93,653	103,019
Delegate Member or Delegate Leader - <b>Renewal Only <sup>6</sup></b> (Delegate Leader must purchase Industry Advisory Services Leadership Team Members)	54,509	59,960	65,956
Advisor Member or Advisor Leader (Advisor Leader must purchase Industry Advisory Services Leadership Team Members)	42,318	46,550	51,205
Cross Function Member	28,212	31,034	34,138
Role Member	20,051	22,057	24,263



## Attachment 2.1 - DIR Customer Price

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Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Executive Programs Leadership Team with Industry <sup>2</sup> (one industry)</b>			
Leader	97,633	107,397	118,137
Essentials Member - <i>Limited Availability</i> <sup>3</sup>	9,371	10,309	11,340
<b>Enterprise IT Leadership Team with Industry <sup>2</sup> (one industry)</b>			
Leader - Check with your Gartner account executive for available domains.	84,635	94,792	106,168
Leader - <i>Renewing Subscriber</i> <sup>6</sup> - For license purchase <b>Feb-01-2020 to Jan-31-2021</b> with continuous renewal.	77,482	85,231	93,755
Leader - <i>Renewing Subscriber</i> <sup>6</sup> - For license purchase <b>before Feb-01-2020</b> with continuous renewal.	72,746	80,021	88,024
Advisor Member	38,288	42,117	46,329
Cross Function Member	23,477	25,825	28,408
Role Member	13,401	14,742	16,217
Essentials Member	9,371	10,309	11,340
<b>Industry Advisory Services Leadership Team <sup>2</sup> (one industry)</b>			
Leader	38,288	42,117	46,329
Advisor Member	38,288	42,117	46,329
Cross Function Member	23,477	25,825	28,408
Role Member	13,401	14,742	16,217
Essentials Member	9,371	10,309	11,340
<b>SECTION 1.2 - Individual Solution Research Services</b>			
<b>Research Board for Global Executives - Invitation Only</b>			
Global CIO	190,227	209,250	230,175
<b>Executive Programs Individual Solutions</b>			
Member (Single User)	95,167	104,684	115,153
Member (Multi User)	84,445	92,890	102,179
Two Additional Meetings Add-on - <i>Limited Availability</i> <sup>3</sup>	17,503	19,254	21,180
<b>Executive Programs Individual Solutions with Industry (one industry)</b>			
Member (Single User)	106,499	117,149	128,864
Member (Multi User)	95,618	105,180	115,698
<b>IT Leaders</b>			
Individual Access Advisor (Single User)	40,447	44,492	48,942
Individual Access Advisor (Multi User)	30,552	33,608	36,969
Reference (Single User)	27,168	29,885	32,874
Reference (Multi User)	17,246	18,971	20,869



## Attachment 2.1 - DIR Customer Price

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Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Industry Advisory Services (one industry)</b>			
Individual Access Advisor (Single User)	49,472	54,420	59,862
Individual Access Advisor (Multi User)	38,288	42,117	46,329
Reference (Single User)	33,351	36,687	40,356
Reference (Multi User)	22,771	25,049	27,554
<b>Core Connect</b>			
Advisor (Single User)	33,371	36,709	40,380
Advisor (Multi User)	24,350	26,785	29,464
Reference (Single User)	21,423	23,566	25,923
Reference (Multi User)	12,340	13,574	14,932
<b>IT News and Insights - per license</b>	686	755	831
<b>SECTION 1.3 - Multi-user Research Services</b>			
<b>Technical Professionals <sup>4</sup> (per agency)</b>			
Advisor Department	118,229	130,052	143,058
Reference Department	79,647	87,612	96,374
Advisor Team	58,842	64,727	71,200
<b>Technical Professionals Small &amp; Midsize Business (SMB) <sup>4, 5</sup> (per agency)</b>			
Advisor SMB	62,671	68,939	75,833
Reference SMB	41,613	45,775	50,353
<b>IT Associates 100 Research Notes - Limited Availability <sup>3, 4</sup></b>	27,406	30,147	33,162
<b>SECTION 1.4 - Other Services</b>			
<b>Strategic Advisory Services <sup>4</sup> - for clients with research services</b>			
Internal Advisory Session	16,726	18,399	20,239
Remote Advisory Services	8,262	9,089	9,998
<b>Conferences - North America <sup>8</sup> - Price per ticket. Ticket pricing expires December 31 of the year indicated.</b>			
IT Symposium/Xpo	4,931	5,425	5,968
Summit (BI, Data Center, Security, or Apps)	3,357	3,693	4,063
Summit (excludes BI, Data Center, Security, and Apps)	2,841	3,126	3,439
<b>SECTION 1.5 - Gartner Business Services</b>			
<b>Customer Service &amp; Support Leaders Team <sup>7</sup></b>			
Leader	32,343	35,578	39,136
Advisor Member	32,343	35,578	39,136
Reference Member	14,509	15,960	17,556

## Attachment 2.1 - DIR Customer Price

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Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Customer Service &amp; Support Leaders Individual Access</b>			
Advisor (Single User)	43,225	47,548	52,303
Advisor (Multi User)	32,343	35,578	39,136
<b>Chief Financial Officers Team <sup>7</sup></b>			
Leader	88,968	97,865	107,652
Advisor Member or Advisor Leader (Advisor Leader must purchase Finance Leaders Team Members)	32,343	35,578	39,136
Reference Member	15,013	16,515	18,167
<b>Chief Financial Officers Individual Access</b>			
Individual Access (Single User)	98,036	107,840	118,624
Individual Access (Multi User)	88,968	97,865	107,652
<b>Finance Leaders Team <sup>7</sup></b>			
Leader	32,343	35,578	39,136
Advisor Member	32,343	35,578	39,136
Reference Member	15,013	16,515	18,167
<b>Finance Leaders Individual Access</b>			
Advisor (Single User)	43,225	47,548	52,303
Advisor (Multi User)	32,343	35,578	39,136
<b>Chief Human Resources Officers Team <sup>7</sup></b>			
Leader	88,968	97,865	107,652
Advisor Member or Advisor Leader (Advisor Leader must purchase Human Resources Leaders Team Members)	32,343	35,578	39,136
Reference Member	17,834	19,618	21,580
<b>Chief Human Resources Officers Individual Access</b>			
Individual Access (Single User)	98,036	107,840	118,624
Individual Access (Multi User)	88,968	97,865	107,652
<b>Human Resources Leaders Team <sup>7</sup></b>			
Leader	32,343	35,578	39,136
Advisor Member	32,343	35,578	39,136
Reference Member	17,834	19,618	21,580
<b>Human Resources Leaders Individual Access</b>			
Advisor (Single User)	43,225	47,548	52,303
Advisor (Multi User)	32,343	35,578	39,136

## Attachment 2.1 - DIR Customer Price

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Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Human Resources Professionals <sup>7</sup></b>			
Reference - Up to 20 HR Professionals	39,597	43,557	47,913
Reference - Up to 5 HR Professionals	24,585	27,044	29,749
<b>TalentNeuron™</b>			
Single Country	31,537	34,691	38,161
Single Country Reference	24,081	26,490	29,139
Additional 5 Users	4,535	4,989	5,488
Additional Workbench	10,781	11,860	13,046
<b>Legal, Risk and Compliance Leaders Team <sup>7</sup></b>			
Leader	27,910	30,701	33,772
Advisor Member	27,910	30,701	33,772
Reference Member	11,184	12,303	13,534
<b>Legal, Risk and Compliance Leaders Individual Access</b>			
Advisor (Single User)	36,978	40,676	44,744
Advisor (Multi User)	27,910	30,701	33,772
<b>Marketing Leaders Team <sup>7</sup></b>			
Leader	40,807	44,888	49,377
Advisor Member	40,807	44,888	49,377
Reference Member	16,021	17,624	19,387
<b>Marketing Leaders Individual Access</b>			
Advisor (Single User)	49,069	53,976	59,374
Advisor (Multi User)	40,807	44,888	49,377
<b>Enterprise Supply Chain Leadership Team <sup>7</sup> - Limited Availability <sup>3</sup></b>			
Leader	64,809	72,587	81,298
Leader - <b>Renewing Subscriber <sup>6</sup></b> – For license purchase <b>before Feb-01-2021</b> with continuous renewal.	61,794	67,974	74,772
Advisor Member	31,173	34,291	37,721
Cross Function Member	18,417	20,259	22,285
Essentials Member	9,260	10,186	11,205
<b>Supply Chain Leadership Team <sup>7</sup> - Limited Availability <sup>3</sup></b>			
Leader	31,173	34,291	37,721
Advisor Member	31,173	34,291	37,721
Cross Function Member	18,417	20,259	22,285
Essentials Member	9,260	10,186	11,205



## Attachment 2.1 - DIR Customer Price

Item 9.

Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Supply Chain Leaders - Limited Availability <sup>3</sup></b>			
Individual Access Advisor (Single User)	41,256	45,382	49,921
Individual Access Advisor (Multi User)	31,173	34,291	37,721
Reference (Single User)	27,691	30,461	33,508
Reference (Multi User)	17,598	19,358	21,294
<b>News and Insights - per seat</b>	686	755	831
<b>SECTION 2 - Renewal Only Services <sup>6</sup></b>			
<b>Executive Programs Member Basic - Renewal Only <sup>6</sup></b>			
Member Basic (Single User)	65,479	72,027	79,230
Member Basic (Multi User)	58,580	64,438	70,882
<b>Executive Programs Member Basic with Industry (one industry) - Renewal Only <sup>6</sup></b>			
Member Basic (Single User)	75,870	83,457	91,803
Member Basic (Multi User)	68,917	75,809	83,390
<b>IT Executives - Renewal Only <sup>6</sup></b>			
CIO Signature	108,501	119,352	131,288
CIO (Single User)	98,115	107,927	118,720
CIO (Multi User)	87,024	95,727	105,300
CIO Essentials (Single User)	65,479	72,027	79,230
CIO Essentials (Multi User)	58,580	64,438	70,882
<b>Enterprise IT Leaders - Renewal Only <sup>6</sup></b>			
Individual Access (Single User) – For license purchase <b>after Feb-01-2020</b> with continuous renewal.	TBD	TBD	TBD
Individual Access (Multi User) – For license purchase <b>after Feb-01-2020</b> with continuous renewal.	TBD	TBD	TBD
Individual Access (Single User) – For license purchase <b>before Feb-01-2020</b> with continuous renewal.	73,243	80,568	88,625
Individual Access (Multi User) – For license purchase <b>before Feb-01-2020</b> with continuous renewal.	61,283	67,412	74,154
Two Onsite Meetings Add-on - Limited Availability <sup>3</sup>	17,503	19,254	21,180
Industry Add-on (one industry) <sup>4</sup>	11,285	12,414	13,656
<b>Enterprise Supply Chain Leaders - Renewal Only <sup>6</sup></b>			
Individual Access (Single User) – For license purchase <b>before Feb-01-2021</b> with continuous renewal.	74,464	81,911	90,103
Individual Access (Multi User) – For license purchase <b>before Feb-01-2021</b> with continuous renewal.	61,794	67,974	74,772
Two Onsite Meetings Add-on - Limited Availability <sup>3</sup>	17,503	19,254	21,180

## Attachment 2.1 - DIR Customer Price

Item 9.

Subscription Services	Effective dates		
	Feb 1, 2021 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>SECTION 3 - Research Services for Public &amp; Non-Profit Higher Education University or College ONLY <sup>9</sup></b>			
<b>Core IT Research for Higher Education (per student campus)</b>			
Core IT Research for Higher Education Campus Reference for a community college	30,026	33,029	36,332
Core IT Research for Higher Education Campus Reference for a college or university with 1 to 4,999 Student FTE	30,026	33,029	36,332
Core IT Research for Higher Education Campus Reference for a college or university with 5,000 to 9,999 Student FTE	60,052	66,058	72,664
Core IT Research for Higher Education Campus Reference for a college or university with 10,000 to 24,999 Student FTE	90,078	99,087	108,996
Core IT Research for Higher Education Campus Reference for a college or university with 25,000+ Student FTE	120,104	132,116	145,328
<b>Technical Professional for Higher Education <sup>4</sup> (per student campus)</b>			
Technical Professional Advisor for IT Staff only of a college or university	62,671	68,939	75,833
Technical Professional Reference for IT Staff only of a college or university	41,613	45,775	50,353

**Purchasing guidelines:**

“Single User” applies to a buying center that has one individual license; “Multi User” applies to a buying center that has at least two qualifying licenses within the same agency or named client. To qualify for Multi User price levels, services must be ordered on the same Service Agreement or Purchase Order and reflect a common “Bill To” address. Strategic Advisory Services, Conferences, and Add-on services do not contribute towards Multi User pricing qualification.

<sup>1</sup> **Team** licenses require the purchase of a team configuration and are not available for purchase as standalone licenses. Certain team solutions are invitation only services as indicated in the pricing table. A maximum of one Leader per team. Each Leader type license must have three (3) to ten (10) team member licenses. A minimum of three (3) Advisor and/or Cross Function team member licenses required per Enterprise IT Leadership Leader and per Partner license. Executive Programs Leadership team solutions with one Leader and less than three (3) team member licenses is permissible so long as one of the team member licenses is an IT Executive or a Partner Leader with at least three (3) Advisor and/or Cross Function team member licenses per Partner license. Global CIO team solutions with one Leader and less than three (3) team member licenses is permissible. All licenses in a Team must be coterminous and of the same team type. For example, a Team Plus configuration may only contain Team Plus licenses and cannot include other types of team licenses such as Team Plus with Industry, Team (non-Plus), Global CIO Team etc.

<sup>2</sup> **Team with Industry** licenses require the purchase of a team configuration and are not available for purchase as standalone licenses. Certain team solutions are invitation only services as indicated in the pricing table. A maximum of one Leader per team. Each Leader type license must have three (3) to ten (10) team member licenses. A minimum of three (3) Advisor and/or Cross Function team member licenses required per Enterprise IT Leadership Leader and per Partner license. Executive Programs Leadership team solutions with one Leader and less than three (3) team member licenses is permissible so long as one of the team member licenses is an IT Executive or a Partner Leader with at least three (3) Advisor and/or Cross Function team member licenses per Partner license. Global CIO team solutions with one Leader and less than three (3) team member licenses is permissible. All licenses in a Team must be coterminous and of the same team type. For example, a Team Plus with

**Attachment 2.1 - DIR Customer Price**

Item 9.

Industry configuration may only contain Team Plus with Industry licenses for the same industry and cannot include other types of team licenses such as Team with Industry (non-Plus), Team Plus, Team (no industry, non-Plus), Global CIO Team etc. Team solutions with Industry Advisory Services is for one industry and all licenses in the team must purchase access to the same industry.

<sup>3</sup> Availability is limited. Please check with your Gartner Sales representative before ordering.

<sup>4</sup> Purchasing prerequisite and/or eligibility requirements apply. Check with Sales representatives before purchasing.

<sup>5</sup> Technical Professionals SMB is a per agency license available only to eligible small and medium size agencies with 4,000 or fewer employees. Please check with Sales representatives before purchasing.

<sup>6</sup> **Renewal Only** and **Renewing Subscriber** services and pricing are available to eligible license holders who purchased the service listed on or before the date specified above or below and continuously purchase the service thereafter. Please check with Sales Representative for availability and eligibility before ordering.

Team Delegate Member and Delegate Leader licenses: purchased before February 1, 2020

Executive Programs Member Basic and Member Basic with Industry: purchased before April 1, 2019

IT Executives: purchased before September 1, 2015

<sup>7</sup> Gartner Business Services Team licenses require the purchase of a team configuration and are not available for purchase as standalone licenses. A maximum of one Team Leader per Team. Each Enterprise Supply Chain Leadership Team must have a maximum of one Leader, at least two (2) Advisor Members or Cross Function Members, and up to eight (8) other team member licenses. For all other Team Leader, each Team Leader must have three (3) to ten (10) Team Members coterminous with the Leader license. A Customer Service & Support Team or Legal & Compliance Leaders Team with one Team Leader and two Team Members is permissible. All licenses in a Team must be of the same business domain; for example, a Finance Leaders Team may only consist of Finance Leaders Team licenses. Human Resources Professionals requires the purchase and maintenance of a coterminous Chief Human Resources Officers Team or Human Resources Team.

<sup>8</sup> Ticket prices apply to orders received by December 31st of the year indicated for the start of each term. For example, Symposium ticket price for term "Feb 1, 2021 to Jan 31, 2022 " applies to orders received on or before December 31, 2021. Future ticket prices have not been released; please check with account representatives for future pricing at the time of purchase.

<sup>9</sup> Higher Education products are only available to eligible public and not-for-profit Higher Education colleges or universities. A Core IT Research Reference for Higher Education license is for one designated, student campus based on the total full-time equivalent (FTE) student enrollment of the college or university, as assessed at the time of purchase. Purchasing prerequisites apply. Check with Sales representatives before purchasing.

**Gartner reserves the right to update its pricing on an annual basis consistent with the then current Gartner Public Sector pricing.**



**State of Texas DIR Appendix C - Amendment 4****Table 2: Additional New Products and Pricing**

Prices for each annual term applies to orders received during the effective dates specified for each annual term unless indicated otherwise on the schedule. Delivery start date of service(s) order shall be no later than the first of the month following the expiration of the pricing. To be eligibility for these rates, purchasing entity must be a States of Texas government entity, public sector entity, or a nonprofit wholly owned and operated by government.

**The Customer Pricing listed herein for 01 FEB 2023 thru 31 JAN 2024 (i.e. out-year pricing) are maximum not to exceed rates.** The actual price an eligible client will pay for the renewal of any existing Service during the out-year(s) or the issuance of a new order during an out-year will be consistent with the then current Gartner Public Sector pricing plus any applicable administrative fee(s) or the rates herein, whichever is less, for the Service(s) ordered. Please check with account representative for actual pricing before purchasing.

Subscription Services	Effective dates		
	Jan 1, 2022 to Jan 31, 2022	Feb 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Additional Services</b>			
<b>Gartner for CIOs Team Plus <sup>10</sup></b>			
Leader	61,260	63,074	69,382
Advisor Team Member or Advisor Team Leader (Advisor Team Leader must purchase IT Leadership Team Plus Members)	44,736	46,046	50,651
Cross Function Member	31,033	31,940	35,134
<b>Gartner for CIOs</b>			
Individual Access (Single User)	67,305	69,320	76,252
Individual Access (Multi User)	61,260	63,074	69,382
<b>Gartner for CIOs Team Plus with Industry (one industry) <sup>10</sup></b>			
Leader	67,104	69,119	76,031
Advisor Team Member or Advisor Team Leader (Advisor Team Leader must purchase Industry Advisory Services Leadership Team Plus Members)	52,494	54,106	59,517
Cross Function Member	34,257	35,265	38,792
<b>Gartner for CIOs with Industry (one industry)</b>			
Individual Access (Single User)	73,854	76,071	83,679
Individual Access (Multi User)	67,104	69,119	76,031
<b>Technical Professionals Team <sup>4, 5</sup></b>			
Additional Team Member	11,285	11,890	13,079
<b>Conferences - North America <sup>8</sup> - Price per ticket. Ticket pricing expires December 31 of the year indicated.</b>			
Finance Conference	2,948	2,948	TBD
RelmagineHR Conference	3,250	3,250	TBD
Marketing Symposium/Xpo	3,577	3,577	TBD
Supply Chain Symposium/Xpo	4,106	4,106	TBD



Subscription Services	Effective dates		
	Jan 1, 2022 to Jan 31, 2022	May 1, 2022 to Jan 31, 2023	* Feb 1, 2023 to Jan 31, 2024
<b>Additional Services</b>			
<b>Gartner for CISOs Executive or Gartner for CDAOs Executive</b>			
– Other roles to be released and available upon request.			
Individual Access (Single User)	N/A	135,517	149,069
Individual Access (Multi User) – Price includes Multi User volume incentive for the purchase of 2+ licenses.	N/A	123,124	135,437
Team Leader <sup>11</sup> – Price includes Multi User volume incentive.	N/A	123,124	135,437
Team Member	N/A	46,852	51,538
Tech Professional Team Member	N/A	18,237	20,061
<b>Gartner for CISOs or Gartner for CDAOs</b>			
– Other roles to be released and available upon request.			
Individual Access (Single User)	N/A	69,320	76,252
Individual Access (Multi User) – Price includes Multi User volume incentive for the purchase of 2+ licenses.	N/A	63,074	69,382
Team Leader <sup>11</sup> – Price includes Multi User volume incentive.	N/A	63,074	69,382
Team Member	N/A	41,713	45,885
Tech Professional Team Member	N/A	15,819	17,401
<b>Gartner for R&amp;D Leaders</b>			
Individual Access (Single User)	N/A	46,046	50,651
Individual Access (Multi User) – Price includes Multi User volume incentive for the purchase of 2+ licenses.	N/A	34,459	37,905
Team Leader <sup>7</sup> – Price includes Multi User volume incentive.	N/A	34,459	37,905
Team Advisor Member	N/A	34,459	37,905
Team Reference Member	N/A	18,943	20,838

**Purchasing guidelines:**

“Single User” applies to a buying center that has one individual license; “Multi User” applies to a buying center that has at least two qualifying licenses within the same agency or named client. To qualify for Multi User price levels, services must be ordered on the same Service Agreement or Purchase Order and reflect a common “Bill To” address. Strategic Advisory Services, Conferences, and Add-on services do not contribute towards Multi User pricing qualification.

<sup>4</sup> Purchasing prerequisite and/or eligibility requirements apply. Check with Sales representatives before purchasing.

<sup>5</sup> Technical Professionals Team licenses require the purchase of a team configuration and are not available for purchase as standalone licenses. Each Technical Professionals Team consists of one (1) Team Leader and four (4) Team Member coterminous licenses. Up to six (6) additional Team Members may be added for a maximum total of ten (10) Team Members per Team Leader. Technical Professionals SMB is a per agency license available only to eligible small and medium size agencies with 4,000 or fewer employees. Please check with Sales representatives before purchasing.

<sup>7</sup> Gartner Business Services Team licenses require the purchase of a team configuration and are not available for purchase as standalone licenses. A maximum of one Team Leader per Team. Each Enterprise Supply Chain Leadership Team must have a maximum of one Leader, at least two (2) Advisor Members or Cross Function Members, and up to eight (8) other team member licenses. For all other Team Leader, each Team Leader must have three (3) to ten (10) Team Members coterminous with the Leader license. A Customer Service & Support Team or Legal & Compliance Leaders Team with one Team Leader and two Team Members is permissible. All licenses in a Team must be of the same business domain; for example, a Finance Leaders Team may only consist of Finance Leaders Team licenses. Human Resources Professionals requires the purchase and maintenance of a coterminous Chief Human Resources Officers Team or Human Resources Team.

<sup>8</sup> Ticket prices apply to orders received by December 31st of the year indicated for the start of each term. For example, Symposium ticket price for term "Feb 1, 2022 to Jan 31, 2023" applies to orders received on or before December 31, 2022. Future ticket prices have not been determined and labeled as "TBD"; please check with account representatives for future pricing at the time of purchase.

<sup>10</sup> Gartner for CIOs team solutions require the purchase of a team configuration and are not available for purchase as standalone licenses. A maximum of one Leader per team. Each Leader type license must have one (1) to ten (10) team member licenses. All licenses in a Team with Industry solution must purchase access to the same industry. All licenses in a team must be coterminous and of the same team type. For example, a CIOs Team Plus with Industry configuration may only contain CIOs Team Plus with Industry licenses for the same industry and cannot include other types of team licenses such as Team Plus (no Industry), Team (no industry, non-Plus), Global CIO Team etc.

<sup>11</sup> Team licenses for Gartner for CISOs, CDAOS, and other like kind role-based team solutions require the purchase of a team configuration and are not available for purchase as standalone licenses. A maximum of one Leader per team configuration. Each Leader must have one (1) to ten (10) coterminous Team Member licenses. All licenses in a team configuration must purchase coterminous access to the same role-based service level solution. For example, a Gartner for CISOs Executive team configuration may only contain Gartner for CISOs Executive team licenses and cannot include other types of licenses such as self-directed or Gartner for CDAOs Executive licenses Team etc.

SERVICE	SERVICE DESCRIPTION URL
<b>CIOs Team Plus</b>	
Leader	<a href="https://sd.gartner.com/sd_cio_team_plus_leader.pdf">https://sd.gartner.com/sd_cio_team_plus_leader.pdf</a>
Advisor Team Member	<a href="https://sd.gartner.com/sd_cio_team_plus_advisor_member.pdf">https://sd.gartner.com/sd_cio_team_plus_advisor_member.pdf</a>
Advisor Team Leader	<a href="https://sd.gartner.com/sd_cio_team_plus_advisor_leader.pdf">https://sd.gartner.com/sd_cio_team_plus_advisor_leader.pdf</a>
Cross Function Member	<a href="https://sd.gartner.com/sd_cio_team_plus_cf.pdf">https://sd.gartner.com/sd_cio_team_plus_cf.pdf</a>
<b>CIOs</b>	
Individual Access	<a href="https://sd.gartner.com/sd_cio_individual_advisor.pdf">https://sd.gartner.com/sd_cio_individual_advisor.pdf</a>
<b>CIOs Team Plus with Industry (one industry)</b>	
Leader	<a href="https://sd.gartner.com/sd_cio_team_plus_industry_leader.pdf">https://sd.gartner.com/sd_cio_team_plus_industry_leader.pdf</a>
Advisor Team Member	<a href="https://sd.gartner.com/sd_cio_team_plus_industry_advisor_member.pdf">https://sd.gartner.com/sd_cio_team_plus_industry_advisor_member.pdf</a>
Advisor Team Leader	<a href="https://sd.gartner.com/sd_cio_team_plus_industry_advisor_leader.pdf">https://sd.gartner.com/sd_cio_team_plus_industry_advisor_leader.pdf</a>
Cross Function Member	<a href="https://sd.gartner.com/sd_cio_team_plus_industry_cf.pdf">https://sd.gartner.com/sd_cio_team_plus_industry_cf.pdf</a>
<b>CIOs with Industry (one industry)</b>	
Individual Access	<a href="https://sd.gartner.com/sd_cio_individual_advisor_industry.pdf">https://sd.gartner.com/sd_cio_individual_advisor_industry.pdf</a>
<b>Technical Professionals Team</b>	
Leader	<a href="https://sd.gartner.com/sd_techpro_team_leader.pdf">https://sd.gartner.com/sd_techpro_team_leader.pdf</a>
Additional Team Member	<a href="https://sd.gartner.com/sd_techpro_team_member.pdf">https://sd.gartner.com/sd_techpro_team_member.pdf</a>
<b>Conferences - North America</b>	
Finance Conference	<a href="https://sd.gartner.com/sd_finance_conference_ticket.pdf">https://sd.gartner.com/sd_finance_conference_ticket.pdf</a>
ReImagineHR Conference	<a href="https://sd.gartner.com/sd_reimaginehr_ticket.pdf">https://sd.gartner.com/sd_reimaginehr_ticket.pdf</a>
Marketing Symposium/Xpo	<a href="https://sd.gartner.com/sd_marketing_symp_ticket.pdf">https://sd.gartner.com/sd_marketing_symp_ticket.pdf</a>
Supply Chain Symposium/Xpo	<a href="https://sd.gartner.com/sd_sc_symp_ticket.pdf">https://sd.gartner.com/sd_sc_symp_ticket.pdf</a>
<b>Gartner for CISOs Executive</b>	
Individual Access	<a href="https://sd.gartner.com/sd_ciso_exec_indiv_access.pdf">https://sd.gartner.com/sd_ciso_exec_indiv_access.pdf</a>
Team Leader	<a href="https://sd.gartner.com/sd_ciso_exec_ldr.pdf">https://sd.gartner.com/sd_ciso_exec_ldr.pdf</a>
Team Member	<a href="https://sd.gartner.com/sd_ciso_exec_mbr.pdf">https://sd.gartner.com/sd_ciso_exec_mbr.pdf</a>
Tech Professional Team Member	<a href="https://sd.gartner.com/sd_ciso_exec_techpro_mbr.pdf">https://sd.gartner.com/sd_ciso_exec_techpro_mbr.pdf</a>
<b>Gartner for CISOs</b>	
Individual Access	<a href="https://sd.gartner.com/sd_ciso_indiv_access.pdf">https://sd.gartner.com/sd_ciso_indiv_access.pdf</a>
Team Leader	<a href="https://sd.gartner.com/sd_ciso_ldr.pdf">https://sd.gartner.com/sd_ciso_ldr.pdf</a>
Team Member	<a href="https://sd.gartner.com/sd_ciso_mbr.pdf">https://sd.gartner.com/sd_ciso_mbr.pdf</a>
Tech Professional Team Member	<a href="https://sd.gartner.com/sd_ciso_techpro_member.pdf">https://sd.gartner.com/sd_ciso_techpro_member.pdf</a>



**Gartner for CDAOs Executive**

- Individual Access [https://sd.gartner.com/sd\\_cdao\\_exec\\_indiv\\_access.pdf](https://sd.gartner.com/sd_cdao_exec_indiv_access.pdf)
- Team Leader [https://sd.gartner.com/sd\\_cdao\\_exec\\_ldr.pdf](https://sd.gartner.com/sd_cdao_exec_ldr.pdf)
- Team Member [https://sd.gartner.com/sd\\_cdao\\_exec\\_mbr.pdf](https://sd.gartner.com/sd_cdao_exec_mbr.pdf)
- Tech Professional Team Member [https://sd.gartner.com/sd\\_cdao\\_exec\\_techpro\\_mbr.pdf](https://sd.gartner.com/sd_cdao_exec_techpro_mbr.pdf)

**Gartner for CDAOs**

- Individual Access [https://sd.gartner.com/sd\\_cdao\\_indiv\\_access.pdf](https://sd.gartner.com/sd_cdao_indiv_access.pdf)
- Team Leader [https://sd.gartner.com/sd\\_cdao\\_ldr.pdf](https://sd.gartner.com/sd_cdao_ldr.pdf)
- Team Member [https://sd.gartner.com/sd\\_cdao\\_mbr.pdf](https://sd.gartner.com/sd_cdao_mbr.pdf)
- Tech Professional Team Member [https://sd.gartner.com/sd\\_cdao\\_techpro\\_member.pdf](https://sd.gartner.com/sd_cdao_techpro_member.pdf)

**Gartner for R&D Leaders**

- Individual Access [https://sd.gartner.com/sd\\_rd\\_leaders\\_indiv\\_access\\_advisor.pdf](https://sd.gartner.com/sd_rd_leaders_indiv_access_advisor.pdf)
- Team Leader [https://sd.gartner.com/sd\\_rd\\_leaders\\_team\\_leader.pdf](https://sd.gartner.com/sd_rd_leaders_team_leader.pdf)
- Team Advisor Member [https://sd.gartner.com/sd\\_rd\\_leaders\\_team\\_advisor\\_member.pdf](https://sd.gartner.com/sd_rd_leaders_team_advisor_member.pdf)
- Team Reference Member [https://sd.gartner.com/sd\\_rd\\_leaders\\_team\\_reference\\_member.pdf](https://sd.gartner.com/sd_rd_leaders_team_reference_member.pdf)

## APPENDIX D to DIR Contract No. DIR-TSO-4099

### Gartner, Inc. Services Agreement for NEW BRAUNFELS UTILITIES (“Customer”)

This Service Agreement (“SA”) and DIR Contract No. DIR-TSO-4099 constitutes the complete agreement between **Gartner, Inc.** of 56 Top Gallant Road, Stamford, CT 06904 (“**Gartner**”) and Customer for the Services (as defined below). The SA is based upon and governed by the Contract for Services with the State of Texas Department of Information Services (“DIR”) Contract No. DIR-TSO-4099, between Gartner and DIR, the terms of which are incorporated by reference for use by the Customer. The General Terms contained herein and all applicable Vendor Services Descriptions shall apply to this SA and shall be effective when signed by both parties. Customer agrees to subscribe to the following Services for the term and fees set forth below. All fees shall be as set forth in Appendix C of DIR Contract No. DIR-TSO-4099.

#### 1. DEFINITIONS AND ORDER SCHEDULE

**a. Services** are the subscription-based research and related services purchased by Customer in the Order Schedule below and described in the Service Descriptions.

**b. Service Descriptions**, the terms of which are incorporated by reference, are attached to this SA and describe each Service purchased, specify the deliverables for each Service, and set forth any additional terms unique to a specific Service.

Service Names and Levels of Access are defined in the Service Descriptions. Gartner may periodically update the names and the deliverables for each Service. If Customer adds Services or upgrades the level of service or access, an additional Service Agreement will be required.

#### Summary of Services for NEW BRAUNFELS UTILITIES

<u>Service Name</u>	<u>Level of Access</u>	<u>Quantity</u>	<u>Name of User to be Licensed</u>	<u>Contract Term Start Date</u>	<u>Contract Term End Date</u>	<u>Annual Fee USD</u>	<u>Total Fee USD</u>
Gartner for Chief Financial Officers Team	Leader	1	Dawn Schriewer	01-JUL-2024	30-JUN-2025	\$111,033.00	\$111,033.00
Gartner for Chief Financial Officers Team	Advisor Member	1	Ashley Van Booven	01-JUL-2024	30-JUN-2025	\$37,582.00	\$37,582.00
				Term Total	(Excluding applicable taxes)		\$148,615.00
Gartner for Chief Financial Officers Team	Leader	1	Dawn Schriewer	01-JUL-2025	30-JUN-2026	\$116,584.00	\$116,584.00
Gartner for Chief Financial Officers Team	Advisor Member	1	Ashley Van Booven	01-JUL-2025	30-JUN-2026	\$39,461.00	\$39,461.00
				Term Total	(Excluding applicable taxes)		\$156,045.00
Gartner for Chief Financial Officers Team	Leader	1	Dawn Schriewer	01-JUL-2026	30-JUN-2027	\$122,414.00	\$122,414.00
Gartner for Chief Financial Officers Team	Advisor Member	1	Ashley Van Booven	01-JUL-2026	30-JUN-2027	\$41,434.00	\$41,434.00
				Term Total	(Excluding applicable taxes)		\$163,848.00
				Total Services:	(Excluding applicable taxes)		\$468,508.00

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Minimum Gartner for Financial Officers Team includes three (3) Team Members in addition to the Team Leader. The above non-standard configuration is limited to terms of this agreement only.

## 2. SERVICE DESCRIPTIONS:

<u>Service Name/ Level of Access</u>	<u>Service Description URL</u>
<b>Gartner for Chief Financial Officers Team Leader</b>	<a href="http://sd.gartner.com/sd_cfo_team_leader.pdf">http://sd.gartner.com/sd_cfo_team_leader.pdf</a>
<b>Gartner for Chief Financial Officers Team Advisor Member</b>	<a href="http://sd.gartner.com/sd_cfo_team_advisor_member.pdf">http://sd.gartner.com/sd_cfo_team_advisor_member.pdf</a>

## 3. PAYMENT TERMS

Gartner will invoice Customer in advance for all Services. Payment shall be in accordance with Section 8.3 of Appendix A of the DIR Contract DIR-TSO-4099.

Please attach any required Purchase Order ("PO") to this SA and enter the PO number below. If an annual PO is required for multi-year contracts, Customer will issue the new PO at least 30 days prior to the beginning of each subsequent contract year. Any pre-printed or additional contract terms included on the PO shall be inapplicable and of no force or effect.

**4. CUSTOMER BILLING INFORMATION**

\_\_\_\_\_  
*Purchase Order Number*

\_\_\_\_\_  
*Billing Address*

\_\_\_\_\_  
*Invoice Recipient Name*

\_\_\_\_\_  
*Invoice Recipient Email*

\_\_\_\_\_  
*Invoice Recipient Tel. No.*

**5. AUTHORIZATION  
NEW BRAUNFELS UTILITIES**

**Gartner, Inc.**

\_\_\_\_\_  
*Signature/Date*

\_\_\_\_\_  
*Signature/Date*

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title



## General Terms and Guidelines for Vendor's Services

1. This SA for subscription-based research and related services (the "**Services**") is subject to Section 8.B. of Appendix A of the DIR Contract No. DIR-TSO-4099. Cumulative purchases under this Contract shall not exceed \$722,334.00.
2. **Services** are the subscription-based research and related services described herein. Service Descriptions, Names and Levels of Access are as detailed for each product offering. Vendor may periodically update the names and the deliverables for each Service.
3. **Modification of Services by Vendor.** In order to remain current and timely in its Service offerings, Vendor may make minor modifications from time to time in the content of any Service. If Vendor discontinues any Service in its entirety, Customer may, at its option, receive a substitute Service, or obtain a pro rata refund of the fees paid for the discontinued Service.
4. **Licensed User** is the individual named in the Customer Purchase Order who is licensed to use the Services. Customer will limit access to the Services to the agreed upon number of Licensed Users.
5. **Ownership and Use of the Services.** Vendor owns and retains all rights to the Services not expressly granted to Customer. Only the individuals named in the Customer Purchase Order (each a "**Licensed User**") may access the Services. Each Licensed User will be issued a unique password, which may not be shared. Customer agrees to review and comply with the **Usage Guidelines for Gartner Services** ("**Guidelines**"), which are accessible to all Licensed Users via the "Policies" section of [www.gartner.com](http://www.gartner.com). Among other things, these Guidelines describe how Customer may substitute Licensed Users, excerpt from and/or share Vendor research documents within the Customer organization, and quote or excerpt from the Services externally. Customer may not redistribute copies of individual research documents, by electronic means or otherwise, to non-Users without Vendor's prior written permission. Licensed Users may not reproduce or distribute the Services externally without Vendor's prior written permission, except for external distribution, in their entirety only, of reprints of individual documents purchased by Customer.

Customer may excerpt from the Services for external use only if Customer obtains the prior written approval of Gartner Quote Requests, at [quote.requests@gartner.com](mailto:quote.requests@gartner.com). Any approved external use of the Services must comply with Vendor's *Copyright and Quote Policy* which may be viewed on the Gartner Vendor Relations section of [www.gartner.com](http://www.gartner.com). Services may not be stored by Customer on any information storage and retrieval system.

6. **Access to the Services.** ID's for access to Vendor Core Research and Analyst Inquiry may not be shared. Access to the Services is restricted to the number of named individuals (each a "Licensed User") as identified in the Customer Purchase Order.
7. **Monitoring of Usage.** Customer acknowledges and agrees to inform all Licensed Users that Vendor may monitor activity on Vendor's web site, including access to, and use of, the Services by individuals. Upon request, Customer agrees to provide Vendor with assurance from a responsible party (or other relevant evidence) of compliance with these usage terms.
8. **DISCLAIMER OF WARRANTIES.** THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND VENDOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR AS TO ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. CUSTOMER RECOGNIZES THE UNCERTAINTIES INHERENT IN ANY ANALYSIS OR INFORMATION THAT MAY BE PROVIDED AS PART OF THE SERVICES, AND ACKNOWLEDGES THAT THE SERVICES ARE NOT A SUBSTITUTE FOR ITS OWN INDEPENDENT EVALUATION AND ANALYSIS AND SHOULD NOT BE CONSIDERED A RECOMMENDATION TO PURSUE ANY COURSE OF ACTION. VENDOR SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CUSTOMER MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN. CUSTOMER UNDERSTANDS THAT IT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE USE OF THE SERVICES. Customer does not waive or disclaim warranties expressly provided in the DIR Contract
9. **9.1 Applicable Law.** This SA shall be governed by and construed in accordance with the procedural and substantive laws of the State of Texas, without reference to its conflict of law principles, venue for disputes shall be Comal County, Texas.
10. **Customer Confidential Information.** To the extent allowable under the Texas Public Information Act, Vendor agrees to keep confidential any Customer-specific information communicated by Customer to Vendor that is (i) clearly marked confidential if provided in written form, or (ii) preceded by a statement that such information is confidential, if provided in oral form, and such statement is confirmed in writing within 15 days of its initial disclosure. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by Vendor; (3) entered the public domain through no fault of Vendor subsequent to Customer's communication to Vendor; (4) is in Vendor's possession free of any obligation of confidence at the time of Customer's communication to Vendor; or (5) is communicated by the Customer to a third party free of any obligation of confidence. Additionally, Vendor may disclose such information to the extent required by legal process. Customer acknowledges that Vendor is in the business of researching and analyzing information technology and this obligation of confidence shall not apply to information obtained by Vendor's research, analysis or consulting organization(s) from other sources.
11. **Insurance** Per the DIR Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the DIR Contract. Promptly, upon execution of this Agreement and upon future request

from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

12. **Notice of Cybersecurity Breach** In the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a cybersecurity event or breach, the Vendor shall notify NBU within 72 hours of the event or breach. Before NBU will allow Vendor access to the NBU network after a cybersecurity event or breach, Vendor shall provide NBU with: (1) an audit of the systems compromised to be completed by an independent firm unaffiliated with Vendor and (2) evidence that the Vendor's system is no longer a threat to the NBU network."



## **Department of Information Resources**

**Request for Offer  
DIR-TSO-TMP-414**

**IT Research and Advisory Subscription Services**

**Issued: 09/05/2017**

**Initial Responses Due: 10/06/2017 02:00 PM (CT)**

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## 1 Introduction

### 1.1 Purpose

The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide 1) IT Research and 2) Advisory Subscription Services to the State of Texas, acting by and through the Department of Information Resources (DIR).

As a result of this RFO, DIR expects to receive and evaluate responses and select one or more qualified Vendors with whom to enter into negotiations. Section 5 of this RFO contains more information regarding the response evaluation and Vendor selection process. DIR reserves the right to award more than one contract from this RFO. All contracts awarded shall be indefinite quantity contracts with no minimum guarantees of any purchases.

As a result of this RFO, DIR expects to create a contractual vehicle that satisfies statewide procurement requirements for Research Services and Subscription Services Contracts and improves the efficiency of the procurement process by shortening the time required to procure Research Services and Subscription Services.

**As part of DIR's initiatives to identify strategic sourcing opportunities, DIR reserves the right to make a single award or multiple awards as determined by DIR to achieve the highest overall value to the state.**

### 1.2 Background

#### 1.2.1 Information Technology Acquisition

Through its Cooperative Contracts Program, DIR assists state agencies and local governments (Customers) with cost-effective acquisition of their information resources by negotiating, managing, and administering contracts with information technology providers. Customers include any Texas state agency, unit of local government, or institution of higher education as defined in Texas Government Code, Section 2054.003; the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code; those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Texas Government Code, Chapter 771; any local government as authorized through Texas Government Code, Chapter 791; the Interlocal Cooperation Act; the state agencies and political subdivisions of other states as authorized by Texas Government Code, Section 2054.0565; and for non-telecommunications IT Commodity products and services, "assistance organizations" defined in Texas Government Code, Section 2175.001.

DIR combines the buying power of authorized Customers to obtain volume-discounted pricing for selected technology products and services. In addition to offering volume-discounted pricing, DIR created the Cooperative Contracts (Co-op Contracts) Program to make it easier for Customers to acquire these products and services. Customers place orders with and issue payments directly to the Vendors participating in the Co-op Contracts Program. Subject to DIR rights set forth in Sections 3.8 and 3.9 of this RFO,



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Item 9.

DIR will award and negotiate base contract documents with Vendors as a result of this RFO. Customers contact the Vendor for product and/or services and pricing information, negotiate their own service level agreements and additional terms and conditions, if any, and send their purchase orders (with the DIR contract number) and payments directly to the participating awarded Vendor, not to DIR. Information regarding the Co-op Contracts Program is located on DIR's Web site at <http://dir.texas.gov/View-About-DIR/Pages/Content.aspx?id=41>.

**1.2.2 Texas Government Code, Section 2157.068**

Texas Government Code, Section 2157.068, effective September 1, 2005, requires State agencies to buy commodity items, as detailed below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is a commercially available program that operates hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements and may include Software provided as a service. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staff augmentation, training, maintenance and subscription services. Seat management is a services through which a state agency transfers its responsibilities to a Vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

Technology services do not include telecommunications services. Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001 is excluded. The following services were awarded under the TEX-AN Next Generation Procurement: Long Distance Services, Internet Services (including SOHO), Voice over Internet Protocol (VoIP), Local Voice Service, Wireless Service, Fixed Satellite and Access and Transport.

Institutions of Higher Education, K-12, and local governments are not required to purchase IT commodities from DIR, but may do so voluntarily. Information regarding Texas Government Code §2157.068, including processes and guidelines, is located on DIR's Website at: <http://dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=25>.

**1.2.3 Cost Avoidance Performance Measures**

As part of its performance measures reported to state leadership, DIR must show the cost avoidance realized by the State for the products and services obtained under DIR contracts. Cost avoidance is the difference between the negotiated DIR contract price and the prevailing market price.

**1.2.4 Cost Recovery**

DIR recovers the costs of negotiating, executing, and administering the Co-op Contracts through an administrative fee. DIR is authorized to charge a reasonable administrative fee to all customers per Section 2157.068(d) of the Texas Government Code. The



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administrative fee must be included in the Vendor's price to the customer and paid to DIR by the Vendor. The fee has been set at a not-to-exceed level of 2.00% by the current appropriations act of the State Legislature. For the purposes of responding to this RFO, the administrative fee of 0.75% shall be used in calculating the pricing specified on DIR's Automated Pricing Form in the BidStamp VIS. DIR may change the administrative fee at any time during a contract term. DIR will notify Vendors of any change in the administrative fee.

**1.2.5 Historical Sales**

Contracts negotiated and managed through the Cooperative Contracts Program resulted in over \$6 billion in Customer purchases for the past three (3) fiscal years combined. Information contained within the table below shows the total purchases for the past three (3) fiscal years by Customer segment. These purchases represent contracts that are hardware, software, and services related. The State's fiscal year runs September 1st through August 31st.

Segment	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016
State Agency	\$553,788,672.80	\$543,288,393.08	\$517,306,688.54
Local Government	\$437,786,573.74	\$431,371,234.33	\$461,084,970.28
Higher Education	\$355,586,888.66	\$399,967,445.25	\$348,688,707.56
K-12	\$702,583,186.28	\$677,626,189.55	\$628,637,425.00
Assistance Org	\$5,479,813.56	\$5,176,343.64	\$5,237,895.30
Out of State	\$1,369,739.79	\$10,944,441.03	\$8,767,492.85
<b>Total FY</b>	<b>\$2,056,594,874.83</b>	<b>\$2,068,374,046.88</b>	<b>\$1,969,723,179.53</b>

**1.2.6 Current Contract**

DIR currently has multiple contracts with three (3) Vendor[s] to provide the IT Research and Advisory Subscription Services. The volume of products sold through the contract[s] for FY14 through FY17 was approximately \$25,641,961.00.

**2 Vendor Information System (VIS) Portal - BidStamp**

DIR's BidStamp Vendor Information System (BidStamp VIS) provides prospective bidders (Vendors) with the ability to create a profile that supports the key functions required during the solicitation response process. The high-level processes associated with the portal include vendor account/profile creation, vendor contact creation, vendor account management, and response submission. In addition to the account management and solicitation response capabilities enabled by the BidStamp VIS portal, Vendors will be able to view open solicitations and additional information about DIR.

**2.1 Solicitation Response Requirement**

**Any Vendor responding to this RFO must submit their response through the BidStamp VIS.** Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact DIR at the point of contact in Section 4.1 of this solicitation. Please allow at least five business days for

response.

## 2.2 VIS Account Request Process

Before users can access any of the BidStamp VIS portal functionality, they will be required to provide login credentials to access a new or existing account. Vendors will access the BidStamp VIS Portal via <http://dircommunity.force.com/BidStamp>, and enter in their access credentials. If a Vendor does not yet have login credentials, it will request one by clicking on “Are you a vendor and need to request an account?” button that is located on the login page.

Instructions for VIS account access and using the BidStamp VIS portal to submit solicitation response can be found on DIR’s website [Information for Vendors](#) page.

## 3 Scope

### 3.1 Services

DIR intends to contract to provide 1) IT Research and 2) Advisory Subscription Services for DIR Customers that have varying needs to obtain information that cover a wide variety of subject categories including but not limited to: general, business, social sciences, health, education, science, finance, library materials, etc. Vendors are encouraged to submit their complete line of database products, including delivery of various media types and optional pricing structures.

Areas of Interest may include:

- **Reliable & Secure Services** - Security, Continuity of Operations, Connectivity
- **Mature IT Resources Management** - IT Funding, IT Planning & Governance, IT Workforce
- **Cost Effective & Collaborative Solutions** - Legacy Modernization, Cloud Services, Shared Services
- **Data Utility** - Data Management and Governance, Open Data, Data Analytics
- **Mobile & Digital Services** - Mobile Applications, Digital Services, Internet of Things

Examples of research include, but not limited to:

- **General** - Reference Documents, Various Organization or Associations, Driving Reports, Source Directories
- **Business/Finance** - Company Profiles, Financial Records, Business Services, Marketing, Realty, Insurance
- **Health** - Healthcare Related, Best Practices, Physician Associations, Hospitals, Family Assistance
- **Education** - K-12 and Higher Ed, Research References, Subjects, Academic Statistics, Social Sciences, Geography
- **Science** - Weather Data, Chemical, GPS Data, Environmental
- **Library Materials** - Periodicals/Newspapers, Reference Documents
- **State Specific** - Texas Statutes, Administrative Code, Legislative
- **Information Technology** – Benchmarking, Industry Standards, Information
- **Local Government** – Research References, Environmental, Transportation, Pensions
- **Miscellaneous** - Any other resources not falling into these categories

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(Please note many of these examples are interchangeable within the Categories.)

This RFO is not a solicitation for professional or consulting services as defined in Chapter 2254, Texas Government Code.

This RFO **excludes** Deliverables-Based Information Technology Services (DBITS), specifically DBITS IT Assessments and Planning services, which may support **project-based research** to fulfill customer defined assessment and planning deliverables.

**3.1.1 Pricing**

Any Vendor responding to this RFO must submit specific pricing for the services requested herein. For the purposes of obtaining pricing and evaluating the responses to this RFO, the Services shall be priced and discounted as instructed in this solicitation number DIR-TSO-TMP-414. All IT Research and Advisory Subscription Services may be made available through a Contract.

Vendors must submit pricing on DIR’s Automated Pricing Form in the BidStamp VIS. Failure to respond as instructed may result in Vendor’s offer being disqualified from further evaluation.

Pricing Sheet: A representative sample of products has also been included on the spreadsheet titled “Pricing Sheet.” Vendor must offer only one price for each product listed. The price to the DIR Customer shall include all shipping and handling fees. This is a representative sample only. All products named in this RFO may be made available through a Contract.

DIR is not soliciting IT Research and Advisory Subscription Services for the agency. DIR establishes statewide master contracts for use by DIR eligible customers. DIR competitively bids for information technology products and services.

Customers must identify their own needs, then contact an awarded DIR Vendor and obtain a price quote for services. Customers may submit a statement of work or purchase order to the Vendor when obtaining a quote based on their needs. The Customer makes the best value determination and issues a purchase order directly to the Vendor.

This RFO is **not** a solicitation for professional or consulting services as defined in Chapter 2254, Texas Government Code.

**3.2 Threshold and SOW Requirements**

State Agency Customers (not including institutions of higher education), must adhere to the requirements of Senate Bill 20 (84R) relating to DIR Cooperative Contracts.

**Beginning September 1, 2017**, the Threshold Requirements for IT Commodities (Hardware, Software and Services) are as follows:

<b>Contract Value</b>	<b>Number of DIR Vendors</b>
\$50,000 or less	May award directly to DIR Vendor of choice



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More than \$50,000 but not more than \$1 million	Three (or all DIR Vendors in a category with less than three vendors)
More than \$1 million but less than \$5 million	Six (or all DIR Vendors in a category with less than six vendors)
More than \$5,000,000	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts

In addition, state agencies procuring more than \$50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

Threshold and SOW review and signature processes do not apply to Institutions of Higher Education, K-12, local governments, assistance organizations, or out-of-state customers.

**3.3 Electronic and Information Resources (EIR) Accessibility**

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes [1 TAC 206](#), [1 TAC 213](#), and [WCAG 2.0 AA](#) as applicable, and when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org/public-policy/accessibility>. Vendors that claim their products are exempt from accessibility requirements must present that position to DIR as a question during the question and answer period of the solicitation.

For non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.): credible evidence of the Vendor's capability or ability to produce accessible electronic and information resources. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

Vendors **must** complete the Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment (Bid Package 5).

**3.4 Form of Contract**

**3.4.1 Sample Contract and Terms**

**Negotiation:** The final terms and conditions of any contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that shall be included in any awarded contract are contained in the sample Contract for Services attached as "Bid Package 3" and the Standard Terms and Conditions for Services Contracts attached as "Bid Package 4" to the posting for this RFO,



requisition number DIR-TSO-TMP-414, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us>

### 3.4.2 Proposed Changes and Exceptions

**Caution: Vendors' Responses may be disqualified if their exceptions are excessive, or if they except to non-negotiable terms, as described below.** Item 11 of Exhibit A contains the format for Vendor to note any exception to any provision, term, or condition specified in the *Contract for Services* and *Standard Terms and Conditions for Services Contracts*. Vendor should provide any proposed changes to contract language in redline in the "Proposed Language (redline)" column of the chart in Item 11 of Exhibit A. **Vendors may request exceptions to standard contract terms and conditions; however (1) where noted, exceptions to certain terms and conditions will not be allowed. If Vendor is unable to comply with these provisions, the Vendor's response may be subject to disqualification from further consideration for this solicitation. (2) the number and significance of exceptions taken may negatively impact the Vendor's score at evaluation (See Section 5.2 for evaluation criteria) and (3) DIR in its discretion may or may not accept the Vendor's requested exceptions, and (4) material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) may render the Offer non-responsive and may result in rejection of the bid.** An explanation as to why the Vendor cannot comply with the provision, term, or condition and proposed alternative language **must** be included in the response. If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at some later date.

DIR anticipates a contract term of two years with three, one-year optional extensions to be exercised by DIR at its discretion. The contract will renew automatically in one year increments for three (3) additional years under the same Terms and Conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. In the event of prolonged contract negotiations due to the number and/or significance of exceptions taken, lack of Vendor responsiveness or other failure to close contract negotiations that are not due to a failure on the part of DIR, DIR may in its discretion offer Vendor a shorter contract term.

DIR reserves the right to make changes to the *Contract for Services* or the *Standard Terms and Conditions for Services Contracts* if it is in the best interest of the State to do so. Should this occur prior to the award of any contracts as a result of this RFO, any Vendors selected for negotiations will be notified.

## 4 General Information

### 4.1 Point of Contact

All communications regarding this RFO must be addressed in writing to:

Carrie Cooper  
Department of Information Resources  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701

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Phone: 512-936-2353  
Fax: 512-936-6896  
Internet: [carrie.cooper@dir.texas.gov](mailto:carrie.cooper@dir.texas.gov)

## 4.2 Contact with DIR Staff

Upon issuance of this RFO, employees and representatives of DIR other than the Point of Contact identified in Section 4.1 will not discuss the contents of this RFO with any Vendor or their representatives. **Failure of a Vendor and any of its representatives to observe this restriction may result in disqualification of any related response.** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

## 4.3 Anticipated Schedule

### 4.3.1 RFO Schedule

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. DIR reserves the right to modify these dates at any time. Prospective Vendors will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

Date/Time	Activity
09/05/2017	Publish RFO on Electronic State Business Daily
09/12/2017 10:00 AM (CT)	Optional Vendor Conference <b>Webinar Only</b>
09/19/2017 05:00 PM (CT)	Deadline for submitting questions
09/21/2017 05:00 PM (CT)	Deadline for posting answers to questions on the ESBD
10/06/2017 02:00 PM (CT)	Deadline for DIR to receive Vendor references
<b>10/06/2017 02:00 PM (CT)</b>	Deadline for submitting Responses to RFO
10/07/2017 – until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

### 4.3.2 Vendor Conference

The Optional Vendor Conference will be held on the date and time specified in RFO Section 4.3.1 above at the location listed below. Please bring a copy of the RFO to the Vendor Conference, as DIR will only supply a limited amount of copies.

#### Location: Webinar Only

Please register for the Pre-Bid Conference - DIR-TSO-TMP-414 IT Research and Advisory Subscription Services on September 10, 2017 10:00 AM CDT at:  
<https://attendee.gotowebinar.com/register/1210059111040814849>

After registering, you will receive a confirmation email containing information about joining the webinar.



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DIR will also provide Vendors the opportunity to submit written questions at the conference. All questions submitted at the conference must reference the appropriate RFO page and section number. Although DIR may provide tentative responses to questions at the conference, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

#### **4.3.3 Written Questions and Official Answers**

Vendors shall submit all questions regarding this RFO by fax, e-mail, or in writing to the Point of Contact listed in Section 4.1. **Questions regarding this RFO will be accepted until the date and time specified above in Section 4.3.1, RFO Schedule.** Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-414 on the Electronic State Business Daily (ESBD), <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

Any addenda and/or amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESBD will in no way release the selected Vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

#### **4.4 Historically Underutilized Businesses**

The purpose of the Historically Underutilized Business (HUB) Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency must make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

1. 11.2% for heavy construction other than building contracts;
2. 21.1% for all building construction, including general contractors and operative builders' contracts;
3. 32.9% for all special trade construction contracts;
4. 23.7% for professional services contracts;
5. 26.0% for all other services contracts;
6. 21.1% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

HUBs are strongly urged to respond to this RFO. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. Vendors who meet the qualifications are strongly encouraged to apply for certification as HUBs.



#### 4.4.1 HUB Subcontracting Plan

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. **The HUB Goal for this RFO is 26%. ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBs. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION.** The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are available in the BidStamp VIS. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that Vendors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Vendor for more than five years. If the Vendor does not plan to subcontract, Vendor must state that fact in their plan. An original, signed paper copy of the HSP must be submitted in an envelope that is separate from the rest of the proposal. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.

#### 4.4.2 HUB Continuing Performance

Any contracts awarded as a result of this RFO shall include reporting responsibilities related to HUB subcontracting. Awarded Vendors may not change any subcontractor without submitting a revised HUB Subcontracting Plan (HSP). Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation.

#### 4.4.3 HUB Resources Available

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Website at: <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. For additional information, contact the CPA's HUB program office at: [StatewideHUBProgram@cpa.texas.gov](mailto:StatewideHUBProgram@cpa.texas.gov).

If Vendors know of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

### 4.5 Vendor Qualifications

#### 4.5.1 Authorized Vendors

Vendors who respond to this RFO must be one of the following:

- 1) Vendor who will sell directly to Customers through a Co-op Contract.
- 2) Vendor who will execute a Co-op Contract with DIR and designate one or more qualified dealers or resellers (Order Fulfillers) to sell directly to Customers on its behalf. The Vendor may also sell directly to Customers.

#### 4.5.2 Federal Requirements

- 1) State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Vendor listed in the prohibited Vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who



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*Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Vendor awarded a Contract as a result of this RFO must agree that if at any time during the term of the contract the Vendor is listed on the Terrorism List, the Vendor shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure any Vendor awarded a contract as a result of the RFO remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the contract without recourse in the event Vendor becomes listed on the Terrorism List.

- 2) Should any Vendor or its principals awarded a Contract as a result of this RFO become suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration, the Vendor's contract will be terminated without recourse.
- 3) Vendor shall comply with the requirements of the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

**4.5.3 Vendor Performance and Debarment**

In accordance with 34 TAC, Chapter 20, Subchapter C, any Vendor that is debarred from doing business with the State of Texas will not be awarded a contract under this solicitation. The list of debarred Vendors is located on the CPA Web site at:

<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>

**4.5.4 Required Vendor and Subcontractor Current and Former State Employee Disclosures**

Vendor shall disclose, for itself and on behalf of all of its Subcontractors, in its response to Section 12 of Exhibit A to the RFO, all of the following:

- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years;
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years; and
- 3) Vendor will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.



## 4.6 Response Deadline and Submission Requirements

Vendors are invited to submit responses in accordance with the requirements outlined in this document. Responses must be received by DIR on or before **the solicitation response due date listed in section 4.3.1. No late responses will be reviewed.** No physical written responses will be accepted unless pre-approved and authorized by DIR in accordance with section 2.1 of this solicitation.

### 4.6.1 Official Timepiece

The clock in the DIR Purchasing Office at 300 W. 15<sup>th</sup> Street, 13<sup>th</sup> Floor, Room 1335, is the official timepiece for determining compliance with the deadline. All responses will be date and time stamped when received by the Purchasing Office on the 13<sup>th</sup> floor.

## 4.7 Response Format and Contents

### 4.7.1 Response Format

Per section 2.1 of this solicitation, any Vendor responding to this RFO must submit their response through the BidStamp VIS unless granted an accommodation by DIR by the appropriate deadline.

### 4.7.2 Mandatory Response Contents

**VENDOR MUST PROVIDE THE ITEMS LISTED BELOW OR THE RESPONSE WILL BE REJECTED.**

**1) Vendor Information – Exhibit A of this RFO**

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor. Vendors Response should offer information to support its capability to provide the services requested in this RFO. **Attachments 1 and 2 must be completed and submitted with the response if applicable per Item 20, Canceled Contracts.**

**2) Vendor History and Experience - Exhibit B of this RFO**

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded.

**3) Contract Marketing and Support Plan – Exhibit C of this RFO**

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded.

**4) HUB Subcontracting Plan Forms – Exhibit D of this RFO**

All Vendors, **INCLUDING THOSE WITH HUB DESIGNATION AND THOSE THAT DO NOT PLAN TO USE SUBCONTRACTORS**, must submit a HUB Subcontracting Plan. **The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal.** Refer to Section 4.4 for more information regarding HUB subcontracting. **Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors. The signed copy of the HSP must be uploaded and submitted in the BidStamp VIS.**

**5) Services [*Firm Fixed*] Pricing**

Vendor shall provide a detailed description and the specific pricing for any services that Vendor is proposing to offer in response to this RFO **via the Automated Pricing Form in the BidStamp VIS**. Vendor shall provide specific pricing for the services applicable to their response.

**6) Service Agreements**

Vendor shall provide any Service Agreements that are applicable to the services Vendor is proposing. These Agreements must, at a minimum, allow and provide for inclusion of the terms and conditions of the *Contract for Products and Related Services* (Bid Package 3) and the *Standard Terms and Conditions for Products and Related Services Contracts* (Bid Package 4).

**7) Policy-Driven Adoption for Accessibility – Bid Package 5**

Vendors must provide the PDAA form (Bid Package 5) as requested in Section 3.3, Electronic and Information Resources (EIR) Accessibility, of this RFO.

**4.7.3 References**

Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included on the questionnaire. Vendor may submit the Vendor Reference Questionnaire to companies or government agencies through the BidStamp VIS. DIR is not responsible for undeliverable e-mails or for non-responsive references. Vendor's references will be evaluated in accordance with Section 5.2.2. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. References may be contacted for clarification at DIR's discretion.

**4.7.4 Accessibility of Electronic Response Documents**

Vendor response documents should be submitted in a format that is accessible to people with disabilities. This can include, but is not limited to accessible Office or other productivity document suite. **Vendor should not submit scanned documents.**

**4.8 Rejection of Responses**

DIR has sole discretionary authority and reserves the right to reject any and all responses received as a result of this RFO. Responses that do not comply with the mandatory submission requirements shall be rejected. In addition, DIR reserves the right to accept or reject, in whole or in part, any responses submitted, and to waive minor technicalities when in the best interest of the State.

**4.9 Right to Amend or Withdraw RFO**

DIR reserves the right to alter, amend or modify any provision of this RFO, or to withdraw this RFO, in whole or in part, at any time prior to the award of a contract if to do so is in the best interest of the State. DIR reserves the right to re-solicit for like or similar products and services whenever it determines re-solicitation to be in the best interest of the State.

Any changes or additional information regarding this RFO will be posted as an addendum



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to requisition number DIR-TSO-TMP-414 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. It is the responsibility of Vendors to monitor the web site for addenda. Vendor's failure to periodically check the ESBD will in no way release the vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

#### **4.10 Pre-agreement Costs**

DIR shall not be responsible or liable for any cost incurred by any Vendor in the preparation and submission of its response to this RFO or for other costs incurred by participating in this procurement process.

#### **4.11 Ownership of Responses**

All responses become the property of DIR. DIR reserves the right to use any and all information or materials presented in response to this RFO. Disqualification of a Vendor's response does not eliminate this right.

#### **4.12 Public Information**

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. Vendor may not mark its complete proposal "copyrighted" or mark every page as proprietary or confidential but if a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the Vendor must specify which exception(s) are applicable and provide detailed reasons substantiating the exception(s).

The Office of the Attorney General (OAG) has the sole authority to determine whether information is confidential and not subject to disclosure under the Public Information Act. DIR shall comply with all decisions of the OAG.

DIR assumes no responsibility for asserting legal arguments on behalf of any Vendor. Vendors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

## **5 Evaluation, Negotiations, and Award**

### **5.1 Evaluation of Responses**

DIR will review proposals to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. All proposals determined to be responsive will go through a financial review overseen by the Chief Financial Officer's (CFO's) office. **The financial review is a pass/fail determination that is final.** Only proposals that receive a passing grade will proceed to the Evaluation Committee. DIR will establish an Evaluation Committee to review all responses that have not been rejected. At any time during the evaluation process, DIR may ask any or all Vendors to elaborate on or clarify specific points or portions of their response. DIR's request and Vendor's response shall be in

writing. Once initial evaluation of responses has been completed, the Evaluation Committee shall turnover the tabulated scores to the DIR purchasing office and shall conclude their duties.

## **5.2 Evaluation Criteria**

### **5.2.1 Pass/Fail Criteria**

In addition to the weighted criteria listed below DIR also reviews additional Pass/Fail criteria as follows:

1. DUNS Number and report is a Pass/Fail review conducted by the Finance Group (Exhibit A, Item 13)
2. Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
  - a. A score of less than 90% in the Vendor Performance System;
  - b. Currently under a Corrective Action Plan through the CPA, Having repeated negative Vendor Performance Reports,
  - c. Having purchase orders that have been cancelled in the previous 12 months for non-performance (including but not limited to late delivery, etc.).
3. Completion of HUB Subcontracting Plan (Exhibit D).

### **5.2.2 Weighted Evaluation Criteria**

The criteria and weight to be used in determining the best value for the State are as follows:

- 50% - Pricing
- 25% - Vendor History and Experience and References in providing the products and services requested. (Exhibit B of Bid Package 1 and Vendor References)
- 25% - Vendor's Contract Marketing and Support Plan – Exhibit C

Vendors will be evaluated on performance under existing and prior contracts for similar products or services and the evaluation may include consideration of Vendor performance as recorded in the CPA Vendor Performance Tracking System as described in the Texas Administrative Code, 34 TAC 20.108(b).

## **5.3 Oral Presentations, Best and Final Offer**

DIR in its discretion shall make the determination whether to request oral presentations and/or engage in the Best and Final Offer process. Both oral presentations and the Best and Final Offer process, if held, will also be scored.

DIR reserves the right to continue to evaluate responses until such point as the best value, as defined by Texas Government Code, Section 2157.003, is obtained for the State.

## **5.4 Negotiations**

At the conclusion of the evaluation, as described within Sections 5.1 through 5.3 above, DIR staff shall determine the number of Vendors with which it will start contract negotiations. In its discretion, DIR shall terminate contract negotiations when DIR



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determines that the best value for the State has been obtained. Then the staff will recommend award of one or more contracts to DIR Executive Management.

### **5.5 Award of Contract**

DIR Executive Management shall make the decision to award any contracts, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final. Any award for this RFO shall be posted under requisition number DIR-TSO-TMP-414 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>, upon execution of a contract with one or more Vendors. All responses and working papers pursuant to this RFO are not subject to disclosure under the Public Information Act until all contracts resulting from this RFO have been executed.

Any Contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

### **5.6 Vendor Protest Procedures**

Any Vendor who is aggrieved in connection with this RFO, evaluation, or award of a contract may formally protest to DIR in accordance with the Vendor protest procedures posted on the DIR Web site at: <http://dir.texas.gov/View-Information-For-Vendors/Pages/Content.aspx?id=21>.

**END OF RFO**

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**Exhibit A**  
**Vendor Information**

**This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.**

- 1) Company Name: \_\_\_\_\_
  
- 2) Comptroller of Public Accounts Vendor Identification Number: \_\_\_\_\_
  
- 3) Principal place of business  
Address:  
City:  
State:  
Zip Code:
  
- 4) Facility responsible for servicing the contract  
Address:  
City:  
State:  
Zip Code:
  
- 5) Contact Person regarding Vendor's response to the RFO  
Name:  
Address:  
City, State, Zip:  
Phone Number:  
Fax:  
Email:
  
- 6) Contact Person responsible for contract negotiation  
Name:  
Address:  
City, State, Zip:  
Phone Number:  
Fax:  
Email:
  
- 7) Officer or Agent empowered to contractually bind the Vendor:  
Name:  
Title:  
Address:  
Phone Number:  
Fax:  
Email:  
1.
  
- 8) Indicate whether or not your company is a certified Historically Underutilized Business (HUB) with the State of Texas by the CPA.  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No

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- 9) Provide the year in which your company was created/incorporated.
- 10) Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included on the Vendor Reference Questionnaire. The Vendor Reference Questionnaire may be submitted through the BidStamp VIS portal. DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR.
- 11) List below by subsection all exceptions to the *Contract for Services* and *Standard Terms and Conditions for Services Contracts* **in redline form**. You must include the basis of your exceptions and provide proposed alternate language. **If Vendor fails to list exceptions in its response, Vendor shall not be permitted to submit exceptions to the same section during the negotiation process or thereafter. Vendor shall not redline the contract or Exhibit A. All exceptions must be listed in the chart below.**

Section	Section Title	Explanation of Exception	Proposed Language (redline)

- 12) Vendor and Subcontractor Conflict of Interest Disclosure  
List below all current or former employees of Vendor and/or proposed Vendor personnel with conflict of interests as follows:
- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.

Vendor Personnel:

<u>Current or Former Employees who are current or former State employees (see Note 1 above)</u>	<u>Vendor Personnel related to State of Texas Employees (see Note 2 above)</u>

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Subcontractor personnel:

<u>Current or Former Employees of Subcontractor(s) who are current or former State employees (see Note 1 above)</u>	<u>Subcontractor Personnel related to State of Texas Employees (see Note 2 above)</u>

3) Vendor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

13) Proof of Financial Stability.

All Vendors responding to this RFO and all Vendors that will enter into a contract with DIR must be and remain current in payment of all taxes, including Sales and Franchise Taxes. In general, the Comptroller of Public Accounts must identify the Vendor to be “in good standing” and a Vendor with which the state is authorized to do business.

Vendors must provide a Dun and Bradstreet D-U-N-S number. The D-U-N-S number MUST be included in the Vendor’s response. **Failure to include the D-U-N-S number listed for the company shall cause automatic rejection of the response.**

14) Electronic Product Environment Assessment Tool (EPEAT). To the extent Customers use products provided by Vendor in the delivery of Services offered under this RFO, indicate whether the products provided are EPEAT certified and identify the applicable EPEAT rating (bronze, silver or gold) for certified products. If products provided are not EPEAT certified, describe Vendor's efforts to obtain EPEAT certified products.

15) Statement of Compliance

A. Checklist for the RFO

The following checklist is provided for the convenience of Vendors in their response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFO. Vendors must ensure that all mandatory requirements for this RFO are met, even if they are not included in this checklist. The mandatory documentation must be submitted with the original and each copy of the response.

A completed checklist shall not be binding on DIR’s administrative review for compliance with the mandatory response contents specified in this RFO. As step one of the evaluation process, DIR will review all responses to ensure compliance with the mandatory response contents as specified in Section 4.7.2. of the RFO and reject any response that does not comply.

**All responses must be received by DIR on or before the date and time specified in Section 4.3.1 of this RFO. No late responses will be reviewed.**



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Item	Check
Responses must be submitted in the BidStamp VIS Portal	
<b>Mandatory Response Contents</b>	
Vendor Information – Exhibit A signed	
Vendor History and Experience – Exhibit B	
HUB Subcontracting Plan Forms – BidStamp VIS Form (Print, sign and upload)	
Pricing Form (BidStamp VIS Portal)	
Accessibility Documentation (PDAA), Section 3.3 RFO Requirement	
Service Agreement(s) (if applicable)	

**B. Certification Statement**

The undersigned hereby certifies on behalf of insert company name here that **DIR-TSO-TMP-414** has been read and understood. In submitting its response insert company name here represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- iv) as of the date of signature below, Vendor is not listed in the prohibited Vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- v) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- vi) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vii) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
- (viii) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;
- (ix) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- (x) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (xi) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award; .Enter the name and Social Security Numbers for each person below



**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

(alternatively, if this section applies, Vendor may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- xii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
- (xiv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;
- (xv) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xvi) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;
- (xvii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;
- (xviii) Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements); and
- (xix) Vendor agrees that these representations will be incorporated into any subsequent agreement(s) between Vendor and Customer that result from this RFO.
- (xx) Respondent certifies that there have been  yes /  no canceled contracts in the past five (5) years. Note: If yes is checked, Respondent must complete Exhibit A, Attachment 1 & 2 and submit with the response.**

\_\_\_\_\_  
Signature of Officer or Agent empowered to contractually bind the Vendor

\_\_\_\_\_  
Date



**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

Item 9.

**Exhibit A  
Attachment 1  
List of Vendor's Cancelled Contracts**

**THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR ANY IDENTIFIED CONTRACT CANCELLED WITHIN THE PAST FIVE YEARS REFERENCE AND SUBMITTED WITH THE RESPONDENT'S REQUIREMENTS SUBMISSION**

RESPONDENT NAME: \_\_\_\_\_

COMPANY NAME		
COMPANY ADDRESS (Street, City, State, Zip Code)		
*CONTACT NAME / PHONE		
*E-MAIL		
CONTRACT AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:
DESCRIPTION OF SERVICE:		
REASON FOR CANCELLATION:		

COMPANY NAME		
COMPANY ADDRESS (Street, City, State, Zip Code)		
*CONTACT NAME / PHONE		
*E-MAIL		
CONTRACT AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:
DESCRIPTION OF SERVICE:		
REASON FOR CANCELLATION:		

\* Note: Do NOT complete these fields if DIR is the Cancelled Contract Reference

Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414

Item 9.

Exhibit A  
Attachment 2  
RESPONDENT RELEASE OF LIABILITY  
(TO REFERENCE)

**THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE (GENERAL REFERENCES AND CANCELLED CONTRACT REFERENCES) AND SUBMITTED WITH THE RESPONDENTS REQUIREMENTS SUBMISSION**

To company providing the reference:

*Enter name of company providing the reference here*

You are hereby requested to provide a business reference for:

*Enter name of company (Respondent) or key staff person's name needing a reference*

to the:

Texas Department of Information Resources  
Solicitation Evaluation Team

Please disclose any and all information that you deem relevant relating to the above-named parties' business relationship. By signing this document, the entity and, if applicable, individual key staff person signing below releases the above-named company providing a reference, its agents, employees, and all persons, natural or corporate, in privity with above-named company providing a reference from any and all liability, claims or causes of action arising from their disclosure of information pursuant to this request for a business reference.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Respondent Signature)

\_\_\_\_\_  
(Respondent Printed Name)

\_\_\_\_\_  
(Respondent Title)

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Key Staff Signature or "N/A" if Respondent-level release)

\_\_\_\_\_  
(Key Staff Printed Name)

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

Item 9.

**Exhibit B  
Vendor History and Experience**

- 1) Provide a detailed history of your company.
  
- 2) Provide the number of years your company has sold the products/services requested in this RFO.
  
- 3) Provide the number of years your company has sold the products/services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.
  
- 4) Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the products/services listed in this RFO from your company within the last 12 months.  
\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

- 5) Indicate whether or not your company holds a contract for use by public entities (state agencies, local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO.  
\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

- 6) Indicate whether or not your company holds a contract with any entity or consortium authorized by Texas law to sell the products and services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.  
\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

- 7) Indicate whether or not your company currently holds or has held a DIR contract(s) in the past 5 years.  
\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, provide the DIR contract number(s).

**END OF EXHIBIT B**

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

**Exhibit C  
Contract Marketing and Support Plan**

**Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded. The plan must include the information listed below.**

- 1) Describe your company's strategy for marketing and selling the services listed in this RFO to eligible DIR Customers. A Contract Marketing Plan, as an example, would list the marketing elements Vendor would use like publishing on DIR website, email signature tag, Trade Publication Advertisements etc.
- 2) Describe your company's strategy for providing sales, order processing, and support of eligible DIR Customers throughout the State of Texas.
- 3) Provide the projected total sales of the services listed in this RFO that your company anticipates making to eligible DIR Customers within the next 12 months. If available, show the projected sales breakdown between the following segments: State and Local Governments, Higher Education, and K-12.
- 4) Do you have other existing DIR Contracts? If yes, list those existing DIR contracts, and explain how this contract will impact the marketing and support of your other contracts? How will your other contracts impact the marketing of this contract, should you receive an award?
- 5) Provide an overview of the management and customer relationship team that will be responsible for managing the State's relationship in the event of being awarded a contract. Address the following:
  - a. Describe the geographical reach of the Vendor, teaming partners and subcontractors (if any), to include, at a minimum, locations of corporate and branch offices as well as locations where work is currently taking place. Explain how these locations and any proposed new locations will be used in the performance of this contract.
  - b. Provide names, titles, prior account management experience for accounts of the State's size and type.
  - c. Provide an organization chart identifying the chain of command for managing this contract, including resource sourcing responsibility, and organization components that support this contract. In a narrative, describe how the Vendor will manage the contract to ensure uninterrupted, high quality performance and overall contract effectiveness.

**END OF EXHIBIT C**



**DIR-TSO-TMP-414: IT Research and Advisory Subscription Services  
Sample Bid Package 2 – Pricing Sheet**

**Instructions:**

A representative sample of products/services/training is provided in the tables below. Vendors must offer ONLY one (1) specific price for each Product/Service/Training listed. The price to the DIR Customer shall include all shipping and handling fees. This is a representative sample only for the purposes of this RFO and evaluation process.

**Pricing Form must be completed in BidStamp.**

**PLEASE NOTE: All prices quoted to Customers shall include the .75% administrative fee.**

<b>SUBSCRIPTION SERVICE Description</b>	<b>Product Number</b>	<b>MSRP</b>	<b>Unit</b>	<b>Customer Discount % off MSRP</b>	<b>DIR Customer Price</b>
Advisory Subscription (Annual)					
Advisory Subscription (Quarterly)					
Advisory Subscription (Monthly)					
<b>RESEARCH SERVICE Description</b>	<b>Product Number</b>	<b>MSRP</b>	<b>Unit</b>	<b>Customer Discount % off MSRP</b>	<b>DIR Customer Price</b>
Two-week rapid assessment with personalized report					
Four-week rapid assessment with personalized report					
<b>OPTIONAL SUBSCRIPTION SERVICE Description</b>	<b>Product Number</b>	<b>MSRP</b>	<b>Unit</b>	<b>Customer Discount % off MSRP</b>	<b>DIR Customer Price</b>
Example: Advisory Subscription (seasonal, e.g. Legislation Session)					
<b>OPTIONAL RESEARCH SERVICE Description</b>	<b>Product Number</b>	<b>MSRP</b>	<b>Unit</b>	<b>Customer Discount % off MSRP</b>	<b>DIR Customer Price</b>

Vendor Contract No. \_\_\_\_\_

**Bid Package 3 – Sample Contract –  
DO NOT COMPLETE  
DIR WILL COMPLETE FINAL DOCUMENT**

**TEXAS DEPARTMENT OF INFORMATION RESOURCES  
CONTRACT FOR  
IT RESEARCH AND ADVISORY SUBSCRIPTION SERVICES**

*VENDOR NAME*

**1. Introduction**

**A. Parties**

This Contract for services is entered into between the Department of Information Resources, an agency of the State of Texas (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and *VENDOR NAME* (hereinafter “Vendor”), with its principal place of business at *VENDOR ADDRESS*.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-414, on *POSTING DATE*, for *IT Research and Advisory Subscription Services*. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-414 shall be posted by DIR on the Electronic State Business Daily

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Service Requirement; *Exhibit 1, Vendor’s Response to BAFO, including all addenda; Exhibit 2, the BAFO, including all addenda; Exhibit 3, Vendor’s Response to RFO DIR-TSO-TMP-414, including all addenda; and Exhibit 4, RFO DIR-TSO-TMP-414, including all addenda*; are incorporated by reference and constitute the entire agreement between DIR and Vendor. The documents listed in this paragraph shall be hereinafter referred to as the “Contract Documents”. In the event of a conflict between the Contract Documents, the controlling document shall be this Contract, then Appendix A, then Appendix B, then *Exhibit 1, then Exhibit 2*, then Exhibit 3, and finally Exhibit 4. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. The contract will renew automatically in one-year increments for three (3) additional years under the same Terms and Conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.



Vendor Contract No. \_\_\_\_\_

Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

**3. Service Offerings**

Services available under this Contract are limited to *insert SPECIFIC services here* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

**5. DIR Administrative Fee**

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is *insert number* percent (*insert number*%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$*insert dollars*.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

DIR Representative  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759  
Email: [@dir.state.tx.us](mailto:@dir.state.tx.us)

If sent to the Vendor:

*Vendor Representative*  
*Company Name*

Vendor Contract No. \_\_\_\_\_

Address

City, State Zip

Phone: ( ) -

Facsimile: ( ) -

Email:

## 7. Service Agreement

**A)** Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

### **B) Conflicting or Additional Terms**

In the event that conflicting or additional terms in Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations

Vendor Contract No. \_\_\_\_\_

from its Manufacturer or Publisher.

8. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.**

No exceptions have been agreed to by DIR and Vendor.

{remainder of page left intentionally blank}

DRAFT

Vendor Contract No. \_\_\_\_\_

This Contract is executed to be effective as of the date of last signature.

***VENDOR LEGAL ENTITY NAME***

**Authorized By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Office of General Counsel:** \_\_\_\_\_

**Appendix A:Standard Terms and Conditions For Services Contracts**

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## Appendix A: Standard Terms and Conditions For Services Contracts

### 1. No Quantity Guarantees:

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The Contract is not exclusive to the Vendor. Customers may obtain services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of services will be procured through the Contract.

### 2. Definitions

**A. Customer** – any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

**B. Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third-party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.

**C. Contract** – the document executed between DIR and Vendor into which this Appendix

## Appendix A: Standard Terms and Conditions For Services Contracts

A is incorporated.

- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** – shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Purchase Order** – the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- G. State** – refers to the State of Texas.

### 3. General Provisions

#### A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

#### B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer’s Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendor.

#### C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
- 2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any

**Appendix A: Standard Terms and Conditions For Services Contracts**

respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

**D. Assignment**

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

**E. Survival**

All applicable service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality; and indemnification will remain in effect after termination or expiration hereof.

**F. Choice of Law**

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

**G. Limitation of Authority**

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

**H. Proof of Financial Stability**

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

**Appendix A: Standard Terms and Conditions For Services Contracts****4. Intellectual Property Matters****A. Definitions**

1) “*Work Product*” means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer’s benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2) “*Intellectual Property Rights*” means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3) “*Statement of Work*” means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

**Appendix A: Standard Terms and Conditions For Services Contracts**

4) “Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.

5) “Vendor IP” shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor’s provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

**B. Ownership.**

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third-Party IP, except as may be incorporated in the Work Product by Vendor.

**C. Further Actions.**

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor’s signature due to the dissolution of Vendor or Vendor’s unreasonable failure to respond to Customer’s repeated requests for such signature on any document reasonably



**Appendix A: Standard Terms and Conditions For Services Contracts**

necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

**D. Waiver of Moral Rights.**

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

**E. Confidentiality.**

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under subparagraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

**F. Injunctive Relief.**

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

**G. Return of Materials Pertaining to Work Product.**

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents

**Appendix A: Standard Terms and Conditions For Services Contracts**

and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

**H. Vendor License to Use.**

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

**I. Third-Party Underlying and Derivative Works.**

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third-Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third-Party IP that may be embodied or reflected in the Work Product.

**J. Agreement with Subcontracts.**

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

**K. License to Customer.**

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license

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includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

### L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

## 5. Terms and Conditions Applicable to State Agency Purchases Only:

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

### A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

### B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades,

## Appendix A: Standard Terms and Conditions For Services Contracts

enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

### 6. Contract Fulfillment and Promotion

#### A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

#### B. Internet Access to Contract and Pricing Information

##### 1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;
- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- l) the DIR logo in accordance with the requirements of this Section.



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If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

### 2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

### 3) Webpage Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's webpage will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this webpage is compliant with the pricing as stated in the Contract.

### 4) Webpage Changes

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

### 5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

### 6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

## C. Services Warranty and Return Policies

Vendor and Order Fulfiller will adhere to the Vendor's then-currently published policies concerning services warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like services.

## D. DIR Logo

Vendor may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when

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displayed, the size of the DIR logo must be equal to or smaller than the Vendor logo, (iii) the DIR logo is only used to communicate the availability of services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

**E. Vendor Logo**

If DIR receives Vendor's prior written approval, DIR may use the Vendor's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

**F. Trade Show Participation**

At DIR's discretion, Vendor may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's booth.

**G. Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include reporting requirements. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

**H. Performance Review Meetings**

DIR may require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract, at DIR's discretion. The meetings may be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

**I. DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract.



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### 7. Pricing, Purchase Orders, Invoices, and Payments

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A-F, H-J**

#### A. Manufacturer's Suggested Retail Price (MSRP) or List Price

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

#### B. Customer Discount

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The minimum Customer discount for all services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

#### C. Customer Price

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1**

1) The price to the Customer shall be calculated as follows:

**Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).**

2) Customers purchasing services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended days to reflect the lower price.

#### D. Shipping and Handling Fees

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

#### E. Tax-Exempt

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this



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Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

### F. Travel Expense Reimbursement

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

### G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

### H. Purchase Orders

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

All Customer Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84<sup>th</sup> Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

### I. Invoices

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**



## Appendix A: Standard Terms and Conditions For Services Contracts

1) Invoices shall be submitted by the Vendor directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to the Vendor. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

3) The administrative fee specified in the contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

### J. Payments

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

## 8. Contract Administration

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A, C-D**

### A. Contract Managers

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Managers will be posted on the Internet website designated for the Contract.

#### 1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's performance under the terms and conditions of the Contract, and ii) periodic verification of pricing and, iii) verification of monthly reports submitted by Vendor.

#### 2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between Vendor and a Customer, and iii) advising DIR of Vendor's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

**Appendix A: Standard Terms and Conditions For Services Contracts****B. Reporting and Administrative Fees****1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all services purchased under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15<sup>th</sup>) calendar day of the month following the month of the sale. If the 15<sup>th</sup> calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

**3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

**4) DIR Administrative Fee**

a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14<sup>th</sup>) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25<sup>th</sup>) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15<sup>th</sup>; DIR closes January sales and notifies Vendor of



## Appendix A: Standard Terms and Conditions For Services Contracts

administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment.

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

### 5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

### C. Records and Audit

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH 1.**

1) Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Customer name,



## Appendix A: Standard Terms and Conditions For Services Contracts

invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Vendor through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

### D. Contract Administration Notification

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

1) Prior to execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts E-Mail Box information.

## 9. Vendor Responsibilities

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W.**



**Appendix A: Standard Terms and Conditions For Services Contracts****A. Indemnification****1) INDEPENDENT CONTRACTOR**

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

**2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**3) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third-party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any

## Appendix A: Standard Terms and Conditions For Services Contracts

use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

### 4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

### B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR

## Appendix A: Standard Terms and Conditions For Services Contracts

WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### C. Vendor Certifications

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced



## Appendix A: Standard Terms and Conditions For Services Contracts

outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;

- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiv) under Section 2155.006 and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvi) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

### D. Ability to Conduct Business in Texas

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor and its Order Fulfillers shall be authorized and validly existing under the laws



## Appendix A: Standard Terms and Conditions For Services Contracts

of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

### E. Equal Opportunity Compliance

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

### F. Use of Subcontractors and Designation of Order Fulfillers

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

Vendors who submit Order Fulfillers must indicate whether (a) the Order Fulfiller(s) will provide sales and marketing of the Vendor's services only or (b) the Order Fulfiller(s) will provide technical services in addition to sales and marketing of the Vendor's services. If Vendor wishes to engage additional Order Fulfiller(s) to provide technical services after Contract execution, Vendor must submit the qualifications of Order Fulfiller(s) to the DIR Contract Manager for approval (in addition to meeting HUB requirements) prior to inclusion of such Order Fulfiller.

### G. Responsibility for Actions

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under the Certification Statement of Exhibit A to the RFO and/or Section 9.C. (x), Vendor Certifications of this Appendix A to the Contract change.



## Appendix A: Standard Terms and Conditions For Services Contracts

Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

### H. Confidentiality

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

### I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

### J. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer. Should any employee or subcontractor of the Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

### K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures



## Appendix A: Standard Terms and Conditions For Services Contracts

of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

### L. Overcharges

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

### M. Prohibited Conduct

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

### N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

#### 1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;



## Appendix A: Standard Terms and Conditions For Services Contracts

- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation.

### 2) Workers' Compensation Insurance

**WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 PER ACCIDENT, \$1,000,000 DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.**

### 3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

## O. Use of State Property

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other resources of the Customer or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

## P. Immigration

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and



## Appendix A: Standard Terms and Conditions For Services Contracts

- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

### Q. Public Disclosure

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

No public disclosures or news releases pertaining to this contract shall be made by Vendor without prior written approval of DIR.

### R. Product and/or Services Substitutions

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Substitutions are not permitted without the written permission of DIR or Customer.

### S. Secure Erasure of Hard Disk Managed Services Products and/or Services

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC 202.

### T. Deceptive Trade Practices; Unfair Business Practices

1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

### U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to



## Appendix A: Standard Terms and Conditions For Services Contracts

implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

### V. Accessibility of Public Information

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

- 1) Pursuant to S.B. 1368 of the 83<sup>rd</sup> Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

### W. Vendor Reporting Responsibilities

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83<sup>rd</sup> Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

## 10. Contract Enforcement

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7.**

### A. Enforcement of Contract and Dispute Resolution

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.
- 3) State agencies are required by rule (34 TAC §20.1115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

### B. Termination

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

#### 1) Termination for Non-Appropriation

##### a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations

## Appendix A: Standard Terms and Conditions For Services Contracts

under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the services, they are obligated to pay for the services or they may discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

### b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

## 2) Absolute Right

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

## 3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days' written notice.

## 4) Termination for Cause

### a) Contract



## Appendix A: Standard Terms and Conditions For Services Contracts

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing services under the Contract have no power to terminate the Contract for default.

### b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 3.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

### 5) Immediate Termination or Suspension

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

### 6) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination



## Appendix A: Standard Terms and Conditions For Services Contracts

of the Contract for its then effective term.

### 7) Vendor or Order Fulfiller Rights Under Termination

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

### C. Force Majeure

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

## 11. Notification

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

### A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

### B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
 Department of Information Resources  
 Attn: Public Information Officer  
 300 W. 15<sup>th</sup> Street, Suite 1300  
 Austin, Texas 78701  
 (512) 475-4759, facsimile

## 12. Captions

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

**Appendix A: Standard Terms and Conditions For Services Contracts**

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.



**Department of Information Resources**

**Request for Offer  
DIR-TSO-TMP-414**

**IT Research and Advisory Subscription Services**

**Bid Package 5**

**Vendor ICT Accessibility Policy Assessment  
(PDAA)**



## **Bid Package 6**

**Department of Information Resources**

**IT Research and Advisory Subscription Services**

**Request for Offer DIR-TSO-TMP-414**

**Vendor References**



VENDOR REFERENCES
IT Research and Advisory Subscription Services
Request for Offer DIR-TSO-TMP-414
REFERENCE DEADLINE TO DIR: No later than 10/03/2017 02:00 PM

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: ITResearch414@dir.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name
Insert Type of (e.g. Software ) Product/Services Category
Prime Contractor
Subcontractor(s)
Dates of Performance: Starting Date Ending Date
Total Est. Contract Dollar Amount

This portion to be completed by the Customer providing reference and returned to DIR at ITResearch414@dir.texas.gov.

Rating: (0) Unsatisfactory; (1) Marginally Satisfactory; (2) Satisfactory; (3) Exceeds Expectations; N/A. Not Applicable
Definitions for each rating category are contained on the following page.

Please provide your opinion by rating the following:

Quality of IT Research and Advisory Subscription Services Products and Related Services

- 1. Have you purchased any IT Research or Advisory Subscription Services from this Vendor in the past 2 years?
2. Vendor's ability to provide the products or services in a timely manner?
3. Vendor's knowledge of and ability to answer questions regarding the products?
4. Vendor's ability to resolve problems?

Cost

- 5. Timely, current, accurate & complete invoices

Timeliness of Performance

- 6. Adherence to delivery schedule (major tasks, milestones)

Business Relations & Customer Satisfaction

- 7. Effectively communicated with customer management & staff
8. Vendor personnel (professional, cooperative & flexible)
9. Vendor's attitude toward customer service
10. Overall Satisfaction with Vendor

Comments: (Please use additional page if necessary)

Blank lines for comments.

In your opinion, should this Vendor be used again for IT Research or Advisory Subscription Services?
Yes No

In your opinion, should this Vendor be recommended to others? Yes No

Rater's Name: Date:
Organization:
Title:
Phone Number: Fax Number: Email address:



**Vendor Reference Evaluation  
Scoring**

<p><b>Excellent (3)</b> There are no quality problems.</p>	<p>There are no cost issues.</p>	<p>There are no delays.</p>	<p>Responses to inquiries, technical, service, and administrative issues are effective and responsive.</p>
<p><b>Satisfactory (2)</b> Nonconformances do not impact achievement of contract requirements.</p>	<p>Cost issues do not impact achievement of contract requirements.</p>	<p>Delays do not impact achievement of contract requirements.</p>	<p>Response to inquiries, technical, service, and administrative issues is usually effective and responsive.</p>
<p><b>Marginal (1)</b> Nonconformances require minor Agency resources to ensure achievement of contract requirements.</p>	<p>Cost issues require minor Agency resources to ensure achievement of contract requirements.</p>	<p>Delays require minor Agency resources to ensure achievement of contract requirements.</p>	<p>Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.</p>
<p><b>Unsatisfactory (0)</b> Nonconformances are compromising the achievement of contract requirements.</p>	<p>Cost issues are compromising performance of contract requirements.</p>	<p>Delays are compromising the achievement of contract requirements.</p>	<p>Response to inquiries, technical, service, and administrative issues is not effective and responsive.</p>

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

Item 9.

**Addendum #1**



**Addendum 1**

**Department of Information Resources**

**IT Research and Advisory Subscription Services  
DIR-TSO-TMP-414**

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

**Addendum #1**

This Addendum #1 to Request for Offer DIR-TSO-TMP-414:

1. Corrects Bid Package 1, Section 1.2.1, Information Technology Acquisition
2. Corrects Bid Package 1, Section 4.4.1 HUB Subcontracting Plan
3. Corrects the due date for Bid Package 6, Vendor References
4. Provides a copy of the Vendor Pre-Bid Conference Power Point presentation as an attachment to this Addendum #1.
5. Provides a copy of the Vendor Pre-Bid Conference attendee list as an attachment to this Addendum #1.
6. Extends the due date for vendor references, and RFO responses to October 20, 2017.

<b>Date/Time</b>	<b>Activity</b>
09/05/2017	Publish RFO on Electronic State Business Daily
09/12/2017 10:00 AM (CT)	Optional Vendor Conference <b>Webinar Only</b>
09/19/2017 05:00 PM (CT)	Deadline for submitting questions
09/21/2017 05:00 PM (CT)	Deadline for posting answers to questions on the ESBD
10/20/2017 02:00 PM (CT)	Deadline for DIR to receive Vendor references
10/20/2017 02:00 PM (CT)	Deadline for submitting Responses to RFO
10/21/2017 – until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

**Addendum #1**

- 1. Bid Package 1, Section 1.2.1, Information Technology Acquisition correction:**  
Correction made to second paragraph, fourth sentence to read: Subject to DIR rights set forth in **Sections 4.8 and 4.9** of this RFO, DIR will award and negotiate base contract documents with Vendors as a result of this RFO.
  
- 2. Bid Package 1, Section 4.4.1 HUB Subcontracting Plan correction:**  
**Removes the requirement for a paper copy of the HUB Subcontracting Plan in a separate envelope.**

**4.4.1 HUB Subcontracting Plan**  
DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. The HUB Goal for this RFO is 21.1%. ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBs. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION. The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are available in the BidStamp VIS. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that Vendors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Vendor for more than five years. If the Vendor does not plan to subcontract, Vendor must state that fact in their plan. ~~An original, signed paper copy of the HSP must be submitted in an envelope that is separate from the rest of the proposal. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.~~

End of Addendum #1



## **Bid Package 6**

**Department of Information Resources**

**IT Research and Advisory Subscription Services**

**Request for Offer DIR-TSO-TMP-414**

**Vendor References**



**VENDOR REFERENCES**

IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414

**REFERENCE DEADLINE TO DIR: No later than 10/20/2017 02:00 PM (CT)**

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: [ITResearch414@dir.texas.gov](mailto:ITResearch414@dir.texas.gov)

**This portion to be completed by the Vendor requesting reference information**

Vendor Name \_\_\_\_\_  
 Insert Type of (e.g. Software ) Product/Services Category \_\_\_\_\_  
 Prime Contractor \_\_\_\_\_  
 Subcontractor(s) \_\_\_\_\_  
 Dates of Performance: Starting Date \_\_\_\_\_ Ending Date \_\_\_\_\_  
 Total Est. Contract Dollar Amount \_\_\_\_\_

**This portion to be completed by the Customer providing reference and returned to DIR at [ITResearch414@dir.texas.gov](mailto:ITResearch414@dir.texas.gov).**

Rating: (0) Unsatisfactory; (1) Marginally Satisfactory; (2) Satisfactory; (3) Exceeds Expectations; N/A. Not Applicable  
 Definitions for each rating category are contained on the following page.

Please provide your opinion by rating the following:

**Quality of IT Research and Advisory Subscription Services Products and Related Services**

1. Have you purchased any IT Research or Advisory Subscription Services from this Vendor in the past 2 years?  
 Yes \_\_\_ No \_\_\_
2. Vendor's ability to provide the products or services in a timely manner? 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_
3. Vendor's knowledge of and ability to answer questions regarding the products? 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_
4. Vendor's ability to resolve problems? 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_

**Cost**

5. Timely, current, accurate & complete invoices 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_

**Timeliness of Performance**

6. Adherence to delivery schedule (major tasks, milestones) 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_

**Business Relations & Customer Satisfaction**

7. Effectively communicated with customer management & staff 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_
8. Vendor personnel (professional, cooperative & flexible) 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_
9. Vendor's attitude toward customer service 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_
10. Overall Satisfaction with Vendor 0. \_\_\_ 1. \_\_\_ 2. \_\_\_ 3. \_\_\_ N/A \_\_\_

**Comments: (Please use additional page if necessary)**

In your opinion, should this Vendor be used again for IT Research or Advisory Subscription Services?

Yes \_\_\_ No \_\_\_

In your opinion, should this Vendor be recommended to others? Yes \_\_\_ No \_\_\_

Rater's Name: \_\_\_\_\_ Date: \_\_\_\_\_

Organization: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email address: \_\_\_\_\_

**Vendor Reference Evaluation  
Scoring**

<p><b>Excellent (3)</b> There are no quality problems. There are no cost issues.</p>	<p>There are no delays.</p>	<p>Responses to inquiries, technical, service, and administrative issues are effective and responsive.</p>
<p><b>Satisfactory (2)</b> Nonconformances do not impact achievement of contract requirements.</p>	<p>Cost issues do not impact achievement of contract requirements.</p>	<p>Response to inquiries, technical, service, and administrative issues is usually effective and responsive.</p>
<p><b>Marginal (1)</b> Nonconformances require minor Agency resources to ensure achievement of contract requirements.</p>	<p>Delays do not impact achievement of contract requirements.</p>	<p>Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.</p>
<p><b>Unsatisfactory (0)</b> Nonconformances are compromising the achievement of contract requirements.</p>	<p>Delays require minor Agency resources to ensure achievement of contract requirements.</p>	<p>Response to inquiries, technical, service, and administrative issues is not effective and responsive.</p>

# **IT Research and Advisory Subscription Services Request for Offer DIR-TSO-TMP-414**

**Vendor Pre-Bid Conference**

**September 12, 2017**

**10:00 am (central time)**





# Introduction



**Kelly Parker, DIR**

**Director, Cooperative Contracts**  
Chief Procurement Office

**Joan Scott, DIR**

**Contract Manager**  
Chief Procurement Office

**Lynn Sanchez, DIR**

**HUB Coordinator**  
Chief Procurement Office

**Elizabeth Lopez, DIR**

**Contract Manager**  
Chief Procurement Office

**Mary Vickery, DIR**

**Contract Manager**  
Chief Procurement Office

**Beth Perry, DIR**

**Manager**  
IT Application Development

# Agenda

- General Information
- BidStamp Vendor Information System Portal (VIS) Overview
- Request for Offer (RFO)
  - RFO Overview
  - RFO Scope
  - RFO Schedule
  - RFO Contents
  - Mandatory Submissions
  - Evaluation Criteria
- Break
- Questions
- Conference Closing



# General Information



- Reference the RFO page number and Section number when submitting questions.
- Webinar participants may submit questions electronically at anytime during the webinar, please use the question tab.
- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Check the ESBD often for updates
- All questions regarding this RFO must be submitted in writing through the BidStamp Vendor Information System Portal (VIS) by 2:00 P.M. (CT), September 19, 2017.

# General Information (continued)



- **Disqualification of Offers**
  - Failure to sign Vendor Information Form (Exhibit A)
  - Failure to complete Financial Information
  - Failure to complete a Historically Underutilized Business (HUB) Subcontracting Plan (HSP)
  - Must submit on or before due date and time
  - Contact with DIR employees regarding this RFO other than designated contacts
- **Delivery of Offers**
  - Any Vendor responding to this RFO must submit their response through the BidStamp VIS.

# General Information (continued)



Vendors and all vendor representatives shall not attempt to discuss the contents of this RFO with any employees or representatives of DIR other than designated contacts. Failure to observe this restriction may result in disqualification of any related Response.



# General Information (continued)



## Contacts for inquiries regarding this RFO

Carrie Cooper – [carrie.cooper@dir.texas.gov](mailto:carrie.cooper@dir.texas.gov)

## Contacts for the following related topics:

Vendor Information Systems (VIS) Portal - BidStamp: Kelly Parker -- [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

HUB Subcontracting Plan: Lynn Sanchez – [dir.hub@dir.texas.gov](mailto:dir.hub@dir.texas.gov)

Statewide Electronic and Information Resources (EIR) Accessibility: Jeff Kline – [jeff.kline@dir.texas.gov](mailto:jeff.kline@dir.texas.gov)

## DIR Cooperative Contracts



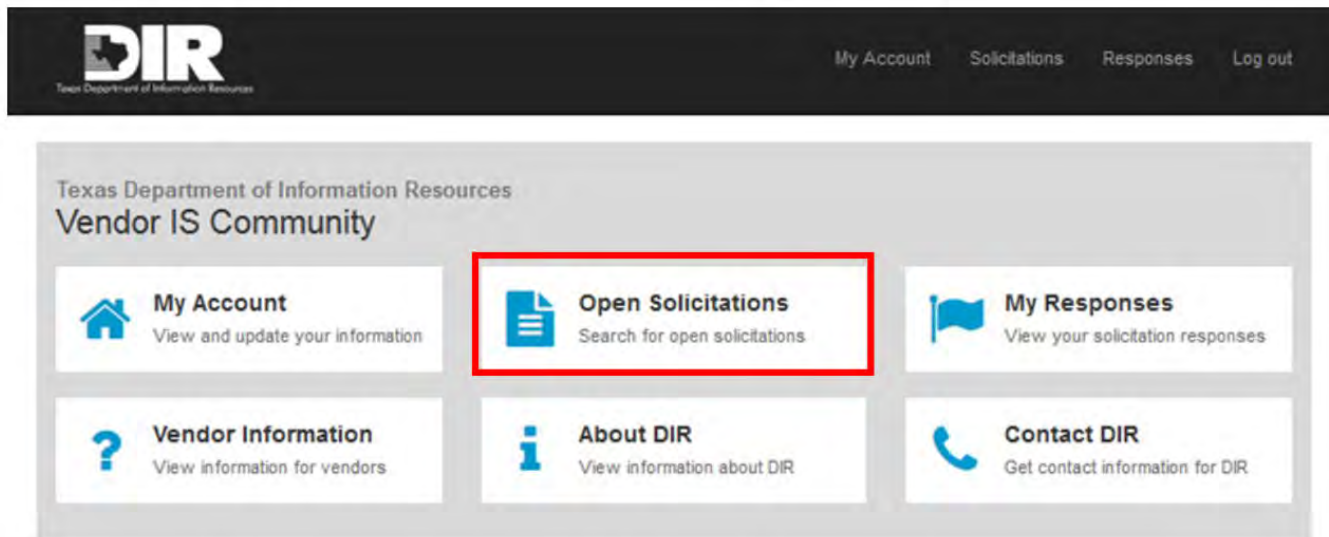
- DIR combines the buying power of DIR Customers to obtain volume-discounted pricing for IT products and services.
- Customer purchases through the Cooperative Contracts Program resulted in over \$6 billion for fiscal years FY2014 – FY2016. See Bid Package 1, Section 1.2.5, Historical Sales.
- Historical Sales for IT Research and Advisory Subscription Services for FY14 – FY17 was approximately \$25,641,961.00



# Responding to a Solicitation



After Vendor account is enabled, Vendor will submit and manage RFO responses from the BidStamp VIS portal.



(reference Vendor Guide Section 5.0 Vendor Response Management):

The Vendor BidStamp Guide and the presentation are posted on DIR’s website on the Information For Vendors page.

<http://dir.texas.gov/View-Information-For-Vendors/Landing.aspx>

# Creating a New Response



## To create a new response:

1. Log in to the VIS portal and select the “Open Solicitations” tile
2. Click on the “RFO Number” of the solicitation you want to respond to
3. You will be navigated to the “RFO Number” detail page

The screenshot shows the DIR portal navigation bar with 'Solicitations' selected. Below is a table titled 'All Open Solicitations' with a filter box and a tabbed interface (A-Z, Other, All). The table contains the following data:

RFO Number #	RFO Description	Solicitation Status	Phase	Type	Date/Time Respo...	Question Submi...
<a href="#">DIR-TSO-TMP-266</a>	testMadan	Posted	RFI - Posted	Cooperative	5/24/2017 9:18 AM	4/30/2017 9:18 AM
<a href="#">DIR-TSO-TMP-267</a>	test	Posted	Posting	Cooperative	11/8/2017 9:49 AM	1/9/2017 6:13 AM
<b>DIR-TSO-TMP-293</b>	Request for Widg...	Posted	Posting	Cooperative	3/31/2017 10:24 AM	3/15/2017 9:52 PM
<a href="#">DIR-TSO-TMP-295</a>	Test RFO Title	Draft	Posting	Cooperative	3/31/2017 2:11 PM	3/13/2017 2:13 PM
<a href="#">DIR-TSO-TMP-296</a>	Dell-branded Prod...	Posted	Posting	Cooperative	4/30/2017 1:47 PM	3/17/2017 10:01 AM
<a href="#">DIR-TSO-TMP-297</a>	RFO		Posting	Cooperative	3/15/2018 6:32 AM	





## Creating a New Response, cont.



### RFO Number Detail Button Description:

- **Respond to a Solicitation (or View Response):** Create a new response or view a response that is in-progress. If a response has already been created or started, this button will read as **“View Response”** and allow you to resume your progress on an existing RFO response.
- **Ask A Question:** Submit a question to be reviewed by a DIR resource. Questions can be submitted up until the “Question Submission Deadline date” indicated in the RFO document and on the detail page.
- **Subscribe to Solicitation:** Subscribe to a solicitation if you would like to receive addendum notifications. To subscribe to the solicitation, you must select the “Subscribe to Solicitation” button AND have enabled your contact to [“Receive Notifications”](#). *(reference slide 12 of this presentation)*
- **View Solicitation Documents:** Navigate to the ESBD posting for a solicitation and view the solicitation’s documents.

# Respond to a Solicitation



DIR Texas Department of Information Resources

My Account | Solicitations | Responses | Log out

RFO Response  
R0006029

1 Add your documents below (400MB max size). Click the "Submit" button once all documents have been added.

1 Please review the ESBID posting to ensure you have provided all the necessary documents in your submission. Also, please verify the information on the page is correct before submitting. Once submitting your response, you will be unable to make changes unless you withdraw your response completely and restart the submission process.

RFO Response Detail

Delete | Submit | Ask A Question | Create Pricing Form  
Add HUB Subcontracting Form

RFO Number	DIR-TSO-TM-170	Posting	in Progress
Submission Date		Vendor	Tech Widgets-R US
Submitted By		Actual Start Date	5/15/2017
Vendor Conference Date	5/25/2017 2:00 PM	Posting	
RFO Answers to Questions Deadline Date	6/7/2017 5:00 PM	Question Submission Deadline Date	5/31/2017 2:00 PM
Actual Start Date Evaluation	6/16/2017	Date/Time Responses Due	6/15/2018 2:00 PM

RFO Response Documents

No records to display

1 Reference forms are being sent via BidStamp as a courtesy. DIR will not be responsible if the form is not received by the vendor for any reason. It is solely the vendor's responsibility to ensure that the reference party receives the request.

Vendor References

No records to display

## "RFO Response Page" buttons:

- **Delete:** Delete all information that has been uploaded and the response record before the response has been submitted. **Note:** Once the response is submitted, Vendor must use the **Withdraw** button that will appear upon solicitation submission.
- **Submit:** Submits the response record and all associated information. (*reference Vendor Guide Section 5.7*)
- **Ask A Question:** Questions can be submitted up until the "Question Submission Deadline date" indicated in the RFO document and on the detail page. (*reference Vendor Guide Section 5.6*)
- **Add (or Edit) HUB Subcontracting Form:** Complete an automated version of the HSP form. Note: Vendors must also print, sign, and upload the signed HSP. (*reference Vendor Guide Section 5.4*)
- **Create Pricing Form:** Create a pricing form to submit pricing information for your response (*reference Vendor Guide Section 5.5*)
- **New (RFO Response Documents):** Upload required files indicated in the RFO posted on the ESBID (*reference Vendor Guide Section 5.2*)
- **New (Vendor References):** Submit a new reference's email address and opt to send the vendor a reference (*reference Vendor Guide Section 5.3*)



## RFO Overview



- The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide IT Research and Advisory Subscription Services to the State of Texas, acting by and through the Department of Information Resources (DIR).
- DIR may make multiple awards from this RFO.

# Term of Contract



## Bid Package 3 – DIR Sample Contract for Services

The term of any Contract awarded from this RFO shall be two (2) years commencing on the last date of approval by DIR and Vendor.

### **NEW!**

The contract will renew automatically in one-year increments for three (3) additional years under the same Terms and Conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

## RFO Scope



- DIR intends to contract with qualified Vendors to provide 1) IT Research and 2) Advisory Subscription Services for DIR Customers that have varying needs to obtain information that cover a wide variety of subject categories including but not limited to: general, business, social sciences, health, education, science, finance, library materials, etc.
- Vendors are encouraged to submit their complete line of database products, including delivery of various media types and optional pricing structures.



## RFO Scope, *continued*

Areas of Interest may include:

- **Reliable & Secure Services** - Security, Continuity of Operations, Connectivity
- **Mature IT Resources Management** - IT Funding, IT Planning & Governance, IT Workforce
- **Cost Effective & Collaborative Solutions** - Legacy Modernization, Cloud Services, Shared Services
- **Data Utility** - Data Management and Governance, Open Data, Data Analytics
- **Mobile & Digital Services** - Mobile Applications, Digital Services, Internet of Things

## RFO Contents



- Bid Package 1 – RFO DIR-TSO-398 (contains Exhibits A, B, C, & D)
- Bid Package 2 – Pricing List Sample
- Bid Package 3 – DIR Sample Contract for Services
- Bid Package 4 – Standard Terms and Conditions for Services Contracts
- Bid Package 5 – Policy Driven Adoption Assessment (PDAA)
- Bid Package 6 – Vendor References



## Bid Package 1



- Bid Package 1 – RFO DIR-TSO-414
  - Vendor Information System (VIS) Portal - BidStamp
  - Scope
  - General Information
  - Submission requirements, etc.
  - Evaluation, Negotiations, and Award
  - Exhibit A, Vendor Information Form
  - Exhibit B, Vendor History and Experience
  - Exhibit C, Contract Marketing and Support Plan
  - Exhibit D, HUB Subcontracting Plan

# Exhibit D - HUB Subcontracting Plan (Bid Package 1)

**\*The HSP form is automated and should be submitted in BidStamp.**  
**A sample HSP form was uploaded to the ESBD**

## Bid Package 1, Exhibit D – HUB Subcontracting Plan



### Exhibit D – HUB Subcontracting Plan (Bid Package 1)

- DIR encourages all respondents to seek Historically Underutilized Business (HUB) subcontractors and maximize HUB participation in their bids.
- **Responses submitted without a current HUB Subcontracting Plan (HSP) provided in the RFO, will be disqualified per TAC Rule §20.285**
- All respondents, **HUBs and Non-HUBs**, are required to submit a completed HSP
- The HSP form includes specific instructions for meeting the Good Faith Effort requirements
- Vendors must complete a **new** HUB Plan and a good faith effort for this procurement



## Bid Package 1, Exhibit D – HUB Subcontracting Plan



The HUB Goal for this RFO is 26%

- METHOD A (Attachment A) - If you are subcontracting and you are meeting or exceeding the HUB Goal for this RFO, you will complete Method A.
- Include all VID numbers for each vendor, all estimated dollar amounts and percentages for each vendor.

## Bid Package 1, Exhibit D – HUB Subcontracting Plan



METHOD B (Attachment B) - If you are subcontracting, and are not going to meet the HUB Goal of 26% you will complete Method B.

- **Provide written notification** of subcontracting opportunity listed to at least three State of Texas certified HUBs
- **Provide written notification** of subcontracting opportunity to at least (2) minority or women's trade organization or development center
- Allow no less than seven (7) working days from their receipt of notice for HUBs to respond (keep delivery receipt emails).
- **Note:** Attach supporting documentation (letters, fax transmittals, email, etc.) demonstrating evidence of the good faith effort performed with RFO submittal



## Bid Package 1, Exhibit D – HUB Subcontracting Plan



If not subcontracting, your response must contain a detailed explanation demonstrating HOW your company will fulfill the entire contract with its own resources

- **Self-Performance Justification must be provided in the space provided in SECTION 3, do not reference sections in the RFO**

## Bid Package 1 – HUB Subcontracting Plan



You may contact DIR's HUB Department for assistance in completing your HUB Subcontracting Plan (HSP) up to seven (7) working days before the RFO submittal.

Lynn Sanchez  
512-463-9813

Email: [lynn.sanchez@dir.texas.gov](mailto:lynn.sanchez@dir.texas.gov)

or

[dir.hub@dir.texas.gov](mailto:dir.hub@dir.texas.gov)

## Pricing



- Vendors must submit pricing on DIR's Automated Pricing Form in the BidStamp VIS.
- Volume Discounts: DIR encourages Vendors to offer VOLUME pricing for specific Products and/or Services.
- Aggregate Sales: If Vendor is proposing increased discounts based on total statewide aggregate contract sales, Vendor must list total contract dollar amount threshold, specific product and/or service or ALL, and discount percentage increase.



# Threshold and SOW Requirements



**Beginning September 1, 2017**, the Threshold Requirements for IT Commodities (Hardware, Software and Services) are as follows:

Contract Value	Number of DIR Vendors
\$50,000 or less	May award directly to DIR Vendor of choice
More than \$50,000 but not more than \$1 million	Three (or all DIR Vendors in a category with less than three vendors)
More than \$1 million but less than \$5 million	Six (or all DIR Vendors in a category with less than six vendors)
More than \$5,000,000	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts

State agencies procuring more than \$50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

## Electronic and Information Resources (EIR) Accessibility Forms



Texas state agencies and institutions of higher education are required to procure, develop, and use EIR that is inclusive and accessible to people with disabilities.

This RFO includes the following accessibility related forms:

Policy Driven Adoption for Accessibility (PDAA) - Bid Package 5

- Required for all vendors



## Bid Package 5 - Policy Driven Adoption for Accessibility (PDAA)



### Why is DIR requesting information on vendor accessibility policy?

- **Texas agencies and institutions of higher education are required to procure or develop accessible offerings. Gaps in vendor internal governance systems and leadership commitment inhibit the ability to meet these standards for their products / services.**
  - Making vendor's IT offerings accessible to people with disabilities requires commitment in many areas of an organization. PDAA data helps DIR better understand the commitment and progress by vendors in making their offerings accessible.
- **Accessibility policy maturity provides insight into vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings, which can increase the confidence in accuracy of vendor's accessibility documentation.**
  - A mature accessibility policy implementation signals that a vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner.

## Bid Package 5 - Policy Driven Adoption for Accessibility (PDAA)



### How will this information be used?

- The completed form will establish a baseline for where a vendor stands with regard to its accessibility policy.
  - illustrates the depth and maturity of the vendor's support for accessibility policy and practices as illustrated via the PDAA Maturity Model.
- The questionnaire may also be included in future solicitations so that progress can be assessed.
- Vendors can use the results as a roadmap for implementing their organization-wide ICT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.



## Additional Information regarding EIR Accessibility and Forms



- **EIR Accessibility Website**

<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=36>

- **PDAA Maturity Model**

<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx>

- **Additional Information**

<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement>

**Jeff Kline**  
**Program Director**  
**Statewide Electronic and Information Resources (EIR)**  
**Accessibility**

**Email: [jeff.kline@dir.texas.gov](mailto:jeff.kline@dir.texas.gov)**



## Mandatory Submissions



### RFO Section 4.7.2 – Mandatory Response Contents

**RESPONDENT MUST PROVIDE THE ITEMS LISTED BELOW OR THE RESPONSE WILL BE REJECTED.**

- Exhibit A – Vendor Information (*signed*)
- Exhibit A – Canceled Contracts – Attachments 1 and 2 (if applicable)
- Exhibit B – Vendor History and Experience
- Exhibit C – Contract Marketing and Support Plan
- Exhibit D – HUB Subcontracting Plan
- Pricing – Bid Package 2 (Automated Pricing Form in BidStamp VIS)
- Policy Driven Adoption Assessment (PDAA) – Bid Package 5
- Vendor’s service or licensing agreement, etc.(if any)





## Evaluation Criteria



- RFO Section 5.1 – Evaluation of Responses
  - Incomplete response package will be rejected
  - The financial review and HSP review are on a pass/fail basis.
    - Failure to provide a DUNs number will result in your response being disqualified.
  - Only responses that receive the passing grade will proceed to the next evaluation phase.
  
- RFO Section 5.2 – Evaluation Criteria
  - Pricing – 50%
  - Vendor History and Experience and Vendor References – 25%
  - Vendor’s Contract Marketing and Support Plan – 25%

## Questions

- Break (10 minutes)
- Reference the Section Number and page number with your submitted question.
- Questions answered today are unofficial until posted on the ESBD.

# Reminder



- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-414 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>
- It is the responsibility of Vendors to monitor the EBSD web site for addenda.



# RFO Schedule



Date/Time	Activity
09/05/2017	Publish RFO on Electronic State Business Daily
09/12/2017 10:00 AM (CT)	Optional Vendor Conference (Webinar Only)
09/19/2017 05:00 PM (CT)	Deadline for submitting questions
09/21/2017 05:00 PM (CT)	Deadline for posting answers to questions on the ESBD
10/06/2017 02:00 PM (CT)	Deadline for DIR to receive Vendor references
10/06/2017 02:00 PM (CT)	Deadline for submitting Responses to RFO
10/07/2017 – until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

# Conference Closing



- All questions, inquiries must be directed to Carrie Cooper

## Carrie Cooper

**Phone:** 512-936-2353

**Fax:** 512-936-6896

**Email:** [carrie.cooper@dir.texas.gov](mailto:carrie.cooper@dir.texas.gov)

Thank you for attending today's webinar!



**Attendee Details**

Attended	Last Name	First Name	Email Address	Organization	Address	City	State/Province	Zip/Postal Code	Phone
Yes	Lamb	BRIAN	briantlamb@hotmail.com	ISAM	2261 West Road	Chesapeake	Virginia	23323	7576425376
Yes	Patel	Anil	info@alphasirius.com	Alpha Sirius Inc					2147668548
Yes	Pierce	David	davidp@the-mcorp.com	M CORP	6507 Jester Blvd, Ste 510P	Austin	Texas	78750	850-524-2529
Yes	Raymond	Ashleigh	ashleighr@the-mcorp.com	M Corp	6507 Jester Blvd Suite 510 P	austin	Texas	78750	5125169907
Yes	Scott	Chris	cscott@infotech.com	Info-Tech Researd	3960, Howard Hughes Parkway, Suite 500	Las Vegas	Nevada	89169	888-670-8889

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

**Addendum #2**



**Addendum 2**

**Department of Information Resources**

**IT Research and Advisory Subscription Services  
DIR-TSO-TMP-414**

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

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**Addendum #2**

This Addendum #2 to Request for Offer DIR-TSO-TMP-414:

1. Revises Section 4.3.1, RFO Schedule.
2. Extends the due dates for posting answers to questions on the ESBD; submit vendor references and RFO responses.
3. Revises Exhibit A, Section 15.B, to include: item (xxi) In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.”
4. Contains Questions submitted and responses by DIR.

**Department of Information Resources  
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**Addendum #2**

1. Bid Package 1, Section 4.3, Anticipated Schedule is replaced in its entirety to read:

4.3.1 RFO Schedule

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a schedule of events. DIR reserves the right to modify these dates at any time. Prospective Vendors will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

<b>Date/Time</b>	<b>Activity</b>
09/05/2017	Publish RFO on Electronic State Business Daily
09/12/2017 10:00 AM (CT)	Optional Vendor Conference <b>Webinar Only</b>
09/19/2017 05:00 PM (CT)	Deadline for submitting questions
09/22/2017 05:00 PM (CT)	Deadline for posting answers to questions on the ESBD
10/23/2017 02:00 PM (CT)	Deadline for DIR to receive Vendor references
<b>10/23/2017 02:00 PM (CT)</b>	Deadline for submitting Responses to RFO
10/24/2017 – until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

2. Replace Bid Package 1, RFO Exhibit A, Vendor Information with Bid Package 1, RFO Exhibit A, Vendor Information dated 09/2017 to add item (xxi) non-boycott of Israel certification.
3. Official Answers to Vendor Questions pursuant to Section 4.3.3 of the RFO:

**3.1 Question:** Is there any training on using BidStamp?

**Answer:** Yes, please visit the DIR webpage [Information for Vendors](#). On this page is a BidStamp Training Guide and a Power Point presentation. For questions regarding BidStamp, Vendors may contact Kelly Parker at [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov). Please allow up to 5 days for a response.

**3.2 Question:** Is subcontracting or partnering allowed with a HUB certified company?

**Answer:** Yes, please refer to Section 4.4, Historically Underutilized Businesses for additional information. For additional information regarding the HUB program, Vendors may contact DIR's HUB Coordinator at [dir.hub@dir.texas.gov](mailto:dir.hub@dir.texas.gov).

**3.3 Question:** The Marketing Plans is under Exhibit C. When I downloaded the information, I did not see Exhibit C. If that is new I will go back and check again.

**Answer:** Confirmed on September 12, 2017 that Exhibit C, Contract Marketing and Support Plan was available through BidStamp. All documents related to this RFO are also located on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>.

**3.4 Question:** Is this for only HUB certified companies?

**Answer:** No, it is not just for HUB certified companies

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**Addendum #2**

**3.5 Question:** I noticed on the RFO timeline it says Vendor References are due 10/06/17 by 2PM CDT but on Bid Package 6 Vendor References, it says 10/03/17 2PM. Which deadline is correct?

**Answer:** Addendum 2 extends the due date for vendor references, and RFO responses to October 23, 2017.

**3.6 Question:** Consumers of research, especially public sector clients, insist that the research they rely on for strategic decision making be based on independent, unbiased and objective perspectives. Research that is performed for a vendor for a fee is also known as “sponsored” research. Sponsored research could potentially compromise independent perspectives.

a. Does the State consider research that is created on a sponsored basis to be unbiased and objective?

**Answer:** No

b. Will the State require Vendors to certify that they have not performed and will not perform sponsored research during the term of the contract?

**Answer:** The state will require that the vendor either (a) certify that they have not performed and will not perform sponsored research or (b) vendor will certify on an individual basis as to whether a particular body of research contains, in whole or in part, sponsored research.

**3.7 Question:** Texas DIR had more than 50 webinar attendances in the last 12 months, demonstrating that the organization values the ability to participate in Webinars.

a. Is it a requirement for Vendors to offer a calendar of an 20 new Webinars each month?

**Answer:** This is not a requirement for this RFO. DIR Customers may request requirements such as these, if applicable, when soliciting for services through an awarded DIR Cooperative.

b. Is it a requirement for Vendors to allow all of DIR (including non-seatholders) to participate in Webinars, at no additional cost to DIR?

**Answer:** DIR is not soliciting these services for the agency. DIR establishes statewide master contracts for use by DIR eligible customers. DIR Customers may request requirements such as these, if applicable, when soliciting for services through an awarded DIR Cooperative.

**Question:** The effectiveness of a Research and Advisory provider’s ability to provide up-to-date information on the latest technology can vary widely in the IT industry. In our experience, clients that require expert advice, consultation, research and analysis require a minimum of 3,000 new documents to be published annually.

a. What is the minimum number of newly published research documents required per year to support DIR with up-to-date research?

**Answer:** Vendors should submit their capabilities, such as these, in their response to document their ability and strategy for supporting a contract to be awarded from this RFO.



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**3.8 Question:** Section 3.1 of the RFO lists a number of Topic Areas and examples of research that are important to DIR. Is it a requirement for Vendors to provide the number of research documents and analysts covering each of those topics and areas, in order to provide a common ground for evaluation of Vendors?

**Answer:** DIR is not soliciting these services for the agency. The items listed Section 3.1 of the RFO are examples that DIR Customers may be interested in procuring. Vendors are encouraged to provide an offer that describes the Vendor’s ability and strategy for promoting and supporting a contract, if awarded.

**3.9 Question:** Many public sector clients gain significant value from the ability to consult with government-focused IT analysts, and from reading government-specific IT research.

a. Is it a requirement for the Vendor to have a dedicated team of government analysts?

**Answer:** This is not a requirement for this RFO. DIR Customers may request requirements such as these, if applicable, when soliciting for services through an awarded DIR Cooperative.

b. Is it a requirement for the Vendor to publish a discrete government research agenda on an annual basis?

**Answer:** This is not a requirement of this RFO. DIR encourages vendors to provide their most comprehensive offer that describes their ability to provide the services requested within the RFO.

**3.10 Question:** Many public sector entities require access to peer networking as part of their IT research and advisory services, in order to facilitate on-demand networking and interactions with peers in Government and industry. Does DIR require Vendors to have the capability to provide access to a private, online peer networking community that enables users to initiate conversations with other registered users independently (without the help or facilitation of Contractor staff)?

**Answer:** This is not a requirement of this RFO. DIR encourages vendors to provide their most comprehensive offer that describes their ability to provide the services requested within the RFO.

**3.11 Question:** To achieve effective research results, the best vendors employ at least 400 subject matter expert analysts who are dedicated to research to ensure that they can cover all topics within the constantly evolving IT industry.

a. Is there a minimum number of subject matter expert analysts a Vendor must have in order to be compliant? Is one analyst enough? Is 10 analysts enough? Is 200 analysts enough?

**Answer:** Vendor’s ability to provide the services in this RFO should be clearly stated within their response to this RFO.

b. Is it a requirement for Vendors to provide the general qualifications of their analysts in order to provide a common ground for evaluation? Accepting advice from an unqualified or underqualified resource poses a significant risk to DIR.

**Answer:** Vendor’s ability to provide the services in this RFO should be clearly stated within their response to this RFO.

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**Addendum #2**

c. Is it a requirement for Vendors to provide 10 sample analyst biographies in order to demonstrate the qualifications of their available analysts?

**Answer:** Vendor's ability to provide the services in this RFO should be clearly stated within their response to this RFO.

End of Addendum #2

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Item 9.

**Exhibit A  
Vendor Information**

**This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.**

- 1) Company Name: \_\_\_\_\_
  
- 2) Comptroller of Public Accounts Vendor Identification Number: \_\_\_\_\_
  
- 3) Principal place of business  
Address:  
City:  
State:  
Zip Code:
  
- 4) Facility responsible for servicing the contract  
Address:  
City:  
State:  
Zip Code:
  
- 5) Contact Person regarding Vendor's response to the RFO  
Name:  
Address:  
City, State, Zip:  
Phone Number:  
Fax:  
Email:
  
- 6) Contact Person responsible for contract negotiation  
Name:  
Address:  
City, State, Zip:  
Phone Number:  
Fax:  
Email:
  
- 7) Officer or Agent empowered to contractually bind the Vendor:  
Name:  
Title:  
Address:  
Phone Number:  
Fax:  
Email:
  
- 8) Indicate whether or not your company is a certified Historically Underutilized Business (HUB) with the State of Texas by the CPA.  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No

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- 9) Provide the year in which your company was created/incorporated.
- 10) Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included on the Vendor Reference Questionnaire. The Vendor Reference Questionnaire may be submitted through the BidStamp VIS portal. DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR.
- 11) List below by subsection all exceptions to the *Contract for Services* and *Standard Terms and Conditions for Services Contracts* **in redline form**. You must include the basis of your exceptions and provide proposed alternate language. **If Vendor fails to list exceptions in its response, Vendor shall not be permitted to submit exceptions to the same section during the negotiation process or thereafter. Vendor shall not redline the contract or Exhibit A. All exceptions must be listed in the chart below.**

Section	Section Title	Explanation of Exception	Proposed Language (redline)

- 12) Vendor and Subcontractor Conflict of Interest Disclosure  
List below all current or former employees of Vendor and/or proposed Vendor personnel with conflict of interests as follows:

- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.

Vendor Personnel:

<u>Current or Former Employees who are current or former State employees (see Note 1 above)</u>	<u>Vendor Personnel related to State of Texas Employees (see Note 2 above)</u>

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Subcontractor personnel:

<u>Current or Former Employees of Subcontractor(s) who are current or former State employees (see Note 1 above)</u>	<u>Subcontractor Personnel related to State of Texas Employees (see Note 2 above)</u>

3) Vendor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

13) **Proof of Financial Stability.**

All Vendors responding to this RFO and all Vendors that will enter into a contract with DIR must be and remain current in payment of all taxes, including Sales and Franchise Taxes. In general, the Comptroller of Public Accounts must identify the Vendor to be “in good standing” and a Vendor with which the state is authorized to do business.

Vendors must provide a Dun and Bradstreet D-U-N-S number. The D-U-N-S number **MUST** be included in the Vendor’s response. **Failure to include the D-U-N-S number listed for the company shall cause automatic rejection of the response.**

14) **Electronic Product Environment Assessment Tool (EPEAT).** To the extent Customers use products provided by Vendor in the delivery of Services offered under this RFO, indicate whether the products provided are EPEAT certified and identify the applicable EPEAT rating (bronze, silver or gold) for certified products. If products provided are not EPEAT certified, describe Vendor's efforts to obtain EPEAT certified products.

15) **Statement of Compliance**

A. Checklist for the RFO

The following checklist is provided for the convenience of Vendors in their response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFO. Vendors must ensure that all mandatory requirements for this RFO are met, even if they are not included in this checklist. The mandatory documentation must be submitted with the original and each copy of the response.

A completed checklist shall not be binding on DIR’s administrative review for compliance with the mandatory response contents specified in this RFO. As step one of the evaluation process, DIR will review all responses to ensure compliance with the mandatory response contents as specified in Section 4.7.2. of the RFO and reject any response that does not comply.

**All responses must be received by DIR on or before the date and time specified in Section 4.3.1 of this RFO. No late responses will be reviewed.**



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Item	Check
Responses must be submitted in the BidStamp VIS Portal	
<b>Mandatory Response Contents</b>	
Vendor Information – Exhibit A signed	
Vendor History and Experience – Exhibit B	
HUB Subcontracting Plan Forms – BidStamp VIS Form (Print, sign and upload)	
Pricing Form (BidStamp VIS Portal)	
Accessibility Documentation (PDAA), Section 3.3 RFO Requirement	
Service Agreement(s) (if applicable)	

**B. Certification Statement**

The undersigned hereby certifies on behalf of insert company name here that **DIR-TSO-TMP-414** has been read and understood. In submitting its response insert company name here represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- iv) as of the date of signature below, Vendor is not listed in the prohibited Vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- v) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- vi) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vii) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
- (viii) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;
- (ix) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- (x) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (xi) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award; .Enter the name and Social Security Numbers for each person below



**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

(alternatively, if this section applies, Vendor may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- xii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
- (xiv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;
- (xv) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xvi) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;
- (xvii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;
- (xviii) Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements); and
- (xix) Vendor agrees that these representations will be incorporated into any subsequent agreement(s) between Vendor and Customer that result from this RFO.
- (xx) Respondent certifies that there have been  **yes** /  **no canceled contracts** in the past five (5) years. Note: If yes is checked, Respondent must complete Exhibit A, Attachment 1 & 2 and submit with the response.
- (xxi) In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

\_\_\_\_\_  
Signature of Officer or Agent empowered to contractually bind the Vendor

\_\_\_\_\_  
Date

**Department of Information Resources  
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Item 9.

**Exhibit A  
Attachment 1  
List of Vendor's Cancelled Contracts**

**THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR ANY IDENTIFIED CONTRACT CANCELLED WITHIN THE PAST FIVE YEARS REFERENCE AND SUBMITTED WITH THE RESPONDENT'S REQUIREMENTS SUBMISSION**

RESPONDENT NAME: \_\_\_\_\_

COMPANY NAME			
COMPANY ADDRESS (Street, City, State, Zip Code)			
*CONTACT NAME / PHONE			
*E-MAIL			
CONTRACT AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:	
DESCRIPTION OF SERVICE:			
REASON FOR CANCELLATION:			

COMPANY NAME			
COMPANY ADDRESS (Street, City, State, Zip Code)			
*CONTACT NAME / PHONE			
*E-MAIL			
CONTRACT AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:	
DESCRIPTION OF SERVICE:			
REASON FOR CANCELLATION:			

\* Note: Do NOT complete these fields if DIR is the Cancelled Contract Reference



Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414

Item 9.

Exhibit A  
Attachment 2  
RESPONDENT RELEASE OF LIABILITY  
(TO REFERENCE)

**THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE (GENERAL REFERENCES AND CANCELLED CONTRACT REFERENCES) AND SUBMITTED WITH THE RESPONDENTS REQUIREMENTS SUBMISSION**

To company providing the reference:

*Enter name of company providing the reference here*

You are hereby requested to provide a business reference for:

*Enter name of company (Respondent) or key staff person's name needing a reference*

to the:

Texas Department of Information Resources  
Solicitation Evaluation Team

Please disclose any and all information that you deem relevant relating to the above-named parties' business relationship. By signing this document, the entity and, if applicable, individual key staff person signing below releases the above-named company providing a reference, its agents, employees, and all persons, natural or corporate, in privity with above-named company providing a reference from any and all liability, claims or causes of action arising from their disclosure of information pursuant to this request for a business reference.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Respondent Signature)

\_\_\_\_\_  
(Respondent Printed Name)

\_\_\_\_\_  
(Respondent Title)

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Key Staff Signature or "N/A" if Respondent-level release)

\_\_\_\_\_  
(Key Staff Printed Name)

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

**Addendum #3**



**Addendum 3**

**Department of Information Resources**

**IT Research and Advisory Subscription Services  
DIR-TSO-TMP-414**



**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

**Addendum #3**

1. Bid Package 1, Section 4.3, Anticipated Schedule is revised as follows

<b>Date/Time</b>	<b>Activity</b>
09/05/2017	Publish RFO on Electronic State Business Daily
09/12/2017 10:00 AM (CT)	Optional Vendor Conference <b>Webinar Only</b>
09/19/2017 05:00 PM (CT)	Deadline for submitting questions
09/22/2017 05:00 PM (CT)	Deadline for posting answers to questions on the ESBD
10/27/2017 02:00 PM (CT)	Deadline for DIR to receive Vendor references
10/27/2017 02:00 PM (CT)	Deadline for submitting Responses to RFO
10/30/2017 – until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

End of Addendum #3

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

Item 9.

**Addendum #4**



**Addendum 4**

**Department of Information Resources**

**IT Research and Advisory Subscription Services  
DIR-TSO-TMP-414**

**Department of Information Resources  
IT Research and Advisory Subscription Services  
Request for Offer DIR-TSO-TMP-414**

**Addendum #4**

1. Bid Package 1, Section 4.3, Anticipated Schedule is revised as follows

<b>Date/Time</b>	<b>Activity</b>
09/05/2017	Publish RFO on Electronic State Business Daily
09/12/2017 10:00 AM (CT)	Optional Vendor Conference <b>Webinar Only</b>
09/19/2017 05:00 PM (CT)	Deadline for submitting questions
09/22/2017 05:00 PM (CT)	Deadline for posting answers to questions on the ESBD
11/01/2017 02:00 PM (CT)	Deadline for DIR to receive Vendor references
11/01/2017 02:00 PM (CT)	Deadline for submitting Responses to RFO
11/02/2017 – until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

End of Addendum #4

**Amendment Number 1  
to  
Contract Number DIR-TSO-4099  
between  
State of Texas, acting by and through the Department of Information Resources  
and  
Gartner, Inc.**

This Amendment Number 1 to **Contract** Number **DIR-TSO-4099** ("**Contract**") is between the Department of Information Resources ("DIR") and Gartner, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Appendix C. Pricing Index**, is hereby restated in its entirety and replaced with Appendix C, Pricing Index attached hereto.

All other terms and conditions of the **Contract**, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 1, and then the Contract.

**(Remainder of Page Intentionally Left Blank)**

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 4/06/2020.

**Gartner, Inc.**

**Authorized By:** Signature on File

**Name:** Phillip A. Cummings

**Title:** Sr. Director Contracts Counsel

**Date:** 3/27/2019

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 3/29/2019

**Office of General Counsel:** \_ MH 3/29/2019



**Amendment Number 2**  
to  
**Contract Number DIR-TSO-4099**  
between  
**State of Texas, acting by and through the Department of Information Resources**  
and  
**Gartner, Inc.**

This Amendment Number 2 to Contract Number DIR-TSO-4099 (“Contract”) is between the Department of Information Resources (“DIR”) and Gartner, Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Appendix C. Pricing Index (per Amendment 1)**, is hereby updated in its entirety and replaced with **Appendix C, Pricing Index (per Amendment 2)** attached hereto.

All other terms and conditions of the Contract, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 2, then Amendment Number 1, and then the Contract.

**(Remainder of Page Intentionally Left Blank)**

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

**Gartner, Inc.**

**Authorized By:** Signature on File

**Name:** Phillip A. Cummings

**Title:** Sr. Director Contracts Counsel

**Date:** 10/9/2020

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 10/13/2020

**Office of General Counsel:** MH 10/13/2020

**Amendment Number 3**  
**to**  
**Contract Number DIR-TSO-4099**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Gartner, Inc.**

This Amendment Number **3** to **Contract** Number **DIR-TSO-4099** ("**Contract**") is between the Department of Information Resources ("DIR") and Gartner, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through April 6, 2022, or until terminated pursuant to the termination clauses contained in the Contract. There remains one (1) optional one-year renewal. Prior to expiration of this term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party sixty (60) days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. **Contract, Section 6. Notification** is hereby restated in its entirety as follows:

If sent to the State:

Hershel Becker or Successor in Office  
 Chief Procurement Officer  
 Department of Information Resources  
 300 W. 15th St., Suite 1300  
 Austin, Texas 78701  
 Phone: (512) 475-4700

If sent to the Vendor:

Phillip A. Cummings  
 Contracts Counsel  
 Gartner, Inc.  
 1201 Wilson Blvd 17th Floor  
 Arlington, VA 22209  
 Phone: (703) 387-5619  
 Facsimile: (800) 446-3597  
 Email: Phillip.cummings@gartner.com

3. **Appendix C, Pricing Index (per Amendment 2)** is hereby updated in its entirety and replaced with **Appendix C, Pricing Index (per Amendment 3)** attached hereto.

All other terms and conditions of the **Contract**, not expressly amended herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 3, then Amendment Number 2, then Amendment Number 1 and then the Contract.

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**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events no later than April 6, 2021.

**Gartner, Inc.**

**Authorized By:** Signature on File

**Name:** Phillip Cummings

**Title:** Contracts Counsel

**Date:** 4/6/2021

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 4/7/2021

**Office of General Counsel:** Signature on File 4/7/2021



**Amendment Number 4**  
**to**  
**Contract Number DIR-TSO-4099**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Gartner, Inc.**

This Amendment Number 4 to Contract Number DIR-TSO-4099 (“Contract”) is between the Department of Information Resources (“DIR”) and Gartner, Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Appendix A. Standard Terms and Conditions for Product and Related Services Contracts** dated 09/29/2017, is hereby deleted and replaced in its entirety with the attached **Appendix A. Standard Terms and Conditions** dated 12/1/2021.
2. **Appendix C, Pricing Index (per Amendment 3)**, is hereby deleted and replaced in its entirety with **Appendix C. Pricing Index (per Amendment 4)**.
3. **Contract, Section 4. Pricing** is hereby deleted and replaced in its entirety with the following:

#### 4 Pricing

##### 4.1 Pricing Index

Pricing to Customers shall be as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee (as defined below).

##### 4.2 Customer Discount

- a) The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in Appendix C, Pricing Index. Vendor shall not establish a List Price or MSRP for a particular solicitation. For purposes of this Section, “List Price” is the price for a product or service published in Vendor’s price catalog (or similar document) before any discounts or price allowances are applied. For purposes of this Section, “MSRP,” or manufacturer’s suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.

- b) Customers purchasing products or services under this Contract may negotiate additional discounts with Vendor. Vendor and Customer shall provide the details of such additional discounts to DIR upon request.
- c) If products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract, or (ii) to any other customer under the same terms and conditions provided for the State for the same products and services under this contract, then the price of such products and services under this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor for a quantity of one (1), but does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days of providing a lower price as described in this Section, and this Contract shall be amended within ten (10) days to reflect such lower price.

#### **4.3 Changes to Prices**

- a) Subject to the requirements of this section, Vendor may change the price of any product or service upon changes to the List Price or MSRP, as applicable. Discount levels shall not be subject to such changes, and will remain consistent with the discount levels specified in this Contract.
- b) Vendor may revise its pricing by publishing a revised pricing list, subject to review and approval by DIR. If DIR, in its sole discretion, finds that the price of a product or service has been increased unreasonably, DIR may request that Vendor reduce the pricing for the product or service to the level published before such revision. Upon such request, Vendor shall either reduce the pricing as requested, or shall remove the product or service from the pricing list for this Contract. Failure to do so will constitute an act of default by Vendor.

#### **4.4 Shipping and Handling**

Prices to Customers shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees may be charged to Customers for standard shipping and handling. If a Customer requests expedited or special delivery, Customer will be responsible for any additional charges for expedited or special delivery.

4. **Contract, Section 9. Internet Access to Contract and Pricing Information** is hereby inserted immediately after Section 8 as follows:

**9 Internet Access to Contract and Pricing Information**

In addition to the requirements listed in Appendix A, Section 7.2, Internet Access to Contract and Pricing Information, Vendor shall include the following with its webpage:

- a) A current price list or mechanism to obtain specific contract pricing;
- b) MSRP/list price or DIR Customer price;
- c) Discount percentage (%) off MSRP or List Price;
- d) Warranty policies; and
- e) Return policies.

5. **Reserved.**

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

**Gartner, Inc.**

**Authorized By:** Signature on File \_\_\_\_\_

**Name:** Scott Lyon \_\_\_\_\_

**Title:** Director Contracts \_\_\_\_\_

**Date:** 6/7/2022 \_\_\_\_\_

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File \_\_\_\_\_

**Name:** Hershel Becker \_\_\_\_\_

**Title:** Chief Procurement Officer \_\_\_\_\_

**Date:** 6/24/2022 \_\_\_\_\_

**Office of General Counsel:** J.G. 6/23/2022 \_\_\_\_\_

**Amendment Number 5  
to  
Contract Number DIR-TSO-4099  
between  
State of Texas, acting by and through the Department of Information Resources  
and  
Gartner, Inc.**

This Amendment Number **5** to **Contract** Number **DIR-TSO-4099** ("**Contract**") is between the Department of Information Resources ("DIR") and Gartner, Inc. ("**Successful Respondent**"). DIR and Successful Respondent agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to exercise the 90-day extension and then to extend the term of this Contract through July 6, 2024, or until terminated pursuant to the termination clauses contained in this Contract. There are no additional extension options remaining for this Contract. This Contract will expire July 6, 2024.

All other terms and conditions of the Contract as amended, not expressly amended herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 5, then Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment Number 1, and then the Contract.

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**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 4/06/2023.

**Gartner, Inc.**

**Authorized By:** Signature on File

Name: Scott Lyon

Title: Director Legal Affairs

Date: 2/9/2023 | 9:26 AM PST

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 2/14/2023 | 8:08 AM CST

**Office of General Counsel: J G**

## APPENDIX D to DIR Contract No. DIR-TSO-4099

### Gartner, Inc. Services Agreement for NEW BRAUNFELS UTILITIES (“Customer”)

This Service Agreement (“SA”) and DIR Contract No. DIR-TSO-4099 constitutes the complete agreement between **Gartner, Inc.** of 56 Top Gallant Road, Stamford, CT 06904 (“**Gartner**”) and Customer for the Services (as defined below). The SA is based upon and governed by the Contract for Services with the State of Texas Department of Information Services (“DIR”) Contract No. DIR-TSO-4099, between Gartner and DIR, the terms of which are incorporated by reference for use by the Customer. The General Terms contained herein and all applicable Vendor Services Descriptions shall apply to this SA and shall be effective when signed by both parties. Customer agrees to subscribe to the following Services for the term and fees set forth below. All fees shall be as set forth in Appendix C of DIR Contract No. DIR-TSO-4099.

#### 1. DEFINITIONS AND ORDER SCHEDULE

**a. Services** are the subscription-based research and related services purchased by Customer in the Order Schedule below and described in the Service Descriptions.

**b. Service Descriptions**, the terms of which are incorporated by reference, are attached to this SA and describe each Service purchased, specify the deliverables for each Service, and set forth any additional terms unique to a specific Service.

Service Names and Levels of Access are defined in the Service Descriptions. Gartner may periodically update the names and the deliverables for each Service. If Customer adds Services or upgrades the level of service or access, an additional Service Agreement will be required.

#### Summary of Services for NEW BRAUNFELS UTILITIES

<u>Service Name</u>	<u>Level of Access</u>	<u>Quantity</u>	<u>Name of User to be Licensed</u>	<u>Contract Term Start Date</u>	<u>Contract Term End Date</u>	<u>Annual Fee USD</u>	<u>Total Fee USD</u>
Gartner for Chief Financial Officers Team	Leader	1	Dawn Schriewer	01-JUL-2024	30-JUN-2025	\$111,033.00	\$111,033.00
Gartner for Chief Financial Officers Team	Advisor Member	1	Ashley Van Booven	01-JUL-2024	30-JUN-2025	\$37,582.00	\$37,582.00
				Term Total	(Excluding applicable taxes)		\$148,615.00
Gartner for Chief Financial Officers Team	Leader	1	Dawn Schriewer	01-JUL-2025	30-JUN-2026	\$116,584.00	\$116,584.00
Gartner for Chief Financial Officers Team	Advisor Member	1	Ashley Van Booven	01-JUL-2025	30-JUN-2026	\$39,461.00	\$39,461.00
				Term Total	(Excluding applicable taxes)		\$156,045.00
Gartner for Chief Financial Officers Team	Leader	1	Dawn Schriewer	01-JUL-2026	30-JUN-2027	\$122,414.00	\$122,414.00
Gartner for Chief Financial Officers Team	Advisor Member	1	Ashley Van Booven	01-JUL-2026	30-JUN-2027	\$41,434.00	\$41,434.00
				Term Total	(Excluding applicable taxes)		\$163,848.00
				Total Services:	(Excluding applicable taxes)		\$468,508.00

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Minimum Gartner for Financial Officers Team includes three (3) Team Members in addition to the Team Leader. The above non-standard configuration is limited to terms of this agreement only.

## 2. SERVICE DESCRIPTIONS:

<u>Service Name/ Level of Access</u>	<u>Service Description URL</u>
Gartner for Chief Financial Officers Team Leader	<a href="http://sd.gartner.com/sd_cfo_team_leader.pdf">http://sd.gartner.com/sd_cfo_team_leader.pdf</a>
Gartner for Chief Financial Officers Team Advisor Member	<a href="http://sd.gartner.com/sd_cfo_team_advisor_member.pdf">http://sd.gartner.com/sd_cfo_team_advisor_member.pdf</a>

## 3. PAYMENT TERMS

Gartner will invoice Customer in advance for all Services. Payment shall be in accordance with Section 8.3 of Appendix A of the DIR Contract DIR-TSO-4099.

Please attach any required Purchase Order ("PO") to this SA and enter the PO number below. If an annual PO is required for multi-year contracts, Customer will issue the new PO at least 30 days prior to the beginning of each subsequent contract year. Any pre-printed or additional contract terms included on the PO shall be inapplicable and of no force or effect.

**4. CUSTOMER BILLING INFORMATION**

\_\_\_\_\_  
*Purchase Order Number*

\_\_\_\_\_  
*Billing Address*

\_\_\_\_\_  
*Invoice Recipient Name*

\_\_\_\_\_  
*Invoice Recipient Email*

\_\_\_\_\_  
*Invoice Recipient Tel. No.*

**5. AUTHORIZATION  
NEW BRAUNFELS UTILITIES**

**Gartner, Inc.**

\_\_\_\_\_  
*Signature/Date*

\_\_\_\_\_  
*Signature/Date*

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

## General Terms and Guidelines for Vendor's Services

1. This SA for subscription-based research and related services (the "**Services**") is subject to Section 8.B. of Appendix A of the DIR Contract No. DIR-TSO-4099. Cumulative purchases under this Contract shall not exceed \$722,334.00.
2. **Services** are the subscription-based research and related services described herein. Service Descriptions, Names and Levels of Access are as detailed for each product offering. Vendor may periodically update the names and the deliverables for each Service.
3. **Modification of Services by Vendor.** In order to remain current and timely in its Service offerings, Vendor may make minor modifications from time to time in the content of any Service. If Vendor discontinues any Service in its entirety, Customer may, at its option, receive a substitute Service, or obtain a pro rata refund of the fees paid for the discontinued Service.
4. **Licensed User** is the individual named in the Customer Purchase Order who is licensed to use the Services. Customer will limit access to the Services to the agreed upon number of Licensed Users.
5. **Ownership and Use of the Services.** Vendor owns and retains all rights to the Services not expressly granted to Customer. Only the individuals named in the Customer Purchase Order (each a "**Licensed User**") may access the Services. Each Licensed User will be issued a unique password, which may not be shared. Customer agrees to review and comply with the **Usage Guidelines for Gartner Services** ("**Guidelines**"), which are accessible to all Licensed Users via the "Policies" section of [www.gartner.com](http://www.gartner.com). Among other things, these Guidelines describe how Customer may substitute Licensed Users, excerpt from and/or share Vendor research documents within the Customer organization, and quote or excerpt from the Services externally. Customer may not redistribute copies of individual research documents, by electronic means or otherwise, to non-Users without Vendor's prior written permission. Licensed Users may not reproduce or distribute the Services externally without Vendor's prior written permission, except for external distribution, in their entirety only, of reprints of individual documents purchased by Customer.

Customer may excerpt from the Services for external use only if Customer obtains the prior written approval of Gartner Quote Requests, at [quote.requests@gartner.com](mailto:quote.requests@gartner.com). Any approved external use of the Services must comply with Vendor's *Copyright and Quote Policy* which may be viewed on the Gartner Vendor Relations section of [www.gartner.com](http://www.gartner.com). Services may not be stored by Customer on any information storage and retrieval system.

6. **Access to the Services.** ID's for access to Vendor Core Research and Analyst Inquiry may not be shared. Access to the Services is restricted to the number of named individuals (each a "Licensed User") as identified in the Customer Purchase Order.
7. **Monitoring of Usage.** Customer acknowledges and agrees to inform all Licensed Users that Vendor may monitor activity on Vendor's web site, including access to, and use of, the Services by individuals. Upon request, Customer agrees to provide Vendor with assurance from a responsible party (or other relevant evidence) of compliance with these usage terms.
8. **DISCLAIMER OF WARRANTIES.** THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND VENDOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR AS TO ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. CUSTOMER RECOGNIZES THE UNCERTAINTIES INHERENT IN ANY ANALYSIS OR INFORMATION THAT MAY BE PROVIDED AS PART OF THE SERVICES, AND ACKNOWLEDGES THAT THE SERVICES ARE NOT A SUBSTITUTE FOR ITS OWN INDEPENDENT EVALUATION AND ANALYSIS AND SHOULD NOT BE CONSIDERED A RECOMMENDATION TO PURSUE ANY COURSE OF ACTION. VENDOR SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CUSTOMER MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN. CUSTOMER UNDERSTANDS THAT IT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE USE OF THE SERVICES. Customer does not waive or disclaim warranties expressly provided in the DIR Contract
9. **9.1 Applicable Law.** This SA shall be governed by and construed in accordance with the procedural and substantive laws of the State of Texas, without reference to its conflict of law principles, venue for disputes shall be Comal County, Texas.
10. **Customer Confidential Information.** To the extent allowable under the Texas Public Information Act, Vendor agrees to keep confidential any Customer-specific information communicated by Customer to Vendor that is (i) clearly marked confidential if provided in written form, or (ii) preceded by a statement that such information is confidential, if provided in oral form, and such statement is confirmed in writing within 15 days of its initial disclosure. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by Vendor; (3) entered the public domain through no fault of Vendor subsequent to Customer's communication to Vendor; (4) is in Vendor's possession free of any obligation of confidence at the time of Customer's communication to Vendor; or (5) is communicated by the Customer to a third party free of any obligation of confidence. Additionally, Vendor may disclose such information to the extent required by legal process. Customer acknowledges that Vendor is in the business of researching and analyzing information technology and this obligation of confidence shall not apply to information obtained by Vendor's research, analysis or consulting organization(s) from other sources.
11. **Insurance** Per the DIR Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the DIR Contract. Promptly, upon execution of this Agreement and upon future request



from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

12. **Notice of Cybersecurity Breach** In the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a cybersecurity event or breach, the Vendor shall notify NBU within 72 hours of the event or breach. Before NBU will allow Vendor access to the NBU network after a cybersecurity event or breach, Vendor shall provide NBU with: (1) an audit of the systems compromised to be completed by an independent firm unaffiliated with Vendor and (2) evidence that the Vendor's system is no longer a threat to the NBU network."

**SERVICE DESCRIPTION**  
**Attachment to the Service Agreement**  
**GARTNER FOR CHIEF FINANCIAL OFFICERS TEAM**  
**TEAM LEADER**

Gartner for Chief Financial Officers Team: Team Leader (the “Service”) is for CFOs/heads of finance and their leadership teams at the client company (“Client”). The Service provides Client with (i) an ongoing advisory relationship with Gartner, and (ii) access to Gartner Research covering the finance sector and specific finance roles in a team environment. The Service requires the separate purchase of Gartner for Chief Financial Officers Team Member Services.

**DELIVERABLES**

The Gartner for Chief Financial Officers Team is comprised of two sets of users: (i) the “Team Leader”, and (ii) “Team Members” designated by Client and listed in the Service Agreement. Collectively, the Team Leader and Team Members are “Licensed Users”.

1. The Team Leader is entitled to the following Gartner Deliverables:

- Assigned Service Delivery Team
- Virtual Strategy Meetings
- Peer Experiences
- Peer & Practitioner Research
- Gartner Research for Finance Roles
- Tools and Templates
- Virtual Strategy Meetings
- Functional Diagnostics
- Webinars
- Individual Inquiry
- Team Inquiry
- CFO & Finance Executive Conference Ticket

2. Additional information on the Deliverables listed above include the following:

(a) **Assigned Service Delivery Team:** A Service Partner, who is a member of the Assigned Service Delivery Team (“Delivery Team”), will serve as Licensed User’s primary point of contact for this Service. The Service Partner will work with Licensed User to develop and continuously evolve an advisory plan to: (i) highlight value sought, (ii) identify key issues on which service delivery will focus, and (iii) define how the Service will deliver that value. The Service Partner will, as necessary, select and synthesize research in accordance with the plan. Client interactions with the Service Partner may include Strategy Meetings, research expert dialogues, CFO & Finance Executive Conference attendance, Facilitated Networking interactions or Service Partner teleconferences or meetings. A client success manager, also a member of the Delivery Team, will work in partnership with the Service Partner to facilitate a coordinated service approach.

(b) **Virtual Strategy Meetings:** Service Partner will meet with Team Leader for coaching and advice on strategic planning and execution of (i) review and apply relevant finance research content, (ii) recommend appropriate experts on issues of relevance to Client, and/or (iii) develop, discuss progress of and, where necessary, modify the advisory plan.

(c) **Peer Experiences**

Gartner provides opportunities for peer engagement in a variety of ways. Licensed Users have access to Gartner assets that enable ratings and reviews, connecting with qualified peers, access to community features, and exclusive features specific to client role.

**Facilitated Networking:** Service Delivery Team will, upon request, arrange meetings with peers around a specific topic to discuss best practices or areas of expertise.

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**ADDITIONAL USAGE INFORMATION**

The Team Leader may forward to others in the client company up to 25 (twenty-five) Gartner Research documents per contract year. This forwarding may not be done in a manner that has the intent or effect of avoiding the purchase of additional User licenses.

Participation in inquiry calls is limited to the Licensed User(s) and Gartner experts only (i.e., non-Users, either inside or outside the client company, may not attend or otherwise participate on an inquiry call). The Team Leader is entitled to two types of inquiry: (i) inquiry sessions with an expert (“Individual Inquiry”) which may be scheduled independent of other Team Members; and (ii) inquiry sessions with an expert and other members of the team (“Team Inquiry”). For Team Inquiry sessions: (i) the Team Leader must schedule and attend the sessions; and (ii) Team Members may lead the discussion or pose questions to the expert on behalf of the team, provided all such questions and discussions advance the Team Leader’s agenda.

The Conference Ticket is a numbered identifier (e.g., 424562) that entitles Licensed User to register for one (1) conference as specified in the Ticket Letter emailed to Client. Tickets are valid for 12 (twelve) months from the date of issue, per the expiration date on the Ticket Letter. Tickets provided as part of a Gartner research offering are valid only for Gartner conferences during the contract term of that service. One (1) Ticket is issued per contract term of 12 (twelve) months – a shorter contract term does not entitle Client to a Ticket. Tickets are transferable within the client company but may not be transferred to another company. A single Ticket may not be used by more than one (1) individual and may not be used for admission to any Gartner conference other than a CFO & Finance Executive Conference.

Client companies around the world trust Gartner to be objective and independent in its research and advice, and Gartner takes that responsibility seriously. To preserve the objectivity of research, Gartner does not promise Clients favorable coverage or leads from its research experts. Gartner does not provide access to confidential client information, offer aid to secure capital funding, or sell any product for use in litigation. There are no exceptions. If you have questions, please email [ombuds@gartner.com](mailto:ombuds@gartner.com).

Use of this Service is governed by the [Gartner Usage Policy](#) and the [Gartner Content Compliance Policy](#) which are accessible on the Policies section of [gartner.com](http://gartner.com).

**SERVICE DESCRIPTION**  
**Attachment to the Service Agreement**  
**GARTNER FOR CHIEF FINANCIAL OFFICERS TEAM:**  
**ADVISOR TEAM MEMBER**

Gartner for Chief Financial Officers Team: Advisor Team Member (the “Service”) is for senior finance leaders and their leadership teams at the client company (“Client”). The Service provides Client with (i) an ongoing advisory relationship with Gartner, and (ii) access to Gartner Research covering the finance sector and specific finance roles in a team environment. This Service requires the separate purchase of a Chief Financial Officers Team Leader Service.

**DELIVERABLES**

Gartner for Chief Financial Officers is comprised of two sets of users: (i) the “Team Leader”, and (ii) “Team Members” designated by Client and listed in the Service Agreement. Collectively, the Team Leader and Team Members are “Licensed Users”.

1. The Advisor Team Member is entitled to the following Gartner Deliverables:

- Gartner Research for Finance Roles
- Peer Experiences
- Peer & Practitioner Research
- Facilitated Networking
- Tools and Templates
- Functional Diagnostics
- Webinars
- Individual Inquiry
- Team Inquiry
- CFO & Finance Executive Conference Ticket

2. Additional information on the Deliverables listed above include the following:

Licensed Users may deploy Functional Diagnostics to both Licensed and Non-licensed Users in the client company.

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**ADDITIONAL USAGE INFORMATION**

Participation in inquiry calls is limited to Licensed User(s) and Gartner research expert only (i.e., non-Users, either inside or outside of the client company, may not attend or otherwise participate on an inquiry call). Team Members are entitled to two types of inquiry: (i) inquiry sessions with an expert (“Individual Inquiry”) which may be scheduled independent of other Team Members; and (ii) inquiry sessions with an expert and the team (“Team Inquiry”). For Team Inquiry sessions: (i) the Team Leader must schedule and attend the sessions; and (ii) Team Members may lead the discussion or pose questions to the expert on behalf of the team, provided all such questions and discussions advance the Team Leader’s agenda.

The Conference Ticket is a numbered identifier (e.g., 424562) that entitles Licensed User to register for one (1) conference as specified in the Ticket Letter emailed to Client. Tickets are valid for 12 (twelve) months from the date of issue, per the expiration date on the Ticket Letter. Tickets provided as part of a Gartner research offering are valid only for Gartner conferences during the contract term of that service. One (1) Ticket is issued per contract term of 12 (twelve) months – a shorter contract term does not entitle Client to a Ticket. Tickets are transferable within the client company but may not be transferred to another company. A single Ticket may not be used by more than one (1) individual and may not be used for admission to any Gartner conference other than a CFO & Finance Executive Conference.

Client companies around the world trust Gartner to be objective and independent in its research and advice, and Gartner takes that responsibility seriously. To preserve the objectivity of research, Gartner does not

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promise Clients favorable coverage or leads from its research experts. Gartner does not provide access to confidential client information, offer aid to secure capital funding, or sell any product for use in litigation. There are no exceptions. If you have questions, please email [ombuds@gartner.com](mailto:ombuds@gartner.com).

Use of this Service is governed by the [Gartner Usage Policy](#) and the [Gartner Content Compliance Policy](#) which are accessible on the Policies section of [gartner.com](http://gartner.com).





**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Stewardship**

**Financial Excellence**

**EXHIBITS**

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1. DIR-TSO-4099 Contract

Vendor Contract No. \_\_\_\_\_

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES**

**Gartner, Inc.**

**1. Introduction**

**A. Parties**

This Contract for Services ("Contract") is entered into between the State of Texas ("State"), acting by and through the Department of Information Resources ("DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and *Gartner, Inc.* ("Vendor"), with its principal place of business at 56 Top Gallant Road, Stamford CT, 06902.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-414, on August 8, 2017, for IT Research and Advisory Subscription Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-414 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Service Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-414, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-414, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with three (3) optional one-year renewals. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

**3. Service Offerings**

Services available under this Contract are limited to IT Research and Advisory Subscription Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services

Vendor Contract No. \_\_\_\_\_

awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-1647  
Facsimile: (512) 475-4759  
Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

Phillip A. Cummings  
Contracts Counsel  
Gartner, Inc.  
1201 Wilson Blvd 17th Floor;  
Arlington VA 22209  
Phone: (703) 387 - 5619  
Facsimile: (800) 446-3597  
Email: [phillip.cummings@gartner.com](mailto:phillip.cummings@gartner.com)

**7. Service Agreement**

**A)** Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

Vendor Contract No. \_\_\_\_\_

**B) Conflicting or Additional Terms**

In the event that conflicting or additional terms in Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

**8. Authorized Exceptions to Contract and any Appendices.**

**A. Appendix A, Section 4, Intellectual Property Matters, B. Ownership,** is hereby amended and replaced in its entirety as follows:

**B. Ownership**

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all



Vendor Contract No. \_\_\_\_\_

Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday thru Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

Ownership of Prior Rights by Customer – All tangible and intangible property including the Intellectual Property Rights therein, which are owned by Customer prior to the execution of any Statement of Work (e.g. copyrights, trademarks, etc.) shall to be exclusively owned by the Customer and Vendor shall have no ownership thereof and no rights thereto other than the limited, non-exclusive right to use such property for purposes set forth in a Statement of Work and only for the duration of such Statement of Work which is hereby granted to Vendor by Customer.

Ownership of Prior Rights by Vendor – All tangible and intangible property including the Intellectual Property Rights therein, which is owned by Vendor prior to the execution of any Statement of Work (e.g. pre-existing tools, processes, methodologies, proprietary research data and proprietary databases) (hereinafter “Pre-existing Vendor IP”) shall continue to be exclusively owned by the Vendor and Customer shall have no ownership thereof and no rights thereto other than the limited, non-exclusive right to use such Pre-existing Vendor IP for internal business use, solely for purposes set forth in a Statement of Work.

Ownership of Pre-Existing Right Embodied in Deliverables – Ownership Where Pre-Existing Rights become embodied in Works. To the extent any pre-existing rights or property of either party are embodied or contained in the Works, each party shall retain ownership of its pre-existing rights and property (e.g. Vendors pre-existing tools, processes, methodologies, proprietary research data, and proprietary databases) (hereinafter “Pre-existing Vendor IP”) shall continue to be exclusively owned by Vendor and Customer shall have no ownership thereof, and no rights thereto other than the limited, non-exclusive right to use such Pre-existing Vendor IP for internal business use, solely for purposes set forth in a Statement of Work, which is hereby granted by Vendor.

- B. Appendix A, Section 9, Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions,** is hereby amended and replaced in its entirety as follows:

**2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any intentional, willful, reckless, negligent or otherwise wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY

Vendor Contract No. \_\_\_\_\_

GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- C. **Appendix A, Section 9, Vendor Responsibilities, K. Limitation of Liability**, is hereby amended and replaced in its entirety as follows:

**K. Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the greater of three (3) times the total amount paid to Vendor for the Statement of Work or Task Order that gave rise to the claim under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action or \$1,000,000. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind.

Vendor Contract No. \_\_\_\_\_

This Contract is executed to be effective as of the date of last signature.

Gartner, Inc.

Authorized By: /Signature on File/

Name: Phillip A. Cummings

Title: Sr. Director Contracts Counsel

Date: 3/29/2018

The State of Texas, acting by and through the Department of Information Resources

Authorized By: /Signature on File/

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 4/6/2018

Office of General Counsel: DB 4/6/2018



**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Jeff Morriss  
Substations Manager      **Reviewed by:** Gretchen Reuwer  
Director of Electric Services and Compliance

**Submitted by:** Gretchen Reuwer  
Director of Electric Services and Compliance      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with B Comm Constructors L.L.C. for Fiber Optic Outside Plant Maintenance and Emergency Services

## **BACKGROUND**

New Braunfels Utilities (“NBU”) issued a request for proposals (“RFP”) for maintenance and emergency services for fiber optic outside plant to establish a maintenance testing agreement and multiple emergency response agreements (the “Services and Goods”).

The Services and Goods will include on-call attachment transfers, emergency troubleshooting and repair response, and scheduled routine maintenance testing of NBU-owned fiber optic assets. NBU will issue Purchase Orders annually for maintenance testing and as needed for transfers and emergency services.

NBU received five (5) proposals on August 2, 2023, for the Services and Goods during the public bidding process. An Evaluation Committee was established including three (3) NBU employees to review and score the proposals. The Evaluation Committee determined that B Comm Constructors L.L.C. (“B Comm”) is the respondent whose proposal for the Services and Goods are the most advantageous to NBU considering the relative importance of price and the evaluation criteria in the RFP. Three (3) other proposals demonstrated sufficient qualifications for on-call attachment transfers and emergency troubleshooting and repair response services. Those respondents will be contracted separately for those services but will not provide maintenance testing services.

NBU staff requests that the Board of Trustees approve a Services and Goods Agreement with B Comm (the “Agreement”).

This item is being presented to the Board because the total amount of the Agreement exceeds \$250,000.

**FINANCIAL IMPACT**

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The total contract amount for the Agreement is \$90,000 per year and \$450,000 for the five (5) year duration of the Agreement. The Services and Goods are budgeted within the fiscal year 2024 through fiscal year 2025 NBU Board approved Operations and Maintenance Budget.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Infrastructure and Technology**

**Safety and Security**

**EXHIBITS**

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1. Goods and Services Agreement with B Comm Constructors L.L.C.
2. Memorandum of Recommendation from Evaluation Committee



## SERVICES AND GOODS AGREEMENT

This **SERVICES AND GOODS AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **B COMM CONSTRUCTORS L.L.C.**, a Texas limited liability company (the “Vendor”).

For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, and intending to be legally bound hereby, the parties agree as follows.

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below (the “Effective Date”), and will remain in full force and effect for a period of one (1) year from April 25, 2024, to April 24, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Term extend beyond April 24, 2029.
  
2. **Scope of Services, Purchases.**
  - 2.1. **Scope of Services.** The Vendor shall perform the Services described in Exhibit A (the “Services”) within the timeframe specified therein.
  
  - 2.2. **Purchase of Goods.** Unless otherwise directed in writing by NBU, the Vendor shall purchase, as needed, goods related to the Services described in Exhibit A, which shall be reimbursed in accordance with Section 3.
  
3. **Payment.**
  - 3.1. **Amount.** NBU shall pay the Vendor in accordance with the terms and conditions herein the amount set forth in Exhibit B for the Services. Exhibit B shall contain the Total Compensation for the Vendor, which is the maximum dollar amount that the Vendor can be paid under this Agreement for Services and goods.
  
  - 3.2. **Billing Period.** NBU shall pay the Vendor within thirty (30) days after receipt and approval of invoices to the extent the Services have been satisfactorily performed under the terms of this Agreement. NBU shall pay the Vendor for any goods purchased in accordance with the terms stated therein. All invoices provided by the Vendor to NBU shall include documentation and itemization that is satisfactory to NBU of all work completed to date. In the event NBU fails to timely pay any uncontested portion of any invoice within thirty

(30) days of receipt and approval of the Vendor's invoice, the Vendor shall have the right to suspend work.

- 3.3. Reimbursable Expenses and Goods. In order for a Vendor expense, including the purchase of a good related to the Services hereunder, to be reimbursable under this Agreement, each such expense must first have been described in detail and/or contemplated in Exhibit A and shall be specifically described in detail in an invoice provided by the Vendor to NBU after such expense has been incurred. All reimbursable expenses, including goods purchased in connection with performing the Services under this Agreement, shall be included in the calculation of the elements of the Total Compensation listed in Exhibit B. An expense not complying with these requirements shall not be reimbursable by NBU in NBU's sole discretion.

#### **4. Obligations and Representations of Vendor.**

- 4.1. Performance and Compliance with Laws. The Vendor shall perform the Services in compliance 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 requested in writing by NBU, the Vendor shall promptly furnish satisfactory proof of compliance to NBU.
- 4.2. Warranties.
- a. Performance Warranty. The Vendor warrants that the Services provided under this Agreement shall be of the highest quality and standards in accordance with such industry in this country. This warranty shall be in addition to and not in lieu of all other warranties or guaranties offered or provided by the Vendor for the Services and goods.
  - b. Warranties for Goods. All manufacturer warranties and guaranties of goods provided pursuant to this Agreement shall inure to the benefit of NBU. The Vendor shall warrant all work free of defects in materials and workmanship for a period of one (1) year from the date of final acceptance of all work. The Vendor shall, within 30 calendar days after receipt of written notice, repair defects in materials and workmanship that may develop during said one (1) year period, and any damage to other work caused by such defects or the repairing of same, at the Vendor's expense, in a manner acceptable to NBU. The Vendor shall provide NBU the full original equipment manufacturer ("OEM") warranties and guaranties provided by the OEM for all Services and goods under this Agreement free of all liens, claims, and encumbrances. For example, if an OEM offers full replacement of a warranted product at no charge to the Vendor, then the Vendor shall replace such item and shall not charge NBU for such replacement.

- 4.3. Personnel. The Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Vendor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Vendor shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.
- 4.4. Licenses; Materials. The Vendor shall maintain in current status all federal, state, and local licenses and permits required for the Vendor to perform the Services and operate its business. NBU has no obligation to provide the Vendor, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Vendor.
- 4.5. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE OR AGENT THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN “INDEMNIFIED PARTY”), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS’ FEES AND COURT COSTS) TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER (“CLAIMS”), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE GOODS OR SERVICES PROVIDED BY THE VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS FOR THE VENDOR SET FORTH HEREIN SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**
- 4.6. Insurance. The Vendor shall continuously during the Term comply with the following requirements regarding insurance:
- a. Insurer Qualifications. Without limiting any obligations or liabilities of the Vendor, the Vendor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A-VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU’s option.
  - b. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Vendor. NBU

- reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Vendor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
  - d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
  - e. Primary Insurance. The Vendor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
  - f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
  - g. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Vendor. The Vendor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
  - h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Vendor shall be solely responsible for any such deductible or self-insured retention amount.

- i. Use of Subcontractors. The Vendor shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Vendor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Vendor. The Vendor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- j. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Vendor shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Vendor's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.
- k. Required Insurance Coverage. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.
  - i. Commercial General Liability. The Vendor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
  - ii. Auto Liability. The Vendor shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Vendor's owned or hired and



non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Vendor under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

- iii. Professional Liability. The Vendor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Vendor, or anyone employed by the Vendor, or anyone for whose negligent acts, mistakes, errors and omissions Vendor is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Vendor’s Liability insurance policy is written on a “claims made” basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Vendor shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers’ Compensation and Employer’s Liability Insurance. The Vendor shall maintain Workers’ Compensation insurance to cover the Vendor’s employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- 1. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days’ prior written notice to NBU.

#### 4.7. Additional Representations.

- a. Prohibited Gifts, Bonus, Commission, Money, and Other Consideration. The Vendor represents and warrants that the Vendor 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 NBU under this Agreement. Violation of this Section shall subject this Agreement to termination under the Termination provisions of this Agreement. The Vendor further agrees that the Vendor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this

Agreement) for any of the Services performed by the Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Vendor, the Vendor shall immediately report that fact to NBU and, NBU, in its sole discretion, may terminate this Agreement.

- b. Prohibition on Contracts with Companies Boycotting Israel. The Vendor hereby verifies that it and its parent company, wholly- or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.
- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. The Vendor represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Vendor and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.

- d. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. If the Vendor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Vendor represents the following:
- i. it is not owned by or the majority of stock or other ownership interest in the Vendor is not held or controlled by:
    1. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
    2. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
  - ii. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. “Affiliate,” with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

- e. Prohibition on Contracts with Companies Boycotting Energy Companies. The Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2276 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.

- f. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. The Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.

- g. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. The Vendor represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.

## 5. Obligations and Representations of NBU.

- 5.1. Authority to Enter into Agreement. To the fullest extent authorized by law, NBU warrants that it has authority to execute and enter into this legally binding Agreement.
- 5.2. Binding Obligation. This Agreement constitutes a legal, valid, and binding obligation of NBU enforceable against it in accordance with the terms herein.

## 6. Termination.

- 6.1. For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Vendor. Upon termination for convenience, the Vendor will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Vendor may suspend work if the Vendor reasonably determines that working conditions at the site (outside the Vendor’s control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Vendor that are materially interfering with the normal progress of the work. The Vendor’s suspension of work hereunder shall be without prejudice to any other remedy of the Vendor at law or equity.

- 6.2. For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the non-defaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Vendor for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.
- 6.3. Non-Collusion. If NBU determines that the Vendor gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, or if the Vendor otherwise violated its obligations under Section 4.7(a), NBU may, in its sole discretion, terminate this Agreement.
- 6.4. Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Vendor fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Vendor shall be relieved of any subsequent obligation under this Agreement.

## **7. Confidentiality; Texas Public Information Act.**

- 7.1. Confidentiality of Records. The Vendor shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Vendor's



obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Vendor's duties under this Agreement. Persons requesting such information should be immediately referred to NBU. The Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Vendor as needed for the performance of duties under this Agreement.

- 7.2. Confidential Information. To the extent that confidential and proprietary information of each party ("Confidential Information") is exchanged and received in connection with the Services or goods, each party agrees not to use the other party's Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties. Use by third party contractors may be permitted so long as such contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section. "Confidential Information" includes (but is not limited to) the Vendor's Confidential Information (as defined below), and does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information previously known by or developed by the receiving party independent of the Confidential Information or (iii) information that the receiving party rightfully obtains without restrictions on use and disclosure.
- 7.3. Vendor Confidential Information. "Vendor Confidential Information" means any pre-existing proprietary or Confidential Information of the Vendor created by the Vendor and used to perform the Services, or included in any goods provided, including but not limited to software, appliances, methodologies, code, templates, tools, records, data or other intellectual property shall remain the exclusive property of the Vendor.
- 7.4. Conflict with Applicable Statute or Law. Nothing in this Section is intended to reduce or conflict with any duty, obligation or provision contained in the Texas Public Information Act, the Texas Open Meetings Act, or any other applicable statute or rule.
- 7.5. Texas Public Information Act. The Vendor recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within this Agreement, the Vendor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in Section 9.13.

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

The Vendor must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Vendor on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Vendor; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Vendor agrees that the Agreement can be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

## **8. Information Technology and Intellectual Property Infringement.**

- 8.1. Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the Vendor with non-exclusive, limited access to NBU's information technology infrastructure. The Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all the Vendor's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Vendor's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Vendor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- 8.2. Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Vendor shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

- 8.3. Data Security. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Vendor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- 8.4. Compromised Security. In the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Vendor shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **THE VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM VENDOR'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.**
- 8.5. Intellectual Property Infringement. **THE VENDOR SHALL DEFEND AND INDEMNIFY NBU AGAINST ANY COSTS, LIABILITIES OR DAMAGES (INCLUDING ATTORNEY'S FEES) ARISING FROM A CLAIM THAT NBU'S AUTHORIZED USE OF ANY SERVICE OR GOODS PURCHASED PURSUANT TO THIS AGREEMENT INFRINGES ANY PATENT, COPYRIGHT, TRADEMARK OR TRADE SECRET.** NBU agrees to notify the Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify the Vendor of such claim or suit, NBU's failure to so notify the Vendor shall not diminish the Vendor's indemnity obligations hereunder. The Vendor shall have control of any such suit and NBU shall cooperate with the Vendor in connection with its defense at the expense of the Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if the Vendor believes that such Service or good is likely to become the subject of an infringement claim, the Vendor shall (i) obtain the right for NBU to continue to use such Service or good or (ii) replace or modify the Service or good so as to make it non-infringing and equal to the functionality of such Service or good described in this Agreement.
- 9. Miscellaneous.**
- 9.1. Independent Contractor. The Vendor acknowledges that the Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Vendor shall not represent, either expressly or through implication, that the Vendor is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Vendor.
- 9.2. Governing Law; Venue. This Agreement and all of the 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 Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.

- 9.3. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Vendor.
- 9.4. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- 9.5. Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 9.6. 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. Any purported assignment in violation of this Section shall be null and void.
- 9.7. Subcontractors. The Vendor shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Vendor of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Vendor.
- 9.8. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. 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. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 9.9. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.

- 9.10. Liens. All goods or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.
- 9.11. Offset for Damages, Delinquent Fees or Taxes. In addition to all other remedies at law or equity, NBU may offset from any money due to the Vendor any amount the Vendor owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, goods, equipment rental, travel expenses and associated costs. NBU may offset from any money due to the Vendor any amount the Vendor owes to NBU for delinquent fees, including any interest or penalties.
- 9.12. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

**To NBU:**

New Braunfels Utilities  
 Attn: Director of Electric Services  
 355 FM 306  
 New Braunfels, TX 78130

With a copy to:

Purchasing Manager  
 New Braunfels Utilities  
 355 FM 306  
 New Braunfels, TX 78130

**To the Vendor:**

B Comm Constructors L.L.C.  
 PO BOX 200463  
 San Antonio, TX 78219-0463

or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in the manner set forth in this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being



given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 9.13. Right to Audit. NBU shall have the right to examine and audit the books and records of the Vendor with regard to the Services and/or goods obtained pursuant to this Agreement, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall 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.
- 9.14. 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.
- 9.15. 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.
- 9.16. 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.
- 9.17. Multiple 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.
- 9.18. Exhibits. All Exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- 9.19. Conflicting Terms. In the case of any conflicts between the terms of this Agreement and an Exhibit to this Agreement, the statements in the body of this Agreement shall govern.
- 9.20. 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.

- 9.21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 9.22. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.
- 9.23. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, pandemics, epidemics, 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. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. 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.
- 9.24. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give written notice within five (5) business days 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. Third, 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.

- 9.25. Survival. The sections of this Agreement that by their terms are intended to survive the termination of this Agreement shall so survive.
- 9.26. Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.
- 9.27. Electronic Signatures. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

*(The remainder of this page intentionally left blank)*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this the \_\_\_\_ day of \_\_\_\_\_, 2024.

**NBU:**

**NEW BRAUNFELS UTILITIES,**  
a Texas municipally owned utility

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: Chief Executive Officer

**VENDOR:**

**B COMM CONSTRUCTORS L.L.C.,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: Billy Baldwin  
Title: President

## Exhibit A

### Scope of Services

The Vendor shall provide all labor, material, and equipment necessary to perform all operation and administration functions for fiber maintenance and emergency services for NBU and other entities jointly attached on, or otherwise sharing, NBU's optical fiber infrastructure, as reasonably specified by NBU.

The Vendor shall provide fiber maintenance and emergency services as described herein.

1. The Vendor shall provide Optical Time-Domain Reflectometer ("OTDR") testing on an annual basis for dark fiber and in-use fiber, which shall be scheduled by the NBU Substation Manager or his or her authorized designee. Dark fiber is defined as fiber that is not in use. The Professional shall provide OTDR testing results to NBU in PDF format within thirty (30) days after performing the OTDR test. Pricing for the OTDR testing shall be based on 1,500 strands annually, which are terminated at various facilities in and around the City of New Braunfels.
  
2. The Vendor shall establish and maintain an emergency response system twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year for NBU to communicate service requests related to this Agreement with the Professional. The Professional shall provide an emergency phone number and/or email to NBU for use in the event that any outside fiber optic plant issues arise. The emergency contact information may be the same or different than the contact information used during regular business hours provided that NBU is given clear guidance for hours of operation for all contacts the Professional provides. When the Vendor has been alerted to a problem through the emergency response system, the Vendor shall make email contact with NBU within four (4) hours of such alert during normal business hours and within two (2) hours during non-business hours. The email confirmation the Professional sends to NBU shall include a unique service call identification number. The Vendor shall begin gathering information from NBU regarding the outage and begin troubleshooting to identify the issue or to begin making necessary repairs. The Vendor shall be on the job site within eight (8) hours of sending the email confirmation. The Vendor shall arrive with necessary staff and equipment to complete emergency repairs.
  
3. NBU personnel may contact the Vendor to request routine pole attachment transfers. NBU shall keep track of such transfers. The Vendor shall transfer existing fiber optic cable located in close proximity (generally twelve (12) inches) to energized electric conductors and equipment for NBU throughout its service territory and in adjacent portions of Guadalupe Valley Electric Cooperative's service territory for services related to this Agreement. NBU averages ten (10) outside plant repairs, adjustments, or modifications and twenty-five (25) fiber optic pole attachment transfers annually.



4. The Vendor shall provide OTDR testing and/or power meter testing on all installations, modifications, splices, or other work that subjects fiber optic components to potential damage as directed by NBU when the work is complete. The maximum allowable loss standards are 0.3 decibel per kilometer of fiber cable, 1.0 decibel per connector, and 0.25 decibel per splice. If these loss standards are not met, or if the total end to end loss exceeds the tolerances of the receiving end equipment, the Vendor shall make corrections to achieve passing results at no additional cost to NBU.
5. The Vendor shall also provide the Services listed in Table 1 to NBU. These Services will vary in magnitude and complexity and are comprised of various combinations of the work units in Table 1.

The below units shall include labor and materials except as noted otherwise.

<b>Table 1</b>	
Item #	Description
1	Conduit Excavation (soil) – Excavate and backfill in existing trench or soil conditions up to 48” depth and 72” long for conduit repairs or installation.
2	Conduit Excavation (rock) – Excavate and backfill in solid rock up to 48” depth and 72” long for conduit repairs or installation.
3	Conduit repair – Remove damaged conduit and replace with new conduit up to 4” polyvinyl chloride (PVC) or split conduit and up to 60” in length.
4	Conduit installation – Install up to 4” PVC at up to 48” depth of cover. Includes fittings, sweeps, mule tape for cable pulling, and warning tape installed 12” above conduit.
5	Tracer wire - #12 American Wire Gauge (AWG) copper with green insulation in existing underground conduit
6	One 1.25” Innerduct – One 1.25” innerduct in existing 4” conduit.
7	Two 1.25” Innerducts – Two 1.25” innerducts in existing 4” conduit.
8	Three 1.25” Innerducts – Three 1.25” innerducts in existing 4” conduit.
9	Hand Hole (not traffic rated) – Excavate, backfill, and finish hand hole. Enclosure shall be CDR Systems B10132418A and Cover shall be C10132402A017 or equivalent.
10	Hand Hole Cover (not traffic rated) - Replace cover on existing enclosure. Cover shall be C10132402A017 or equivalent.
11	Hand Holes (traffic rated) – Excavate, backfill, and finish hand hole. Enclosure shall be CDR Systems B12132418A and Cover shall be C12132402A017 or equivalent.
12	Hand Hole Cover (traffic rated) - Replace cover on existing enclosure. Cover shall be C12132402A017 or equivalent.
13	1/4" Messenger Wood Structure - 1/4” messenger attached with three bolt and through bolt assembly at each tangent pole with crimped grounding connection to pole ground.

14	1/4" Messenger Metal Structure - 1/4" messenger attached with three bolt and through bolt assembly at each tangent pole with crimped grounding connection to pole ground.
15	Aerial Integrated Messenger Conduit Wood Structure – Up to 2" diameter extruded polymer duct with extruded plastic jacket on 1/4" messenger attached with three bold and through bolt assembly at each tangent pole with crimped grounding connection to pole ground.
16	Aerial Integrated Messenger Conduit Metal Structure – Up to 2" diameter extruded polymer duct with extruded plastic jacket on 1/4" messenger attached with three bolt and through bolt assembly at each tangent pole with crimped grounding connection to pole ground.
17	1/4" Messenger Tension Deadend – Through bolt with thimble eye attachments, pre-formed dead-end grips, crimped lashing termination, crimped pole ground connection.
18	1/4" Messenger Slack Deadend – Through bolt with thimble eye attachments, pre-formed dead-end grips, crimped lashing termination, crimped pole ground connection.
19	Lash Fiber- Double lash fiber to existing messenger.
20	Aerial Splice Case – AFL Apex X-2 Sealed Splice Closure or approved equivalent with up to 12 splice module cassettes and no more than 36 single stacked fusion splices per cassette. Attach aerial splice case and secure associated slack with lashing or metal tie wraps to messenger.
21	Snowshoe - Slack storage brackets to messenger per manufacturer's specification.
22	Extension Bracket- Bracket with through bolt assembly to offset attachment away from pole.
23	Transfer In-Line Cable- Transfer existing cable from one pole to another using 3 bolt suspension clamp.
24	Transfer Cable Deadend Wood Structure – Transfer messenger and cable using a thimble eye bolt assembly.
25	Transfer Cable Deadend Metal Structure – Transfer messenger and cable using a thimble eye bolt assembly.
26	Transfer Down Guy Wood Structure -Transfer down guy to thimble eye on adjacent structure using new preformed guy grips.
27	Transfer Down Guy Metal Structure -Transfer down guy to thimble eye on adjacent structure using new preformed guy grips.
28	Riser Wood Structure – Up to 4" PVC attached with at least 3 standoff brackets attached with one trough bolt assembly and one lag screw per bracket.
29	Riser Metal Structure – Up to 4" PVC attached with at least 3 standoff brackets attached with two rivenut assemblies per bracket.
30	Riser Conduit – Up to 4" PVC attached to at least 3 existing standoff brackets.
31	Transfer Riser Cable and Conduit -Transfer riser conduit, 3 standoff brackets, and cable to adjacent structure.
32	Top Wood Pole- Remove top portion of pole above attachments.
33	Top Metal Pole- Remove top portion of pole above attachments.

34	Down Guy Wood Structure – ¼” down guy with yellow plastic guy guards, strain insulator, and new preformed guy grips attached with thimble eye.
35	Down Guy Metal Structure – ¼” down guy with yellow plastic guy guards, strain insulator, and new preformed guy grips attached with thimble eye.
36	Expansion Anchors – 8” diameter expansion anchor with ¾” diameter, 7’ long anchor rod in soil conditions
37	Expansion Anchors – 8” diameter expansion anchor with ¾” diameter, 7’ long anchor rod in rock conditions
38	Communications Only Wood Pole in Soil – Up to 30’ class 4 wood pole direct embedment of 5 feet in soil conditions with compacted road base backfill for both pole install and removal. (NBU provides pole)
39	Communications Only Wood Pole in Rock – Up to 30’ class 4 wood pole direct embedment of 5 feet in rock conditions with compacted road base backfill for both pole install and removal. (NBU provides pole)
40	Restore Site Concrete – Restore site to finish grade with minimum 4” 3000 psi concrete.
41	Restore Site Sod – Restore site to finish grade with cultivated sod.
42	Restore Site Asphalt – Restore site to finish grade with minimum 2” thick cold mix asphalt.
43	Fiber Optic Cable in Duct On Messenger (DOM) or Conduit – Up to 2” medium density polyethylene duct on ¼” messenger.
44	Grounding Electrode in Soil- 5/8” x 7’ copper clad ground rod in soil conditions. Shall be installed in undisturbed soil and shall not be cut.
45	Grounding Electrode in rock - 5/8” x 7’ copper clad ground rod in rock conditions. Shall be installed in compacted soil and shall not be cut.
46	Guy Guard – Yellow plastic guy guard on existing down guy.
47	Inspect Aerial Fiber Cable from Ground – Visual inspection of aerial fiber cable from ground level in clear easement, right of way, or street. Digital anomaly report to be delivered describing any damage or other concerns discovered. NBU ruling span is 225 feet.
48	Inspect Aerial Fiber Cable with Lift Truck – Visual inspection of aerial fiber cable from elevated platform in clear easement, right of way, or street. Digital anomaly report to be delivered describing any damage or other concerns discovered. NBU ruling span is 225 feet.
49	Fusion Splice Pigtails – Thermal splice connectors on to end of cable.
50	Fusion Splicing Cable to Cable - Thermal splice ends of two fiber strands.
51	Uni-Direction OTDR Testing - OTDR test for signal transmission in one direction. Digital report to be delivered detailing distances to and characterization of any faults present in the fiber strand.
52	Bi-Directional OTDR Testing - OTDR test for signal transmission in two directions. Digital report to be delivered detailing distances to and characterization of any faults present in the fiber strand.

53	Uni-Direction Power Meter Testing – Signal power loss testing in one direction. Digital report to be delivered detailing difference in signal between input and output power levels.
54	Bi-Directional Power Meter Testing – Signal power loss testing in two directions. Digital report to be delivered detailing difference in signal between input and output power levels.
55	Passive Optical Network (PON) Cabinet Foundation – Poured in place concrete foundation shall be installed on compacted gravel base, and be constructed with minimum 3000 pounds per square inch (psi) concrete. Foundation shall be 4” thick with a level mounting surface and wire mesh reinforcement placed between 1” and 2” above subgrade. Foundation dimensions shall extend 3” beyond cabinet footprint in all directions. Foundation shall be installed with one grounding electrode using the appropriate unit above.
56	PON Cabinet 288 Port on Existing Pad – Clearfield FieldSmart Fiber Scalability Center up to 288 ports or approved equivalent. Shall be securely fastened to existing concrete foundation and bonded to existing grounding electrode.
57	PON Cabinet 432 Port on Existing Pad – Clearfield FieldSmart Fiber Scalability Center up to 432 ports or approved equivalent. Shall be securely fastened to existing concrete foundation and bonded to existing grounding electrode.
58	PON Cabinet 288 Port on Existing Wood Pole – Clearfield FieldSmart Fiber Scalability Center up to 288 ports or approved equivalent. Shall be fastened to existing wood pole with two toothed brackets and through bolt assemblies according to manufacturer specifications and bonded to existing grounding electrode conductor.
59	PON Cabinet 288 Port on Existing Metal Pole – Clearfield FieldSmart Fiber Scalability Center up to 288 ports or approved equivalent. Shall be fastened to existing metal pole with two Clearfield brackets and through bolt assemblies according to manufacturer specifications.
60	PON Cabinet 432 Port on Existing Wood Pole – Clearfield FieldSmart Fiber Scalability Center up to 432 ports or approved equivalent. Shall be fastened to existing wood pole with two toothed brackets and through bolt assemblies according to manufacturer specifications and bonded to existing grounding electrode conductor.
61	PON Cabinet 432 Port on Existing Metal Pole – Clearfield FieldSmart Fiber Scalability Center up to 432 ports or approved equivalent. Shall be fastened to existing metal pole with two Clearfield brackets and through bolt assemblies according to manufacturer specifications.
62	Clearfield Blue Cassette – Loose Tube, Patch and Splice, Loaded with 12 ST Type to Ultra Physical Contact (UPC) Adapters, Single mode, 2 Mounting Ears, 1 Push Pull Grommet and Plunger, 2 Fillister Screws.
63	12 Strand Fiber Optic Cable - Single mode, All-Dielectric Outside Plant, Loose Tube, Non-Armored, Color Coded Fibers.
64	24 Strand Fiber Optic Cable - Single mode, All-Dielectric Outside Plant, Loose Tube, Non-Armored, Color Coded Fibers.

65	36 Strand Fiber Optic Cable - Single mode, All-Dielectric Outside Plant, Loose Tube, Non-Armored, Color Coded Fibers.
66	48 Strand Fiber Optic Cable – Single mode, All-Dielectric Outside Plant, Loose Tube, Non-Armored, Color Coded Fibers.
67	72 Strand Fiber Optic Cable – Single mode, All-Dielectric Outside Plant, Loose Tube, Non-Armored, Color Coded Fibers.
68	96 Strand Fiber Optic Cable – Single mode, All-Dielectric Outside Plant, Loose Tube, Non-Armored, Color Coded Fibers.
69	144 Strand Fiber Optic Cable – Single mode, All-Dielectric Outside Plant, Loose Tube, Non-Armored, Color Coded Fibers.
70	288 Strand Fiber Optic Cable – Single mode, All-Dielectric Outside Plant, Loose Tube, Non-Armored, Color Coded Fibers.



## **Exhibit B**

### Price List/ Payment Terms

NBU agrees to pay the Professional for the Services and goods rendered under this Agreement Total Compensation not to exceed \$90,000 annually and \$450,000 for the duration of the Agreement.

**MEMORANDUM OF RECOMMENDATION**

Date: November 20, 2023

To: Jesse Luna, Purchasing Manager

From: Janelle Chapman, Senior Buyer

RE: RFP#: 02626 Fiber Maintenance and Emergency Services

The Evaluation Committee has evaluated the proposals received in accordance with the evaluation factors set forth in the Request for Proposal.


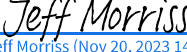

Each committee member has evaluated each proposal in an objective and unbiased manner. Committee members do not have a conflict of interest concerning this Request for Proposal.

The Committee, therefore, recommends the ranking of the following Vendor(s). The ranking, as presented, represents the best value, highest scoring, and most advantageous purchase to New Braunfels Utilities.

We Recommend Award to the following:  
 Maintenance Testing to B Constructors  
 24x7 Repairs and Transfer Services to B Constructors, Chain Electric, Element, Source Power

The proposal evaluation forms are attached for your review.

**SELECTION TEAM**

Team Member	Signature
Taylor Cano	 Taylor Cano (Nov 20, 2023 14:28 CST)
Jeffrey Morriss	 Jeff Morriss (Nov 20, 2023 14:30 CST)
Jason Starnes	 Jason R. Starnes (Nov 20, 2023 14:36 CST)



## **FINANCIAL IMPACT**

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The total financial impact for the Agreement with Paloma Blanca for the Services is not to exceed \$2,500,000 annually and \$12,500,000 for the duration of the Agreement. The Project is budgeted within the fiscal year 2024 through fiscal year 2029 NBU Board approved O&M and Capital Improvements Projects Budgets.

## **LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Financial Excellence**

**Stewardship**

## **EXHIBITS**

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1. Professional Services Agreement with Paloma Blanca Enterprises, Inc.

## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **PALOMA BLANCA ENTERPRISES, INC.**, a Texas corporation (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

### Section 1. Term of Agreement.

This Agreement will be effective on the latest date subscribed below (the “Effective Date”) and will remain in full force and effect for a period of one (1) year from May 1, 2024, to April 30, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond April 30, 2029.

### Section 2. Scope of Services.

(A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The scope of work described in the Services constitutes the “Project.”

(B) The quality of Services provided hereunder shall be of the level of professional quality performed by professionals regularly rendering this type of service.

(C) The Professional shall perform the Services 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 NBU 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) Amount. The Professional shall be paid the amount set forth in Exhibit B as described herein.

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall



include a record of time expended and work performed in sufficient detail to justify payment. In the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

(C) Reimbursable Expenses. Any and all reimbursable expenses related to the Project shall be described in the Services defined in Exhibit A and accounted for in the total compensation amount in Exhibit B. If these items are not specifically accounted for in both Exhibit A and Exhibit B, NBU shall not be required to pay such amounts unless otherwise agreed to in writing by both parties or unless agreed to pursuant to Section 4 of this Agreement.

#### Section 4. Changes to the Project Work; Additional Work.

(A) Changes to Work. The Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If NBU finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by NBU and such services shall be considered as additional work and paid for as specified under the following paragraph.

(B) Additional Work. NBU retains the right to make changes to the Services at any time by a written contract amendment. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by contract amendment before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Services described in Exhibit A and therefore constitutes additional work, the Professional shall promptly notify NBU of that opinion in writing. If NBU agrees that such work does constitute additional work, then NBU and the Professional shall execute a contract amendment for the additional work and NBU shall compensate the Professional for the additional work on the same basis of the rates for the Services contained in Exhibit B. If the changes deduct from the extent of the scope of work for the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by the Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by NBU shall be delivered to and become the property of NBU. 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 NBU without restriction or limitation on the further use of such materials; however, such materials are not intended or represented to be suitable for reuse by NBU or others. Any reuse of the materials related to the Services without prior verification or adaptation by the Professional for the specific purpose intended will be at NBU's sole risk and without liability to the Professional. Where applicable, the Professional shall retain all pre-existing proprietary rights in the materials provided to NBU but shall grant to NBU 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 the Professional's expense, have copies made of the documents or any other data furnished to NBU under or pursuant to this Agreement.

Section 6. Personnel. The Professional shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Professional agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Professional shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

Section 7. Licenses; Materials. The Professional shall maintain in current status all federal, state, and local licenses and permits required for the Professional to perform the Services and operate its business. NBU has no obligation to provide the Professional, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Professional.

Section 8. Performance Warranty. The Professional warrants that the Services provided under this Agreement shall conform to the professional standards performed by professionals regularly rendering this type of service.

Section 9. Indemnification. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE OR AGENT THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN “INDEMNIFIED PARTY”), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS’ FEES AND COURT COSTS) TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER (“CLAIMS”), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE GOODS OR SERVICES PROVIDED BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH BELOW SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU’s option.

- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be

applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

(B) Required Insurance Coverage. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers' Compensation and Employer's Liability Insurance. The Professional shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

(C) Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to NBU.

#### Section 11. Termination.

(A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The

Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

(B) For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the nondefaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Professional for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.

(C) Non-Collusion. The Professional represents and warrants that the 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 NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.



Section 12. Miscellaneous.

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

(B) Governing Law; Venue. This Agreement and all of the 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 Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.

(C) 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 satisfactory proof of compliance to NBU.

(D) Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.

(E) Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.

(F) Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

(H) 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. Any purported assignment in violation of this Section shall be null and void.

(I) Subcontractors. The Professional shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Professional.

(J) Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. 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. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(K) Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.

(L) Liens. All materials or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.

(M) Offset.

- i. Offset for Damages. In addition to all other remedies at law or equity, NBU may offset from any money due to the Professional any amount the Professional owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.
- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.

(N) Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the

party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities  
 Attn: Director of Electric Services and Compliance  
 263 Main Plaza  
 New Braunfels, TX 78130

With copy to:

Purchasing Manager  
 New Braunfels Utilities  
 355 FM 306  
 New Braunfels, TX 78130

If to the Professional:

Paloma Blanca Enterprises, Inc.  
 4901 McCullough Ave.  
 San Antonio, TX 78212

or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in the manner set forth in this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

(O) Confidentiality of Records. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

(P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall 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.

(Q) 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.

(R) 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.

(S) 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.

(T) Multiple 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.

(U) Exhibits. Except as specified in Subsection (V) of this Section, all exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

(V) Conflicting Terms. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern. The Exhibits are intended to detail the technical scope of services, fee schedule, and the term of the contract only and shall not dictate Agreement terms.

(W) 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.

(X) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(Y) Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, 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. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. 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.

Section 14. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written 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. Third, 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.

Section 15. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. The Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.

## Section 16. Information Technology

(A) Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the Professional with non-exclusive, limited access to NBU's information technology infrastructure. The Professional understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Professional shall reasonably enforce such policies, standards, regulations and restrictions with all the Professional's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Professional's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Professional agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Professional. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

(B) Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

(C) Data Security. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Professional must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **THE PROFESSIONAL SHALL INDEMNIFY, DEFEND, AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM THE PROFESSIONAL'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.**

(E) Survival. The obligations of the Professional under this Section shall survive the termination of this Agreement.

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended.



The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 18. Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited. The Professional represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Professional and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 19. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. If the Professional is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Professional represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in the Professional is not held or controlled by:
  - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
  - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

(B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. “Affiliate,” with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

Section 20. Prohibition on Contracts with Companies Boycotting Energy Companies. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2276 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 21. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 22. Texas Public Information Act. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU’s audit rights in Section 12(P).

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

The Professional must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Professional on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Professional; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Professional agrees that the Agreement can be terminated if the Professional knowingly or intentionally fails to comply with a requirement of that subchapter.

Section 23. Electronic Signatures. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

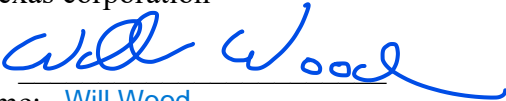
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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NBU:**  
**NEW BRAUNFELS UTILITIES,**  
a Texas municipally owned utility

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: Chief Executive Officer

**PROFESSIONAL:**  
**PALOMA BLANCA ENTERPRISES, INC.,**  
a Texas corporation

By:   
Name: Will Wood  
Title: President

## Exhibit A

**SERVICES****I. TECHNICAL REQUIREMENTS**

A. Services. The Professional shall provide all labor, material, and equipment necessary to perform the following right-of-way services:

1. hydro axe clearing;
2. hand clearing;
3. jarraff trimming;
4. dozer clearing;
5. excavator clearing (grubbing);
6. herbicide application;
7. custom pasture fence and gate construction;
8. custom chain-link fence and gate construction;
9. custom pipe, industrial steel fence, and gate construction;
10. custom wood fence and gate construction;
11. road and pad site construction (rural and urban);
12. substation site construction;
13. creek crossing construction including concrete and steel culvert construction (all sizes);
14. low water crossing construction;
15. concrete flatwork (sidewalks, driveways, curbs);
16. concrete wreck out/demolition;
17. asphalt paving;
18. erosion control installation/removal (silt fence, mulch logs, erosion control blankets);
19. Stormwater Pollution Prevention Plan inspections and reporting;
20. right-of-way restoration;
21. right-of-way grading;
22. excavation;
23. reseeding for vegetation replacement;
24. bollard installation; and
25. mobilization.

B. Supervision of Right-of-Way Clearing Crew. The Professional shall assign an area supervisor for the right-of-way crew. The area supervisor shall check in with NBU's Electric Operations Supervisor every Monday morning regarding scheduling, problems, issues, and concerns. The area supervisor shall monitor the quality and performance of the crew on a daily basis.

### C. Energized Lines.

1. The Professional shall have a line clearance certification. The Professional shall perform all work with the lines and equipment energized unless previous arrangements have been made with NBU in writing to de-energize and properly ground the line and/or equipment. Under no circumstances shall the Professional de-energize any line or equipment on its own.
2. The Professional shall perform all pruning activities in accordance with the Texas Forest Service or American National Standards Institute (“ANSI”) guidelines. The Professional shall remove trees, limbs, and brush that are capable of growing into the conductor security zone or obstructing vehicular traffic, or physical or visual access to distribution/transmission line facilities within the easement.

D. Vegetation Removal. The Professional shall inspect all trees adjacent to transmission line easements and identify trees with limbs overhanging or growing into the line facilities. The inspection shall also identify trees capable of growing into the line safety zone or trees (such as those that are structurally dead, weak, or dying) that might fall onto the line in the future.

E. Orchards, Crops, Gardens and Lawns. The Professional shall ensure that orchards, crops, gardens, and lawns on, or adjacent to, the right-of-way are protected from damage during vegetation clearing operations or vehicle ingress or egress. However, vegetation in orchards, crops, gardens, or lawns capable of growing into, or falling onto the distribution/transmission line facility shall be removed, controlled, or trimmed as required in accordance with NBU’s vegetation control plan.

F. Pathways or Roadways. The Professional shall enter and exit properties by access of the right-of-way unless otherwise stated by NBU’s Electric Operations Supervisor. If vehicular access to a right-of-way is needed but does not exist, the Professional shall create a usable pathway as approved by NBU.

G. Structures, Poles, and Guy Wires. The Professional shall control or remove all vegetation and vines within an area to work safely around all structures, poles, and guy wires. The Professional shall not damage existing structures.

H. Stump Heights. The Professional shall cut trees and brush within the cleared portion of the easement as close to the ground as practical, such that the cut face of the remaining stump is parallel to the ground. Stumps shall not exceed 2 inches in height above ground level unless terrain, fence, or other landscape features restrict or prohibit cutting to this level.

I. Job Site Clean-Up. The Professional shall promptly clean and haul away all debris and spoils from the job site and properly dispose of the debris and spoils as described herein. The Professional shall leave all gates as they are found (locked, unlocked, closed, open, etc.).



## II. GENERAL REQUIREMENTS

A. Notification. The Professional shall notify affected NBU customers of impending work before any work has commenced. The initial notification shall be through the NBU control center for mass notification with a minimum of two (2) days advance notice and by personal contact with the NBU customer or an NBU approved door hanger. The person responsible for notifying NBU customers shall speak and understand English; however, speaking and understanding Spanish is also recommended. The Professional shall provide live customer service and technical support Monday through Friday, 8:00 a.m. to 5:00 p.m. with a required callback time of one hour or less for all issues.

B. Customer Refusal. All NBU customers who do not allow the Professional to complete scheduled work shall be directed to the Professional's crew foreman, who shall notify NBU's Electric Operations Supervisor. NBU shall follow up with the customer and provide the Professional with a resolution.

C. Service Interruption. In the event the Professional causes service interruption to an NBU customer, the Professional shall notify the NBU control center and provide a written report to NBU's Electric Operations Supervisor within 48 hours with details of the incident.

### D. Equipment Maintenance.

1. The Professional shall not perform maintenance on equipment in the field other than routine repairs. In the event a large piece of equipment breaks or ceases to work properly, the Professional must report such information to NBU's Electric Operations Supervisor. If the broken equipment prohibits the Professional from completing the Services, NBU shall not be billed for any time or labor required to repair the equipment during the nonproductive time.
2. The Professional shall also ensure it provides machinery, tools, implements, safety equipment, and personal protective gear necessary to perform the Services. All of the equipment shall be in good working condition. The Professional shall assume full responsibility for loss of or damage of any nature to the required equipment while in use or stored at the job site.
3. The Professional shall be solely responsible for its vehicles, equipment, tools, supplies, materials, and other property. NBU shall not provide a secured location for equipment and is not liable for any vandalism or damage due to weather.

E. Equipment Parking. The Professional shall not store or park its equipment on NBU property without prior written consent. The Professional shall find a designated parking area or other storage location outside of NBU Property for all equipment.

F. Personnel Parking. No personal vehicles of the Professional shall be allowed on the job site without prior permission from NBU.

G. Inspection of Work. The Professional alone is responsible for the quality of its work and for

the proper inspection of its work. If requested by NBU, the Professional shall have an authorized representative accompany NBU's Electric Operations Supervisor when an inspection is made.

H. Waste Disposal. NBU has an agreement with the Comal County Recycling Department in which no disposal fees are required for the Comal County Recycling Department site located at 281 Resource Drive, New Braunfels, Texas 78132. The Professional shall not dispose of any waste generated from sites other than those approved by NBU in this Agreement or separately with NBU's written consent.

I. Safety.

1. The Professional shall work in accordance with NBU's established safety practices, and those specified in ANSI 2133.1 Arboricultural Operations Safety Requirements. The Professional shall be required to keep an OSHA 300 log and submit it to NBU's Electric Operations Management as requested by NBU. The Professional shall be solely and completely responsible for conditions on the job site, including the safety of all employees, property, and the general public during the performance of the Services. This requirement shall apply continuously and shall not be limited to normal working hours.
2. The Professional shall allow NBU to review all safety measures before and while the work is being performed. At its discretion, NBU shall review the Professional safety measures in, on, and near the work site. The Professional is to provide and use all protective equipment necessary for the protection of their employees and the general public, and to guard against interfering with the normal operation of NBU's personnel and infrastructure.

J. Emergency Work. In emergencies, the Professional may be asked to provide a crew or crews during off-duty hours. The Professional shall provide two reliable points of contact to NBU to guarantee the organization of a crew(s) as requested in accordance with the NBU emergency crew call out procedures. The Professional shall provide a single point of contact for the authorization and settlement of orders, transactions, and disputes.

K. Employee File/Personnel. The Professional shall maintain an employee file for each staff member performing Services under this Agreement for NBU. NBU shall assign keys and access badges to designated employees of the Professional. If the Professional fails to return these items to the NBU Electric Operations Supervisor, NBU shall assess a \$500 penalty per key set and badge.

L. Herbicide License/Full-Time Arborist/Forester. The Professional shall maintain an herbicide license and have a full-time arborist/forester on staff and available as needed.

M. Employee Conduct. Professionalism and courtesy are required at all times. Neither the Professional, nor its employees, shall use the customer's equipment or facilities. The Professional shall not dispose of or leave any refuse from breaks or lunch on the customer's property.

N. Intoxicants and Drugs. The Professional shall remove any of its employees from the job site if the employees are found to engage in unsafe or disorderly conduct.

O. Schedule.

1. NBU shall provide a schedule and a list of the work locations. The Professional shall perform the Services according to the schedule. The Professional shall notify NBU's Electric Operations Supervisor of its work plan for the area assigned by NBU each week while the Project is ongoing.
2. The Professional shall perform work between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, unless written approval is received from NBU's Electric Operation Supervisor or Manager for after-hours work. The Professional may perform prep work prior to 7:00 a.m. or after 5:00 p.m., however; NBU's customer's property should not be accessed, nor should chainsaws or chippers be used, outside of normal business hours.

P. Holidays. The Professional shall observe the same holiday schedule as NBU unless prior arrangements have been made in writing and agreed upon by NBU. Additional information about the specific dates observed for each holiday is available on NBU's web site. As of the date of this Agreement, NBU observes the following holidays:

Martin Luther King Jr. Day  
 President's Day  
 Founder's Day  
 Memorial Day  
 Juneteenth  
 Independence Day  
 Labor Day  
 Comal County Fair Day  
 Veterans Day  
 Thanksgiving  
 Christmas  
 New Year's Day

## Exhibit B

NBU shall pay the Professional for the Services in an amount not to exceed \$2,500,000 annually and \$12,500,000 for the duration of the Agreement.

The Professional agrees to provide the Services to NBU in accordance with the specifications in Exhibit A at the following prices:

<b>Item No.</b>	<b>Classification/Title</b>	<b>Standard Time/Hour</b>	<b>Over-Time/Hour</b>
<b>1</b>	Project Manager	\$55.00	\$82.50
<b>2</b>	Supervisor	\$50.00	\$75.00
<b>3</b>	Crew Foreman	\$45.00	\$67.50
<b>4</b>	Equipment Operator	\$42.50	\$63.75
<b>5</b>	Truck Driver	\$40.00	\$60.00
<b>6</b>	Mechanic	\$40.00	\$60.00
<b>7</b>	Welder	\$45.00	\$67.50
<b>8</b>	Safety Manager	\$45.00	\$67.50
<b>9</b>	Laborer	\$35.00	\$52.40
<b>10</b>	Project Coordinator	\$30.00	\$45.00
<b>11</b>	Office Manager	\$35.00	\$52.50
<b>12</b>	Administrative Assistant	\$25.00	\$37.50

<b>Item No.</b>	<b>Equipment Description</b>	<b>Operating Price/Hour</b>
<b>13</b>	1/2 Ton 4x4 Truck	\$15.00
<b>14</b>	¾ Ton 4x4 Truck	\$20.00
<b>15</b>	1 Ton 4x4 Truck	\$25.00
<b>16</b>	Mechanic Truck	\$30.00
<b>17</b>	Gooseneck Trailer	\$7.50
<b>18</b>	Dump Trailer	\$10.50
<b>19</b>	Cargo Trailer	\$5.50
<b>20</b>	Fuel Trailer	\$5.50
<b>21</b>	Haul Truck	\$100.00
<b>22</b>	Equipment Lowboy Trailer	\$85.00
<b>23</b>	End Dump Trailer	\$85.00
<b>24</b>	53' Flatbed Float Trailer	\$85.00

<b>Item No.</b>	<b>Equipment Description</b>	<b>Operating Price/Hour</b>
25	Tandem Axle Dump Truck 8 CuYd	\$50.00
26	Tandem Axle Dump Truck 14 CuYd	\$65.00
27	Pintle Hitch Trailer	\$20.00
28	Welding Trailer	\$35.00
29	Rubber Tire Skidsteer Loader	\$50.00
30	Tracked Skidsteer Loader	\$60.00
31	Backhoe	\$65.00
32	Hydraulic Backhoe Hammer	\$65.00
33	Front End Loader	\$115.00
34	Front End Loader 6' Forks	\$10.00
35	Track Loader	\$95.00
36	Small Dozer	\$80.00
37	Medium Dozer	\$105.00
38	Large Dozer	\$135.00
39	Dozer Brush Rake	\$10.00
40	Excavator	\$135.00
41	Excavator Hydraulic Hammer	\$135.00
42	Excavator Grubbing Attachment	\$10.00
43	Small Vibratory Roller	\$55.00
44	Medium Vibratory Roller	\$75.00
45	Large Vibratory Roller	\$95.00
46	Motor grader	\$135.00
47	Small Farm Tractor	\$45.00
48	Large Farm Tractor	\$60.00
49	Batwing Shredder	\$15.00
50	6' Tractor Shredder	\$10.00
51	6' Tractor Disk Plow	\$15.00
52	Tractor Broadcast Seeder	\$10.00
53	Tractor Drill Seeder	\$15.00
54	Tractor Box Blade Attachment	\$10.00
55	Tractor Chain Harrow	\$10.00
56	Mini Excavator	\$65.00
57	Excavator Grubber Attachment	\$10.00
58	Skidsteer Attachment: Tree Shear	\$15.00
59	Skidsteer Attachment: Brush Grapple Bucket	\$20.00
60	Skidsteer Attachment: Brush Rake	\$15.00
61	Skidsteer Attachment: Forks	\$5.00
62	Skidsteer Attachment: Weighted Auger Attachment	\$20.00
63	185 CFM Air Compressor	\$15.00
64	Pneumatic Rock Drill & Bits	\$10.00
65	Pneumatic Jack Hammer & Bits 60lb	\$15.00

<b>Item No.</b>	<b>Equipment Description</b>	<b>Operating Price/Hour</b>
66	Wood Chipper	\$55.00
67	Welding Machine	\$25.00
68	Welding Tools	\$10.00
69	Generator	\$5.00
70	Concrete Finishing Tools	\$5.00
71	Asphalt Laydown Machine 12' wide	\$75.00
72	Small Asphalt Roller	\$75.00
73	Medium Asphalt Roller	\$115.00
74	Large Asphalt Roller	\$135.00
75	500 Gallon Fuel Trailer	\$5.50
76	Medium Hydro Ax w/ Mulching Head	\$135.00
77	Large Hydro Ax w/ Mulching Head	\$165.00
78	Rubber Tracked Vertical Trimmer	\$145.00
79	Chainsaw	\$3.00
80	Pole saw	\$5.00
81	Medium Tele Handler	\$30.00
82	Large Tele Handler	\$40.00
83	500 Gallon Water Trailer	\$25.00
84	2000 Gallon Water Truck	\$65.00
85	4000 Gallon Water Truck	\$95.00
86	6500 Gallon Off Road Water Wagon	\$125.00
87	14000 Gallon Water Tower	\$85.00
88	Rubber Tracked Crawler - Personnel Carrier	\$85.00
89	Rubber Tracked Crawler w/ Flatbed	\$85.00
90	Small Rubber Tracked Crawler w/ Dumpbed	\$110.00
91	Medium Rubber Tracked Crawler w/ Dumpbed	\$135.00
92	Large Rubber Tracked Crawler w/ Dumpbed	\$150.00

The Professional shall bill materials to NBU no higher than 20% over the Professional's cost and shall charge NBU no more than \$5,000 per project to mobilize the equipment required to perform the Services associated with the project; provided, however, these amounts, together with the amounts attributable to the Services, shall not exceed \$2,500,000 annually or \$12,500,000 for the duration of the Agreement.





**Meeting Date:** April 25, 2024      **Agenda Type:** Consent Items for Action

**From:** Gregory Thomas, P.E.      **Reviewed by:** Gretchen Reuwer  
 Chief Engineer of Electric      Director of Electric Services and  
 Services      Compliance

**Submitted by:** Gretchen Reuwer      **Approved by:** Ryan Kelso  
 Director of Electric Services      Chief Executive Officer  
 and Compliance

**RECOMMENDED ACTION:** Authorize CEO or His Designee to Negotiate and Execute an Electric Service Agreement Between Veramendi Development Company, LLC and NBU Concerning the Construction of an Underground Electric Feeder to Supply Electric Service to NBU Customers

## **BACKGROUND**

During planning activities for extension to Veramendi Precinct 27, Veramendi Development Company, LLC (“Veramendi”) approached New Braunfels Utilities (“NBU”) Electric with a proposal for consideration. The proposal is multi-faceted. First, the routing of four electric distribution feeders sourced from NBU’s planned Hueco Springs Substation would be mutually agreed upon. Second, Underground Distribution (“UD”) would be specified following NBU’s Electrical Connection Policy requirements. In return, NBU will move the timeline for construction of the planned feeder along River Road into its FY 2025 Capital Improvement Plan (“CIP”) budget and incur the costs of construction instead of requiring a Contribution in Aid of Construction (“CIAC”) by Veramendi. The remaining three feeders will be at full cost contribution by Veramendi, to be constructed in the future as localized load growth requires and with no option of a CIAC. NBU legal staff and Veramendi legal staff have jointly drafted the Electric Service Agreement (“Agreement”) to memorialize roles and responsibilities, short-term and long-term.

NBU staff recommends acceptance of this Agreement. NBU’s short-term cost contribution will be at current construction prices as opposed to the anticipated higher cost of construction if the addition of the River Road feeder was delayed until later in the CIP as originally planned. Additionally, the master-planned routing for all four feeders is agreed upon, which avoids future conflicts between electrical infrastructure needs and development goals for minimal cost and land encumbrance. Lastly, the Agreement memorializes that UD is required along River Road. NBU staff recognize the historical aesthetics of River Road, and UD would serve to sustain those aesthetics as best as possible. NBU also observes a lower System Average Interruption Frequency Index (SAIFI) with UD, particularly during severe weather events, which affect NBU’s Overhead Distribution system to a far greater extent.

**FINANCIAL IMPACT**

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The Agreement shifts \$531,061.25 of NBU's cost responsibility to NBU's FY25 and \$236,885.00 of NBU's cost responsibility likely to NBU's FY26. These costs would be incurred by NBU otherwise at a future date, likely within 10 years. The net financial impact over time is zero.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Infrastructure and Technology**

**EXHIBITS**

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1. NBU – Veramendi Electric Service Agreement
2. Veramendi Master Electrical Map
3. Electrical Connection Policy

## ELECTRIC SERVICE AGREEMENT

This Electric Service Agreement (“Agreement”) is made effective as of \_\_\_\_\_, 202\_\_, by and between NEW BRAUNFELS UTILITIES (“NBU”), and VERAMENDI DEVELOPMENT COMPANY, LLC, a Texas limited liability company (“Veramendi”) (NBU and Veramendi collectively referred to as the “parties” and individually as “party”).

### RECITALS

- A. Veramendi is the master developer of the approximately 2400-acre master planned community known as “Veramendi” located within the extra-territorial jurisdiction of the City of New Braunfels, in Comal County, Texas (the “Veramendi Development”).
- B. NBU is the municipally-owned retail electric service provider for the area in which the Veramendi Development is located;
- C. In 2022, Veramendi PE – Darwin, LLC, a Texas limited liability company affiliated with Veramendi, sold a 5.3-acre tract of land to NBU at a price of \$912,834 and upon which NBU plans to construct an electric substation (the “Hueco Springs Substation”) at a cost of \$12,500,000;
- D. NBU exercises its sole and exclusive discretion as to the design, construction, operation and maintenance of its facilities, including the Hueco Springs Substation, and NBU’s present facility plans for this area include the development of four 600-amp feeders running north along River Road from the Hueco Springs Substation (four feeders depicted in the attached **Exhibit A**, referenced herein and therein as the “Gold Coast Feeder”, “Hill Country Drive Feeder”, “River Road West Feeder”, “NBU Feeder”, and all collectively referenced as the “Feeders”) to eventually provide electric service to NBU customers within the Veramendi Development and the general area;
- E. Veramendi desires that the Feeders and electric distribution within the Veramendi Development be located underground, rather than as standard overhead facilities, and build-out of the Veramendi Development has thus far progressed from west to east, such that NBU has planned that the NBU Feeder would be the last of the Feeders to be constructed and placed into service;
- F. Veramendi plans to develop a portion of the Veramendi Development on the eastern side of River Road before Veramendi completes development of other tracts of land on the western side of River Road (precinct 27), and now proposes that the new portion of the Veramendi Development be served temporarily by the NBU Feeder;
- G. Construction of the NBU Feeder along the eastern side of River Road as proposed by Veramendi results in some immediate costs to NBU but will avoid the increased future costs of construction of the NBU Feeder underground that

would have been incurred if it had been constructed when the Veramendi Development is more complete, as anticipated;

- H. NBU is not and will not agree to extend its credit for construction of any of the Feeders, but may exercise discretion, consistent with policies of the NBU Board, to accommodate special circumstances; and
- I. NBU and Veramendi now desire to enter into this Agreement to set forth specific agreements between the parties regarding the timing, cost responsibility and development of the Feeders.

## AGREEMENT

The parties agree as follows:

1. **Recitals.** The parties acknowledge the truth and accuracy of the above recitals, which are hereby made a part of this Agreement.
2. **Application of the NBU Electrical Connection Policy.** Except as specifically provided in this Agreement, the terms and definitions of the NBU Electrical Connection Policy (“Policy”), dated August 2018, apply to this Agreement and to the parties. The Policy is attached as **Exhibit B** and incorporated herein for all purposes.
3. **General Service Requirements.** Veramendi acknowledges that planned electrical service load requirements for the Veramendi Development will require the service capacity of three of the four proposed Feeders and a portion of the fourth Feeder. Accordingly, Veramendi agrees that it will bear the full cost for development of the Gold Coast Feeder, River Road West Feeder and the Hill Country Drive Feeder and a proportional share of the capacity of the NBU Feeder, as set forth in this Agreement. Veramendi further acknowledges that NBU’s Policy does not require underground electric lines in this area and desires that the Feeders be located underground and agrees that Veramendi is solely responsible for any additional costs related to locating the Feeders underground as set forth in this Agreement.
4. **Use of Feeders Installed in Hueco Springs Substation.** As planned, the Gold Coast Feeder, River Road West Feeder and Hill Country Drive Feeder will be used to provide electric service to the Veramendi Development as generally depicted on **Exhibit A**. The NBU Feeder, which will be located on the east side of River Road, will be used by NBU to serve customers within and outside the Veramendi Development. Under this Agreement, the parties contemplate that the NBU Feeder will initially serve the portion of the Veramendi Development east of River Road and NBU’s service area located north of the Hueco Springs Substation. The NBU Feeder will be constructed in two phases as depicted on **Exhibit A** and as described below.
5. **Construction and Use of NBU Feeder.**
  - a. Veramendi agrees to install underground conduits and associated above-ground pads for the first phase of the NBU Feeder within twelve months after the effective

date of this Agreement. The installation of underground conduits for the first phase of the NBU Feeder will, as directed by NBU, include capacity to carry one additional feeder where adjacent to the Gold Coast Feeder, and will be included as part of other public infrastructure improvements (e.g., water/sewer, roads, etc.) of the Veramendi Development. Phase 1 of the NBU Feeder will be constructed at Veramendi’s sole cost and then dedicated to NBU upon final inspection and approval by NBU.

- b. Veramendi will similarly construct and dedicate the second phase of the NBU Feeder in conjunction with its build out of the Veramendi Development, in coordination with NBU; provided however, Veramendi agrees that Phase 2 of the NBU Feeder will be completed within five (5) years after the effective date of this Agreement.
- c. NBU will install all wire, switchgear and transformers associated with the conduits and pads pertaining to the NBU Feeder. Upon completion of Veramendi’s construction of Phase 1 of the NBU Feeder, NBU will promptly proceed with construction of the improvements described in this section to provide electrical service to the Veramendi Development. Phase 1 of the NBU Feeder will be used to provide service to Veramendi until such time as the Gold Coast Feeder is: (i) constructed (which shall occur no later than ten years from the date of this Agreement), (ii) accepted by NBU, and (iii) NBU switches feeders to provide power to the Veramendi Development using the Gold Coast Feeder.

**6. Costs and Credits related to the NBU Feeder.**

- a. Except as provided in this Section 6, Veramendi is solely responsible for Contributions in Aid of Construction (“CIAC”) and fees for electrical service under the Policy for undergrounding in the Veramendi Development.
- b. Veramendi’s dedicated improvements for the NBU Feeder are, upon dedication, considered by the parties to be an in-kind payment of CIAC that NBU will credit toward CIAC and fees for electrical service otherwise due from Veramendi under the Policy for the NBU Feeder, as follows:

Feeder	In-Kind Credit (2024 Dollars)
NBU Feeder, Phase 1	\$531,061.25
NBU Feeder, Phase 2	\$236,885.00
Gold Coast Feeder, Hill Country Drive Feeder and River Road West Feeder	None

- c. For clarity and to avoid confusion, the foregoing In-Kind Credit (as may be escalated for inflation in accordance with the Policy) represents the maximum credit that NBU will provide Veramendi under this Agreement. The parties agree that the In-Kind Credit is exclusive to the NBU Feeder, that the In-Kind Credit is

tied to the timely completion of the NBU Feeder, and that in no instance will NBU be required to reimburse Veramendi any balance of the In-Kind Credit.

- d. Veramendi remains solely responsible to pay the CIAC and fees for electrical service under the Policy for the Gold Coast Feeder, River Road West Feeder and Hill Country Drive Feeder, which will be installed in accordance with NBU's standards for undergrounding, without any similar NBU in-kind credit.

7. **Term.** This Agreement terminates upon the first of the following to occur: (a) Veramendi's completion, and NBU's acceptance, of the last of the four Feeders; or (b) fifteen (15) years after the effective date.

8. **Miscellaneous.**

- a. **Addresses for Notices.** All notices and communications under this Agreement shall be mailed or delivered to the parties at the addresses indicated, unless either party changes its contact information by written notification:

**For NBU:**

New Braunfels Utilities  
 Attn: Electric Services  
 263 Main Plaza  
 New Braunfels, Texas 78130-5135  
 Phone: (830) 629-8428  
 Email: [electricengineering@nbutexas.com](mailto:electricengineering@nbutexas.com)

**For Veramendi:**

ASA Properties, LLC  
 Attn: Peter James  
 2168 Oak Run Parkway, Suite 101  
 New Braunfels, Texas 78132  
 Phone: 830-643-1338  
 Email: [peter@asaproperties.us.com](mailto:peter@asaproperties.us.com)

**With a copy to:**

McGinnis Lochridge LLP  
 Attn: Phillip H. Schmandt  
 1111 West 6<sup>th</sup> Street, Bldg. B, Suite 400  
 Austin, Texas 78703  
 Phone: 512-495-6087  
 Email: [pschmandt@mcginnislaw.com](mailto:pschmandt@mcginnislaw.com)

- b. **Entire Agreement.** This Agreement, including any exhibits, constitutes the entire Agreement and supersedes all prior and informal or oral agreements and understandings between the parties concerning the subject matter.



- c. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- d. **No Third-Party Beneficiary.** The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.
- e. **Waiver.** The failure on the part of either party herein at any time to require the performance by the other party of any portion of this Agreement, shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision, or any other provision. Any waiver by any party herein of any provision hereof, shall not be taken or held to be a waiver of any other provision hereof, or any other breach hereof.
- f. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. ALL ACTS REQUIRED OR PERMITTED TO BE PERFORMED HEREUNDER ARE PERFORMABLE IN COMAL COUNTY, TEXAS, AND IT IS AGREED THAT ANY CIVIL ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HEREWITH, SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION SITTING IN COMAL COUNTY, TEXAS.
- g. **Cumulative Mutual Remedies.** In the event of default by a party herein, the other party may deliver a written notice of default to the defaulting party specifying in reasonable detail the basis of the default. If the party receiving such notice does not cure or remedy such default within thirty (30) days, then the other party may declare an event of default (an "Event of Default"). Upon the occurrence of an Event of Default, the non-defaulting party shall have all rights and remedies afforded to it at law or in equity to recover damages and interpret or enforce the terms of the Agreement. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity. In addition to any other remedies set forth herein, the parties acknowledge that upon an Event of Default by Veramendi under this Agreement NBU may withhold approval of plats for areas within the Veramendi development designed to receive electric service from the improvements described in this Agreement (Veramendi Precincts 23 to 32).
- h. **State or Federal Laws.** This Agreement is subject to all applicable federal and state laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right by either party to question or contest any such law, ordinance, order, rule or regulation in any forum having legal jurisdiction.
- i. **Incorporation of Provisions Required by Law.** Each provision and clause required

by state and federal law to be inserted into this Agreement shall be deemed to be included herein and the Agreement shall be read and enforced as though each were included herein. If through mistake, or otherwise, any such provision is not inserted or is not correctly inserted, this Agreement shall be mutually amended in writing to make such insertion, on application by either party.

- j. **Dispute Resolution.** In the event a dispute arises between the parties, then, except in the case of an application for injunctive or emergency relief, as a condition precedent to any legal action by either party, the parties shall first refer the dispute to their respective upper management as each may designate for good faith negotiations for thirty (30) calendar days. If such good faith negotiations do not occur or are not successful within thirty days after written request for same, such condition precedent shall be deemed satisfied.
- k. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party.
- l. **Approval.** This Agreement is contingent upon approval of the NBU Board of Trustees.

IN WITNESS WHEREOF, this Agreement has been signed by each of the parties to be effective as of the date set forth above, or in the absence of such date, this Agreement shall be effective as of the date last signed below.

<p><b>NEW BRAUNFELS UTILITIES</b></p>  <p>By: _____  Name: _____  Title: _____</p>	<p><b>VERAMENDI DEVELOPMENT COMPANY, LLC</b></p> <p>By: ASA Properties, LLC, its Manager</p> <p>By: _____  Peter James, President</p>
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**Exhibit A**







**Exhibit B**

NBU Electrical Connection Policy  
Dated August 2018



**ELECTRICAL  
CONNECTION  
POLICY**

**AUGUST 2018**



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## **1. INTRODUCTION**

### **1.1 NBU BOARD POLICY**

Pursuant to Chapter 130, Article II, Section 130-31 of the City of New Braunfels Code of Ordinances, the NBU Board of Trustees shall "adopt, alter, amend and enforce all such rules and regulations governing the conduct of the business of such systems as the board of trustees may deem necessary or proper".

This policy is adopted pursuant to such authority.

Electric rates, availability, applicability and service provisions are specified in Chapter 130 of the City of New Braunfels Code of Ordinances.

This policy shall supplement the specific Code of Ordinances presently in force within the City, requirements of the NEC or NESC, and any other local, state, or federal regulation.

The electric service area of NBU is defined by the Public Utility Commission of Texas.

It is the responsibility of NBU to establish and enforce minimum requirements for installation and connection of electrical equipment within its service area. NBU regulations and policy are subject to periodic revision and fees are subject to change.

This publication supersedes all previous versions of the Electrical Connection Policy.

NBU will endeavor to provide economical, reliable electric service in accordance with industry standards. NBU regulations and standards conform to accepted standards and strive to provide satisfactory service at the lowest possible rates and ensure prompt, courteous, and equitable treatment of all customer requirements.

NBU does not guarantee continuous service, standard voltage, or frequency.

NBU accepts no liability for acts of nature or other occurrences beyond its control.

NBU retains the right to discontinue electric service as specified in the Code of Ordinances or to prevent hazardous situations. NBU also retains the right to discontinue electric service for non-payment as provided for in the Customer Service Conditions Policy.

NBU shall only connect or reconnect electric service to meter loops or other equipment that meet or exceed the requirements of the NEC, NESC, any authorities having jurisdiction, and the minimum standards established in this policy.

These standards are to be administered by knowledgeable, certified electricians, qualified to understand all applicable codes and standards and assure its proper application.



## ***ELECTRICAL CONNECTION POLICY***

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Responsibility to ensure compliance with all codes and standards remains with the customer.

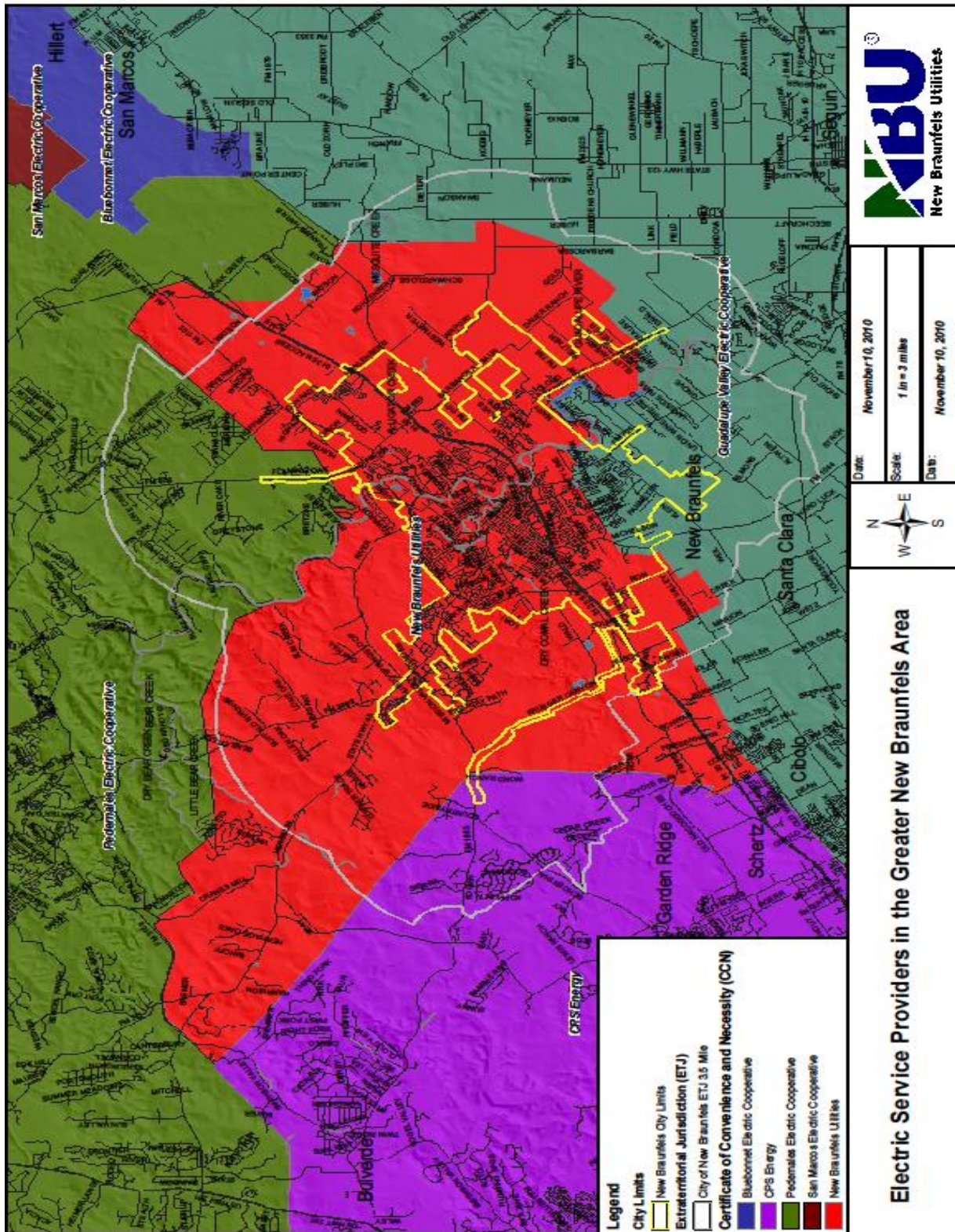
NBU shall not be deemed to have assumed any responsibility with respect to any such action herein authorized or taken by NBU, with respect to proper construction or compliance with any code or standard.

In exceptional cases where this policy appears impractical or unjust, to either NBU or the customer, the matter may be referred to NBU management.

NBU will review special conditions that are not included in the policy on a case-by-case basis.



1.2 ELECTRIC SERVICE AREA MAP





**1.3 DEFINITIONS**

- AHJ: Authority Having Jurisdiction; a local governing jurisdictional authority with defined geographical boundaries.
- Application for Service: The service agreement or contract between NBU and the prospective customer under which electric service is supplied by the former and taken by the latter.
- CIAC: Contribution in Aid of Construction; a fee due to NBU from the customer to offset a portion of the expense to provide new electric distribution facilities.
- City: City of New Braunfels
- Commercial: Pertaining to line construction only, this term shall apply to all business and mercantile enterprises, all educational, institutional and assembly structures (schools, churches, etc.), all hospitals, commercial storage units, unapproved subdivisions, unapproved mobile home parks, and all privately owned residential associations or cooperatives such as condominiums, townhouses, and garden homes whose main access is by way of a private, non-dedicated street or drive.
- Customer: Any present or prospective owner or operator of a business, firm, corporation, industry, or residence, or any person or entity representing him, such as the architect, engineer, contractor, developer, or builder.
- D&R: Disconnect/Reconnect. Customer request for NBU to temporarily disconnect electric service to safely accomplish repairs or maintenance to customer owned equipment, after which service is reconnected.
- DER: Distributed Energy Resources. De-centralized physical or virtual assets connected to the distribution network, typically located on the load side of the service delivery point. Per unit or aggregated, these assets provide constant, or as-needed, generation usage to the network.
- Distribution Line: NBU's high voltage (7200/12,470 volts) electric lines located along streets, alleys, highways, easements or on private property when used or intended for use for general distribution of electric service to NBU customers.
- Easement: The right of NBU to use the land of another for a specific purpose concerning its electric utility system.
- Electric Service: The availability of electric power and energy, regardless of whether any electric power and energy is actually used.

## **ELECTRICAL CONNECTION POLICY**

- Industrial:** Pertaining to line construction only, this term shall apply to all factories, industries, large manufacturing firms or any enterprise that in all probability will be large or very large power users, as defined in the City Ordinance.
- Meter:** An instrument, or instruments, together with auxiliary equipment, for measuring the electric power and energy supplied to a customer.
- Meter Loop:** The opening in and/or extension of a customer's service entrance conductors provided for installation of NBU's meters.
- NBU:** New Braunfels Utilities; a municipal utility established by the City Council of New Braunfels, Texas, in December, 1942, to manage, control, and operate any or all of the electric, water and sewer systems owned or held by the City of New Braunfels. The NBU Board of Trustees consists of five Trustees (one being the Mayor) appointed by the City Council. As used in these Standards, the words NBU represent New Braunfels Utilities or any employee properly qualified to represent New Braunfels Utilities.
- NEC:** National Electrical Code.
- NESC:** National Electrical Safety Code.
- Owner:** When applied to any land, building, or structure, shall include any part owner, joint owner, tenant in common, tenant in partnership, or joint tenant, of the whole or of a part of such land, building, or structure.
- PEV:** Plug-in vehicles.
- Point of Delivery:** The point where the electric energy first leaves the line or apparatus owned by NBU and enters the line or apparatus owned by the customer. The Point of Delivery shall be determined by NBU, and is not necessarily the point of location of the electric meter. Typical points of delivery include weatherheads, meter sockets, service junction boxes and pad-mounted transformers. The point of delivery for an NBU owned and maintained underground residential service lateral is the line side of the meter socket. For an NBU owned and maintained overhead service drop the point of delivery is the attachment to the customer's weatherhead.
- Primary:** NBU's high voltage electric system, 7200 volts single-phase or 12,470 volts three-phase, consisting of poles, crossarms, conductors, conduit, junction boxes, transformers, and other associated equipment and hardware; overhead and underground.

**ELECTRICAL CONNECTION POLICY**

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- Residential:** Pertaining to line construction only, this term shall apply to all private individual dwellings, all wells and noncommercial barns. Residential shall also include multi-family complexes where there is one service meter per living unit.
- Secondary:** NBU's electric system from the low voltage connections on the transformers to the customer's service entrance, meter, or main disconnect devices. The maximum voltage is 480 volts. This system consists of conduit, conductors, junction boxes, and connections, overhead and underground.
- Service Drop:** The portion of NBU's overhead secondary service conductors extending from NBU's overhead distribution system to the customer's service connection.
- Service Lateral:** The portion of NBU's underground secondary service conductors extending from NBU's overhead or underground distribution system to the customer's service connection.
- Service Entrance Conductors:** The wires provided by the customer extending from his main line switch, to the terminals of NBU's service connection.
- Street:** Includes streets, avenues, boulevards, roads, alleys, lanes, viaducts, drives, highways, and all other public places commonly used for the purpose of travel.

**2. GENERAL INFORMATION**

**2.1 CUSTOMER SAFETY**

The customer shall comply with federal, state, and local laws and regulations concerning activities near electrical lines and equipment. The customer shall comply with all laws and regulations to protect themselves, their family, their employees, NBU and its employees, contractors and all third parties from injury, loss, or damage.

State statute and Federal OSHA laws require that no work take place within 10 feet of high-voltage facilities. Some lines require even greater clearance.

If you operate within proximity to power lines, you must contact NBU so appropriate protective measures can be taken.

**A. DIGGING**

Texas state law requires the customer/excavator to call for the location of underground utilities to be marked. This call must be made at least 2 working days, but no more than 14 days, prior to excavation. Excavation shall not begin until underground utility locations have been marked.

TEXAS ONE CALL – Dial 811

Or on the web at:

[www.texasonecall.com](http://www.texasonecall.com)

**2.2 ATTACHMENTS TO NBU PROPERTY**

NBU lighting standards, poles, wires, towers, structures, and other facilities are for the exclusive purpose of supplying electric service. Unless specifically authorized by agreement, any radio or television equipment, customer-owned lighting, wire, ropes, signs, banners, or anything of any nature not necessary to the supply of electric service by NBU, which is in proximity or attached to NBU poles, wires, towers, or structures, may be dangerous to life and property and is prohibited. NBU reserves the right to remove all such hazards without notice and bill the customer for associated cost. NBU assumes no liability for damage to customer property so removed.

**2.3 INTERRUPTION OF SERVICE**

Safe work practices may require NBU to interrupt service to perform necessary maintenance and/or upgrades, or make additions to the electric system. NBU will contact those customers involved with as much notice as is practical. In some instances, it may not be possible to give notice. NBU will make interruptions in service as short as is reasonably possible. When possible, NBU will work with those involved, trying to find a mutually acceptable time to perform the work.

**2.4 CUSTOMER RESPONSIBILITY FOR EQUIPMENT/WIRING**

It is customer responsibility to install equipment and wiring that conforms to NBU, NESC, and NEC standards, and all federal, state, and local regulations. NBU shall refuse to connect service when customer wiring or installation does not comply with these minimum standards. If the AHJ condemns a building or its wiring, NBU will disconnect service at the authority's request.

NBU is not responsible for the installation or maintenance of electrical equipment or wiring on customer's point of delivery side of NBU's electric service, except for meters and their appurtenances.

NBU uses standard protective devices and all reasonable care to ensure a steady and continuous service to its customers, but cannot be responsible or liable for damages due to irregularities.

NBU does not provide equipment to protect the customer's facilities. The customer will meet or exceed all applicable guidelines of the NEC and manufacturer requirements. NBU will provide fault current and electrical data at customer request. Available fault currents may exceed 10,000 amperes in some locations. NBU's power system provides high speed re-closing of protective equipment following power interruptions. Three-phase loads may require protection from single-phasing. It is possible for one phase of a three-phase service to be de-energized for an extended period. Use ground fault protective equipment where appropriate.

**2.5 POWER QUALITY**

**A. GENERAL**

Customer's electrical equipment and devices must allow the NBU distribution system to operate efficiently without undue interference to NBU service or to other customers. When customer equipment has characteristics that cause undue interference with NBU service to other customers, the customer shall make equipment changes or provide, at the customer's expense, additional equipment to eliminate the interference. Otherwise, NBU may refuse service or decline to serve under the established rate schedule.

Prior to installation, the customer should submit to NBU all information regarding equipment that might cause power quality problems.

**B. VOLTAGE PERFORMANCE**

Electric service supplied by NBU may be subjected to voltage disturbances, which do not normally affect the performance of typical electrical equipment. These disturbances may result in the improper operation of voltage-sensitive equipment, such as computers or microprocessors. The customer should provide power-conditioning devices needed to obtain the quality of power necessary for optimum performance of voltage-sensitive equipment.

NBU's voltage, measured at the NBU meter, may acceptably vary  $\pm 5\%$  from nominal voltage. As an example, for a single-phase 240V service, NBU's voltage may vary within a range of 228V to 252V. NBU's three-phase voltage may also be imbalanced up to 5%.

**C. HARMONICS**

The design and operation of high-frequency equipment and equipment that generate harmonics shall not create disturbances on the NBU electrical system that interfere with any other customer's proper operation of equipment.

Devices that can produce harmonic distortion shall be filtered such that the harmonic distortion caused by such devices is kept within the limits specified in The Institute of Electrical and Electronics Engineers (IEEE) Standard 519-1992, Section 10. Compliance with this requirement is judged upon NBU's measurement near the point of delivery.

**D. MOTORS**

**PROTECTION**

To ensure adequate safety to personnel and equipment, the customer is responsible for providing and maintaining code-approved protective devices that protect motors against overloading, short circuits, ground faults, low voltage, and single-phasing of three-phase motors.

**STARTING**

Motor starts may cause unacceptable voltage dips to adjacent customers or on the customer's premises. Frequently started motors, three-phase motors rated larger than 25 hp served from a three-phase system, or single-phase motors larger than 3 hp may require reduced voltage starters. Motors that meet any of these criteria require consultation with NBU.



Motor inrush shall not result in any distribution voltage flicker exceeding the 'Borderline of Irritation' curve as referenced in IEEE 1453 Annex A.

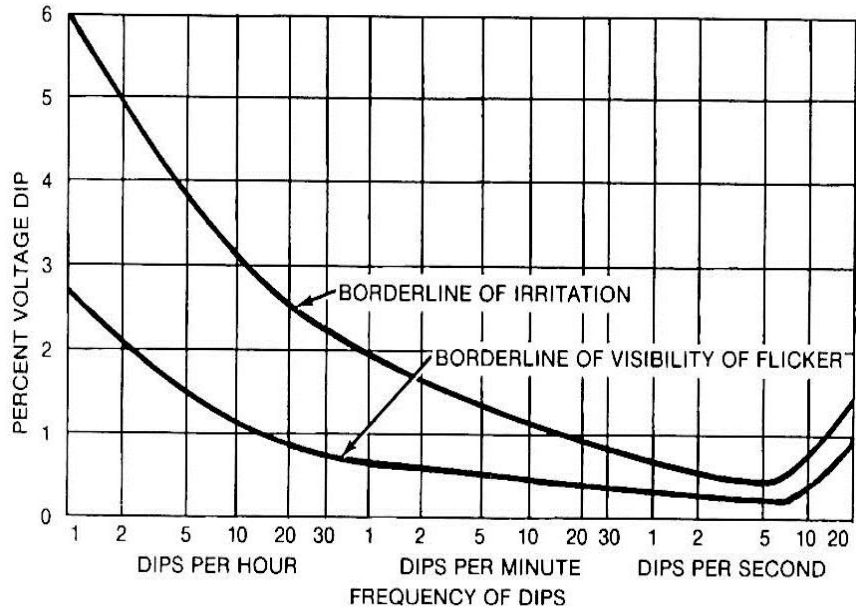


Figure A.1—Flicker tolerance curve from IEEE Std 141-1993/IEEE Std 519-1992

NBU will furnish permitted starting currents, which are dependent upon motor size, starting amperage, frequency of starts and impedance of the distribution system.

If the customer requires additional NBU facilities, such facilities will be installed at the customer's expense.

**E. LOAD BALANCE**

To prevent overloading of service conductors and transformer coils, customer must properly balance the electrical load on the service entrance conductors and service equipment. For both single-phase and three-phase services, the customer shall connect equipment so that the load in any one phase at the point of delivery will not exceed the load in any other phase by more than 10 percent.

**F. POWER FACTOR CORRECTION**

NBU encourages customers to achieve power factor at or above 95%. Where a customer has power factor correction equipment past the NBU point of delivery, all power factor correction equipment shall be three-phase operable. Power factor correction / kVAR balancing shall also be within 10% phase to phase. Allowable leading kVAR may not exceed the lesser of 25% of a customer's kW peak monthly demand, or 1,000 kVAR total. Failure to switch power factor correction equipment off and/or exceeding allowable leading kVAR may result in disconnection of service.

**G. STANDARD FEE ADJUSTMENTS**

Any and all fees listed within this Electrical Connection Policy, typically included within Appendix A, may be adjusted to reflect the Consumer Price Index (CPI) upon a yearly basis. CPI based increases shall not require NBU Board of Trustees approval.

### **3. OPTIONAL SERVICES**

#### **3.1 AFTER HOURS CONNECTIONS**

Service connections are scheduled by NBU and will occur during normal working hours. A customer may request a service connection for times other than normal working hours, subject to approval by NBU and personnel availability. SUCH APPROVAL IS SOLELY AT THE DISCRETION OF NBU. Connection shall be done only if all applications are signed, required deposits, and construction fees have been paid and all the necessary inspections passed.

Residential Customers: A minimum fee of \$150.00 will be assessed. On overhead installations, this fee includes installing the service from a single point of attachment on a pole to the customer's point of attachment, making the final connections and/or setting the meter. On underground installations this fee includes installing the service from an underground enclosure to the customer's equipment that is less than 80 feet in lateral length and 4/0 or smaller in conductor size, making the final connections, and/or setting the meter. This fee does not include the building of risers, pulling of conductor between service enclosures, installing conductor larger than 4/0, or distances greater than 80 feet in lateral length. If the installation exceeds any of the above guidelines, the additional work will be billed to the customer at actual cost of labor. This cost is in addition to the minimum fee. NBU will furnish a total cost estimate upon request by the customer.

Commercial Customers: The customer is billed for actual labor and equipment charges, but not less than \$150.00. NBU will furnish a cost estimate upon request by the customer.

#### **3.2 DISCONNECT/RECONNECT**

NBU will disconnect and reconnect (D&R) utility service to allow a licensed electrician to safely work on the customer side of the electric service point of delivery. The customer work may include scheduled upgrades as well as unscheduled and/or emergency repair work. NBU may waive the D&R fee for a major service modification for which NBU assesses a Contribution in Aid of Construction in advance of the project.

***D&R with less than 2 hours crew involvement..... \$75.00 per instance***

Additional fees may be assessed for D&R's requested at times other than normal business hours, or if NBU personnel are required to be on site longer than two hours.

Except in an emergency, a twenty-four hour notice is required.

## **4. EASEMENTS AND RIGHT-OF-WAY**

### **4.1 USE AND RESTRICTIONS**

An easement provides the right to use an owner's property for a particular purpose. A utility easement allows NBU the right to use an owner's property for specific purposes such as to construct, repair, maintain, operate, and manage utility facilities. Sometimes other utility providers, such as cable and telephone companies, also have the right to use the same utility easement. The property owner owns the land upon which the easement is located. However, NBU has the right of way to enter upon that land for specified utility purposes. A utility easement is created when a property is platted, or created by specific agreement between a property owner and NBU.

At all times, a property owner must provide continuous, unobstructed access to easements held by NBU. A property owner or resident may not place or construct any structure or improvement on an NBU easement without prior NBU written approval. Some examples of structures not allowed include: building additions, sheds, patios, swimming pools, ponds, spas, signs, mast-type equipment, abandoned vehicles, mobile homes, and buildings of any type, wells, and decorative landscaping. Some examples of improvements requiring written approval include: driveways, cart paths, fences (provided 16-foot gates are installed), parking lots, and streets. The failure to obtain written approval may result in the structure being removed at the property owner's expense. Any damage to an unapproved structure is at the owner's risk. In the event that NBU facilities require relocation due to unauthorized encroachment, NBU may require that all costs associated with the relocation or removal be customer responsibility.

### **4.2 NEW CONSTRUCTION EASEMENTS**

Utility easements will typically be 15 feet wide but may vary in dimensions depending on the type of facilities necessary. Utility easements are generally located along streets, lot lines, or between two lots when created by a subdivision of land. Where three or more utility buried trenchlines or other infrastructure items are to exist within a frontage easement, 20' frontage easements are required. Other infrastructure items may include customer owned street lighting service cable, sidewalks, water systems, or parallel drainage.

When platted utility easements do not exist or do not provide adequate right-of-way for utilities, a utility easement may be created by a separate agreement between the owner of the property and NBU. Except for service drops, service laterals and security lighting, an easement is required when it is necessary for NBU to locate its facilities on property not designated as a public right-of-way to serve the customer on whose property the facilities are to be located. The customer shall provide NBU a copy of the recorded deed to verify ownership and legal description of the property affected by the utility easement.

Easements will also be required when it is necessary for NBU facilities to cross over property not designated as public right-of-way and not owned by the customer receiving service. The customer requesting service is responsible for obtaining this easement from other property owners.

If it becomes desirable to relocate or remove NBU facilities from the customer's property for reasons initiated by the customer all costs associated with the request, including the abandonment of existing easements, are charged to the customer making the request.

**4.3 CLEARING**

The initial clearing of the easement is the responsibility of the customer and shall be done before any construction by NBU. All clearing shall be approved by NBU. Under normal clearing procedures, easements shall be prepared by removing all obstructions so that the right-of-way is cleared close to the ground and is the width specified. Obstructions that should be removed include all trees, stumps, brush, debris, boulders, and/or any obstacles along the entire width and length of the easement.

In addition, a private property extension easement must be vehicle traversable. If not traversable, a 12' wide pathway consisting of 6" compacted TxDOT A-2 base shall be required. To maintain access during inclement weather, drainage crossings shall be in culverts.

**4.4 METES & BOUNDS**

For any commercial new extension easement or modified electric routing easement, Metes & Bounds shall be provided to NBU by the customer requesting service. Metes & Bounds shall be drafted by a Registered Professional Land Surveyor (RPLS). In addition, NBU may require the easement be staked and/or re-staked at any time prior to installation of electric facilities.

For any residential new extension easement or modified electric routing easement, NBU shall assume responsibility for the Metes & Bounds.

**4.5 GRADING**

Grade changes within easements, whether Public Utility Easements (PUEs) or standalone private easements, shall be approved in advanced by NBU. Shielding installed grade from predictable erosion shall also be the responsibility of the private property owner.

## **5. TEMPORARY/ CONSTRUCTION SERVICE STANDARDS**

### **5.1 GENERAL SERVICE STANDARDS**

Temporary service is a means of supplying electricity to a site with an active duration of no more than 180 days. Usually a temporary service is installed to provide power during the construction phase of a project while provisions are being made for permanent power.

NBU standard temporary service is a 100 amp or 200 amp, single-phase, 120/240 volt service, served from existing distribution facilities. Availability of other service types will be determined on its feasibility, and if approved, may be provided with the estimated cost of installing and removing such additional electrical facilities paid by customer as a CIAC.

Any temporary service that requires the installation and removal of electrical facilities not required for permanent electric service may be provided subject to approval and based on the estimated cost of installing and removing such additional electrical facilities, to be paid by customer as a CIAC.

A customer requesting temporary service for one-time ventures or for short-term duration, not to exceed 180 days, to locations where permanent power will not be provided, such as construction projects, exhibitions, or festivals, shall be responsible for all associated costs for the installation and removal of all required NBU facilities as estimated by NBU. Temporary service provided under this option shall not serve residential loads. Temporary service may be denied to customers requesting service exceeding these requirements. In such cases customer may install permanent metering equipment in accordance with other sections of this policy.

If an inspection of the temporary service is required by a non-utility AHJ, it is the customer's responsibility to contact that authority for permitting and/or inspection requirements. If an inspection is required, NBU must be notified that a temporary inspection has been granted before NBU can connect temporary service. NBU inspection requirements may still apply.

Any connected temporary service found to be damaged or in violation of any applicable codes shall result in the immediate removal of the meter. The customer will be responsible for any repairs and inspection required before service is reconnected. Repeated damage may result in temporary service being denied.

### **5.2 OVERHEAD TEMPORARY SERVICE**

An overhead temporary meter loop shall be located on the property being served and for which application for service has been made.

The service line path shall avoid areas where vehicular traffic will occur, unless the temporary service pole height is increased to provide adequate clearance.



If the service line will pass through trees or brush, a path must be cleared to allow personnel to run the line and to allow lines to hang without contacting trees or limbs. Maintaining the clear path is the customer's responsibility.

The temporary meter loop shall be installed according to NBU specification drawing EH-110 and inspected by NBU.

### **5.3 UNDERGROUND TEMPORARY SERVICE**

Temporary underground service is available where the existing primary power facilities are installed underground.

A temporary meter loop shall be located on the property being served and for which application for service has been made.

The temporary meter loop shall be installed according to NBU specification drawing EU-110 and inspected by NBU.

## **6. MODIFICATION OF EXISTING SERVICE**

Customer's needs and desires for utilizing their property change periodically, potentially resulting in a physical conflict that necessitates the modification of NBU electrical distribution facilities. The customer must give notice to and obtain approval from NBU for the requested modifications as far in advance as possible. Modifications requiring NBU notice and approval include a major change of load, addition of motors, HVAC systems, auxiliary equipment, pumps, living units, plug-in vehicle (PEV) service, Distributed Energy Resources, etc. Customer may be held financially responsible for damage to NBU infrastructure resulting from unreported modifications to customer load.

If the requested modification on the customer's property is solely for the benefit of the customer, the customer is responsible for the entire cost of the modification. This includes overhead to underground conversions. Costs associated with any modification to avoid or correct a NEC or NESC violation shall be determined on an individual basis.

When a modification requires NBU personnel to disconnect existing service and reconnect the modified service, the customer must schedule the disconnect/reconnect (D&R) in advance to ensure proper coordination. Additional fees may apply for the D&R. Approval by the AHJ is required before NBU is permitted to reconnect the service. Additional applications, easements and deposits may be required. The customer is responsible for arranging the wiring on their side of the point of delivery to receive the modified service.

When electrical distribution facilities on a customer's property are removed or abandoned at customer request, the customer is responsible for removal cost due to early retirement of facilities.

## **7. NON-STANDARD DESIGN**

Where unusual circumstances exist, NBU reserves the right to estimate costs based on those circumstances rather than the standard fees. NBU will confer with customers about those circumstances and charges. Other facilities and special considerations (such as rock pole holes) will be estimated by NBU.

NBU electrical distribution facilities will be designed in the most cost-effective, safe and reliable manner along the shortest, most practical route. If a customer requests a design that is not the most cost effective and the customer's request is feasible, the cost difference between the most cost effective design and the customer requested design will be charged as a CIAC. These charges may include engineering, installation, material, and maintenance costs required to provide and maintain this non-standard construction.

A feasible design is defined as an alternative design that does not compromise safety or reliability and allows adequate access. If the feasibility criterion is not met, then NBU cannot offer the customer the requested design.

New residential service request which would normally qualify for the residential installation credit will receive only that portion of the credit that would be allowed based on the most cost effective design.

**8. ESTIMATES/FEES**

Throughout this policy, reference is made to Contributions In Aid of Construction (CIAC) whereby the customer pays for a portion or all of the requested service.

The CIAC is a fee to help recover the costs of extending electric facilities to those requesting the facilities.

Payments are required well in advance of NBU construction, allowing for proper scheduling and procurement of material. Withholding payment until the latter stages of a project's development may cause unnecessary delays and added expense to the customer.

Fees are nonrefundable after work is performed.

Under no circumstances do any fees and/or CIAC paid to NBU indicate transfer of ownership to the customer. All equipment installed by or for NBU shall become and remain the property of NBU. Fees to customers for special considerations are to defer costs from other NBU customers rather than the selling of services or material.

No permanent or temporary electric facilities will be installed or connected for any customer who has delinquent fees payable to NBU for any service location, unless arrangements are made with NBU.

Fees for construction of new facilities, modification of existing facilities, area lighting, and special designs are addressed elsewhere in the publication. NBU will review the applicable sections with the customer and provide an estimated cost (CIAC) based on the individual project requirements.

Costs for equipment purchased from NBU by the customer for customer installations are not included in this policy.

Any written estimate furnished by NBU for which payment has not been made is valid for a period of 90 days, after which time the estimate must be reviewed by NBU for appropriateness, and may be adjusted by NBU

NBU reserves the right to review and adjust the fees paid by customers if NBU cannot perform the work for which the fees are collected within 18 months of payment of the fees.

## ***ELECTRICAL CONNECTION POLICY***

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Qualified customers owing CIAC for single-family residential service will be allowed to defer payment of fees to a monthly billing based on following requirements:

- Total fees exceed \$300.00 (a minimum initial payment of \$300 is required).
- \$50.00 per month minimum payment.
- Maximum of 60 months payments.
- An administrative fee of \$10.00 per month is added to each monthly bill.

## **9. RESIDENTIAL EXTENSION POLICY**

For all residential projects, from single home up to any including residential subdivisions, NBU shall contribute the associated costs of all distribution transformers and all secondary extensions originating from the distribution transformers, including temporary services.

All primary extension, both on-site and off-site to a residential project, shall be contributed to NBU through a CIAC. NBU, at its sole discretion, but at no additional assessed CIAC to the project owner, may elect to increase any on-site or off-site extension to a higher grade of construction. Applicable CIAC fees shall be as documented within the Electrical Connection Policy below, and within Appendix A.

NBU Electric Engineering is responsible for design of all extensions, including routing. Project owners may select Overhead extension or Underground Distribution extension only.



**10. INSPECTIONS**

**10.1 INSPECTION GENERAL INFORMATION**

When a customer's electrical installation requirements have been completed, it must be inspected by the AHJ to ensure compliance with the NEC, other applicable codes, and any other such local rules that may apply. NBU cannot energize new service installations or alter existing service characteristics until such inspection(s) has been made, and until formal approval notice from the AHJ has been furnished to NBU by the customer.

NBU inspects all customer installations from the point of delivery to the load side terminals of the main disconnect, including the service entrance grounding systems. The purpose of this inspection is to ensure safe working conditions for personnel and to protect NBU equipment from mechanical or electrical hazards. Such inspection in no way relieves the customer of responsibility for providing a safe electrical system. Service will not be connected to any new or existing installation that is known to be unsafe.

Meter loop inspections requested to be performed outside regular inspection hours shall be assessed a non-business hour inspection fee and are subject to inspector availability.

If a meter loop is not ready or does not conform to NBU specification, design, and code requirements, a re-inspection fee shall be assessed each additional time it is necessary to make inspections.

Inspections shall be cancelled no later than 10:00 a.m. the day of the scheduled inspection or it will be considered a failed inspection.

Inspection related fees are billable through an active NBU service account that is not delinquent. The service account holder may make authorization for direct account billings for inspection fees.

All inspection related fees not billed through an active NBU account must be paid in full before an electric meter will be installed.

**A. INSPECTION FEES**

<i>First Meter Loop Inspection</i> .....	<i>No Charge</i>
<i>Accelerated Inspection Fee</i> .....	<i>\$75.00</i>
<i>Meter Loop Re-Inspection Fee</i> .....	<i>\$100.00</i>
<i>Non-Business Hour Inspection Fee</i> .....	<i>\$75.00</i>

## **11. STANDARDS AND DESIGN**

NBU endeavors to provide electric service to its customers by the most economical route available. Alternative design requests require NBU approval and customer is responsible for any additional fees. See "Non-Standard Design".

NBU specifications and standards drawings conform to or exceed minimum requirements of all applicable codes. If any standards are in conflict, NBU standards will prevail.

It is the responsibility of the customer to understand and comply with all code requirements.

NBU is responsible for the design, construction, operation, and maintenance of electric service facilities up to and including the point of delivery. The customer is responsible for design, construction, operation, and maintenance of customer's installation beyond the point of delivery and has sole control and supervision over customer's installation, including compliance with all applicable codes and ordinances. Any customer not familiar with NBU and/or NEC requirements concerning electric service installations may review all relevant standards with the NBU personnel.

The customer assumes responsibility for the service supplied or taken and for all related damages caused by service diversion, unlawful use of service, or damage to NBU equipment.

NBU design and installation is based upon the information provided by the customer. Incomplete information or any deviations or changes by customer after the initial design may delay the establishment of service and result in additional fees.

If electrical requirements exceed 200 amps, NBU requires an electrical load analysis prepared by the customer's engineer or electrician prior to designing the electric service.

Three-phase service is available to customers with a demand of at least 50 kVA or one three-phase motor larger than 7.5 hp. Devices to convert single-phase to three-phase can be obtained for a wide range of three-phase motors, therefore availability for three-phase service for smaller motors should be discussed in advance with NBU.

NBU reserves the right to determine whether primary or secondary metering is appropriate for service needs at any requested point of delivery. NBU shall design all primary facilities.

Commercial primary and secondary extension, both on-site and off-site to a project, shall be contributed to NBU. NBU, at its sole discretion, but at no additional assessed CIAC to the project owner, may elect to increase any on-site or off-site extension to a higher grade of construction. Applicable CIAC fees shall be as documented within the Electrical Connection Policy below, and within Appendix A. NBU contributes the service transformers only.

Other applicable fees shall remain in effect.

**12. GENERAL SERVICE STANDARDS**

The customer shall give NBU access to the premises of the customer in order to obtain information concerning connected load, to measure or test service, to read meters, or for other purposes incidental to the supplying of electric service.

It is customer responsibility to provide adequate protection of NBU equipment located on the customer's property against damage. The customer shall be responsible for any damage or loss resulting from improper protection or neglect.

NBU will furnish and install pole-mounted or pad-mounted transformers in accordance with the voltages and maximum kVA capacities listed below, unless approved otherwise. NBU will determine the installed transformer size. The customer shall provide the necessary information to make this determination. The largest pole-mounted transformer is 100 kVA.

NBU will normally furnish and install transformers and primary pull boxes for permanent electric service at no charge to the customer. A customer may, with NBU approval, purchase the transformer(s) required.

**12.1 AVAILABLE SERVICE TYPES**

Service Size			Maximum Capacity/Type	Available on Service Rates
120/240 V	Single-phase	3-wire	100 kVA Overhead	RE, SGS, LGS
			250 kVA Pad-mounted	
208 Y/120 V	Three-phase	4-wire	225 kVA Overhead	SGS, LGS
			500 kVA Pad-mounted	
480 Y/277 V	Three-phase	4-wire	225 kVA Overhead	SGS, LGS, VLP-D*
			2500 kVA Pad-mounted**	
480 V	Three-phase	3-wire	2500 kVA Pad-mounted**	
7200/12470V	Three-phase	4-wire		LGS, VLP-D*

\*Provided only by contract approved by the NBU Board of Trustees.

\*\* Larger services subject to approval by NBU.

**12.2 METERING**

Only one point of delivery is allowed per primary or secondary meter.

**A. LOCATION OF EQUIPMENT**

**LOCATED OUTDOORS**

Unless approved otherwise by NBU, all meter installations will be outdoors, on a vertical wall or other substantial support where the view from the ground is unobstructed. Meters shall be readily accessible to NBU at all times so they may be read, inspected, removed or tested with a minimum of disruption of service to the customer.

In underground residential subdivisions where transformers are located in the front lot platted utility easement, the residential meter must be located within 80 feet of the platted utility easement. Where the distance from the utility easement is greater than 80 feet, other provisions for metering or service design will be required.

The electric meter on a single-family residence shall be located on the exterior of the structure on the side closest to NBU's equipment (pole, pad-mounted transformer, or service enclosure).

Meters shall not be located behind a fence or other barrier unless special considerations are met. The meter location shall be clear of any discharge fans, vents, or drains from a roof gutter or air conditioner, and shall be free from vibration.

Meters shall not be located where they will interfere with traffic, adjacent to sidewalks or driveways, or where they will obstruct the opening of doors or windows. When the equipment is exposed to vehicular traffic, NBU may require that the metering equipment be protected by concrete filled 4-inch steel pipes firmly installed in the ground.

Meter sockets shall be securely attached to an approved permanent structure and aligned so that the meter is both level and plumb. Some installations may require the meter to be located on a pole (for overhead service) or on a stand (for underground service) as determined by NBU. Attachment to temporary structures, except for temporary service, or structures subject to early deterioration is prohibited.

Install meter socket with the centerline height between 5 and 6 feet, as measured from grade 30 inches in front of the meter. NBU must approve exceptions. Pedestal mounted equipment may have a minimum height of 36 inches.

Where ordinance requires meters to be located above base flood elevation, the customer is responsible for providing access to the meter for maintenance and reading by NBU personnel. The customer shall pay for costs incurred by NBU for providing special service to meet the customer's flood insurance requirements.

**LOCATED INDOORS** (For existing installations prior to May 2018 only)

When meters are located in a meter room, the room shall have adequate lighting and contain only meters and associated equipment. The centerline of the meters shall be 5 feet 6 inches above the floor, but when necessary because of grouping may be a maximum of 72 inches and a minimum of 22 inches. When meters are located behind a locked door the customer must provide a lock box, permanently installed near the meter room door with a door key inside. NBU will place its padlock on the lock box.

When the customer-owned main breaker or disconnect will reside within a building or otherwise enclosed electrical room, NBU's point of delivery for the associated electric service will be either at a service drop termination weatherhead or at the secondary terminals of a distribution transformer. NBU will neither own nor maintain a proposed secondary service inside a customer premise facility.

**B. IDENTIFICATION OF METERS**

Where more than one meter is installed, or the meter is not within the boundaries of the premise served, each meter socket shall be clearly and permanently marked by the person installing it to plainly show location served (e.g. the apartment number and/or address) by the meter. It shall be the responsibility of the customer/contractor to ensure the accuracy of the markings with respect to the apartment and/or address. The customer shall demonstrate and NBU shall witness verification of the accuracy of these markings. Such verification shall be assessed as a CIAC, per meter, as listed within Appendix A.

Where more than one meter is installed, as on multi-family dwellings, or shopping centers, the meters are to be grouped at a point accessible at all times to customers and NBU employees.

**C. EQUIPMENT INSTALLED BY NBU**

NBU installs metering instruments to measure the electric service used by the customer. Usually, only one watt-hour meter per customer is needed.

Self-contained meters are used on services up to 320 amperes and when the voltage to ground is 277 volts or less. Current transformers (CT) are used if the service is greater than 320 amperes or if the voltage to ground is greater than 277 volts. Potential transformers are used when the voltage to ground exceeds 277 volts.

A cabinet for the metering current transformer will be required if the service is greater than 320 amperes and more than one customer is served from the service transformer(s). If only one customer is served from the transformer(s), the metering current transformers may be installed by NBU on a pole or in the pad-mounted transformer.

NBU is responsible for the maintenance, repair, and replacement of all metering equipment installed by NBU.

**D. EQUIPMENT INSTALLED AND OWNED BY THE CUSTOMER**

All residential 200 Amp single-phase meter sockets (meter enclosures) are provided by NBU and installed by the customer.

In some cases, the customer might prefer prefabricated, combination socket and disconnect assemblies for multiple occupancy buildings (e.g. apartment or condominium buildings, shopping centers, etc.) or pedestal mounted equipment for mobile home parks. It shall be the customer's responsibility to obtain authorization from NBU to use this equipment for a particular installation before committing to its use.

Meter socket enclosures and CT cabinets shall not be used as raceways for other conductors.

**E. ORDER OF EQUIPMENT**

The location of metering equipment is designated by NBU. Where permitted by Code, the meter will usually precede all service equipment. Customer-owned step-down transformers shall be installed on the load side of the meter.

Any enclosures (troughs) required on the supply (NBU) side of the meter shall be lockable by NBU to prevent unauthorized opening.

A main disconnect switch is required on the supply (NBU) side of meters where more than six disconnects are needed. In these locations, NBU does not recommend use of breakers as a main disconnect. Replacement fuses are more accessible than replacement breakers after normal business hours.

**F. CT METERING**

CT metering is applicable at service sizes of 400 amps or greater, single-phase or three-phase. CT metering shall be approved by NBU. CT metering shall be located as close to the distribution transformer as is feasible. Where a distribution transformer is dedicated to one customer only, the point of CT metering shall be at the transformer. Where a distribution transformer serves multiple customers, the point of CT metering shall be a transocket served from a dedicated secondary run from the distribution transformer.

*CT meter installation, including meter base: .....\$925.00*



*CT meter installation, Trans-socket: .....\$1,125.00*

**12.3 GROUNDING**

The grounding of electric installations is essential for the safety of those using the electric service, personnel maintaining the service, and is a safeguard for the customer's equipment. A permanent and effective ground shall always be provided for all service entrance equipment. The neutral conductor shall also be grounded.

The customer shall furnish bare or insulated copper wire in his service entrance as a bond between the equipment ground and NBU's common neutral system. This conductor shall be appropriately sized but in no case shall it be less than #6 AWG.

Neutral conductors shall be continuous from the weatherhead to the service disconnect. Strip the insulation away from the neutral conductor and connect at the neutral lug of the meter base. Do not cut the neutral. Mark the neutral at both ends by using white tape.

To assure maximum safety, it is necessary that the customer provide an adequate and permanent ground connection attached to a driven ground rod and to the neutral terminal of the meter socket.

Ground rods shall be 5/8 inch diameter by 8 foot length, copper-clad type. They shall be driven 2 inches below final ground grade.

All service grounding from the meter socket or main disconnect to the ground rod shall be a minimum #6 copper of a continuous length, enclosed in 1/2 inch sunlight resistant PVC and continuing 2 inches below final ground grade.

Installation of the above is subject to inspection and approval by NBU.

**12.4 BONDING**

Bonding shall be provided where necessary to ensure electrical continuity and the capacity to safely conduct any fault current likely to be imposed.

Non-current carrying metal parts of equipment shall be effectively bonded together, including but not limited to raceways, service enclosures, meter enclosures, etc.

Bonding to other systems shall not be done on or within a metering enclosure unless a means of bonding, intended for intersystem bonding, is furnished as part of a listed joint-use metering enclosure. (i.e. Telephone, CATV, etc.)

### **13. OVERHEAD SERVICE STANDARDS**

#### **13.1 GENERAL SERVICE STANDARDS**

Customer facilities shall not be installed on the same pole with primary (7200 volts or above) facilities. This is for protection of the customer, electricians, and public, and for ease of maintenance.

Service poles are required and installed for various reasons as deemed necessary by NBU. There is a fee for installation of these poles. Long secondary runs, angles in route direction, or road crossings create this need. This should be considered when the meter location is determined.

NBU shall install the pole when pole-mounted meter loops are required, except for poles installed in TxDOT or UPRR controlled rights-of-way. The location of the meter pole is decided and agreed upon between NBU and customer. There is a fee for installation of these poles. The customer is responsible for constructing meter loop on the pole. Non-standard pole types may be required and are estimated according to "Non-Standard Design". All poles remain the sole property of NBU. NBU cannot install poles for uses other than that required by NBU.

Texas Department of Transportation (TxDOT) and Union Pacific Railroad (UPRR) are allowed to install and own service poles within their controlled rights-of-way. Minimum pole requirement is class 6 strength, 30 foot height, with a burial depth of 2 feet plus 10% of structure height. Backfill shall be compacted.

Under no circumstances will NBU attach its service drop to an intermediate structure installed by the customer between NBU's distribution lines and the customer's point of delivery.

Service drops shall be free of possible contact with trees. Customer must initially trim all trees necessary to provide the required clearance and allow NBU to trim trees in the future as needed. If it is necessary to trim or remove trees belonging to other property owners, in order to provide service, the customer requesting the service must obtain permission for NBU to do this.

Conductors shall not cross over or through a building or structure unless it is necessary to provide service to that building or structure, and approved by NBU. Where conductors providing service to a building cross a portion of the roof, the clearance above the roof shall not be less than 18 inches. If conductor crosses more than 4 linear feet of roof, increase the clearance to 36 inches. If conductors cross more than 6 linear feet of roof, the clearance must be greater than 8 feet. Measurements are to apply along the entire conductor path.

The customer shall mark all privately owned underground facilities, and maintain such markings throughout all project activities.

**A. CLEARANCES**

TYPE OF TERRAIN	MINIMUM CLEARANCE
Spaces or walkways subject to pedestrians only	12'-6"
Public walkways/sidewalks	17'
Residential Driveways	17'
Commercial Driveways & Parking Lots	18'
Public Streets, Roads, Highways and Alleys	22'
Railroads	27'
Waterways	Determined by NBU

The NESC, Section 232, allows reduction of this height where it is not possible to meet these values. NBU must determine if it is possible to reduce these clearances.

**B. SERVICE MAST CONSTRUCTION**

That portion of the mast above the uppermost conduit support (roof line) shall be continuous in length without couplings.

Service masts over 48 inches may require guying. Contact NBU before constructing masts more than 48 inches above the roof line.

Service masts shall not extend more than 6 feet above any sloped roof. Measure this height from the point where the conduit exits the enclosed portion of the roof to the top of the weatherhead.

Only power service-drop conductors are permitted to be attached to a service mast. (NEC 230-28).

The customer shall provide a solid point of attachment for supporting the overhead service drop. A 5/8 inch eyebolt securely fastened to a structure capable of supporting 300 pounds is required.

The point of attachment shall never have less than 12 feet 6 inches of clearance, and not more than 30 feet of clearance above final ground grade unless approved by NBU.

The point of attachment shall be located high enough to provide the required vertical clearance of NBU's service drop cable between NBU's pole and the point of attachment.

**ELECTRICAL CONNECTION POLICY**

If the attachment point height cannot be obtained from the ground directly above the meter box, then the customer shall provide an attachment point by installing a properly secured mast, according to specifications.

Drip loops shall never have less than 10 feet 6 inches of clearance above final grade.

Weatherheads shall be located high enough to provide the required vertical clearance of NBU's service drop cable between NBU's pole and the weatherhead. The bottom of weatherhead shall not have less than 12 feet of clearance above final grade.

Attach meter loops on poles such that the weatherhead is within 24 inches of the top of the pole.

Conductor shall have minimum 90°C rated insulation and shall have minimum 3 feet excess length out of the weatherhead.

Identify neutral conductors with white tape at both ends.

Installation is subject to inspection and approval by NBU.

**C. OVERHEAD CONSTRUCTION FEES**

Amounts due as CIAC from customers who require extensions or modifications of distribution facilities are calculated in accordance with the following fee schedule. NBU shall estimate any installation requiring conductor larger than 1/0 aluminum wire according to "Non-Standard Design".

**CONDUCTOR FEES**

<i>Single-Phase Primary</i> .....	<i>\$13.00 per linear foot</i>
<i>Single-Phase Secondary</i> .....	<i>\$6.00 per linear foot</i>
<i>Three-Phase Primary, Medium</i> .....	<i>\$27.25 per linear foot</i>
<i>Three-Phase Primary, Bulk</i> .....	<i>\$50.00 per linear foot</i>
<i>Three-Phase Secondary</i> .....	<i>\$6.25 per linear foot</i>

**POLE FEES**

<i>Wood Service Pole (30 foot)</i> .....	<i>\$550.00 per unit</i>
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**13.2 FRONT-LOT CONSTRUCTION**

Overhead construction shall be front-lot only for all individual lot residential subdivisions. For multi-family services, rear-lot or middle-lot overhead construction may be considered with specific and advanced approval of NBU. Unobstructed vehicular and personal access to infrastructure, both initially and permanently, would be required.

## **14. UNDERGROUND SERVICE STANDARDS**

### **14.1 GENERAL SERVICE STANDARDS**

Underground secondary service can be provided from both overhead and underground primary facilities. All loads more than 100 kVA single-phase and 225 kVA three-phase must be served from pad-mounted transformers.

In certain geographical areas designated by NBU, electrical service is only available from an underground distribution system. When this is the case, underground distribution service utilizing pad-mounted transformers and pad-mounted manual switching equipment are the standard method of service.

Outside the designated areas this service is not standard and must be approved by NBU and the appropriate CIAC will be paid by the customer. Coordination with NBU early in the design stages of construction is required for this type of service.

Prior to the installation of the underground conductors by NBU, the final grade levels of the building sites shall be established by the owner. The construction shall be coordinated with the installation of underground electrical facilities to permit unimpeded access of NBU equipment to the installation sites; to allow installation of underground facilities at proper depth and before streets, curbs or other obstructions are installed, and to eliminate dig-ins to the underground electrical facilities after installation. Should established lots or final grade levels change after installation of underground electrical facilities has begun, or if installation of electrical facilities is required by the owner before final grades are established, and either of these conditions results in additional expenses to NBU, payment for these additional expenses shall be made to NBU by the owner.

Work site grading and landscaping must be at final grade or within 6 inches of final grade before installation of underground facilities.

All single-phase or three-phase underground line segments providing service to more than three pad-mounted transformers shall be built with an integral loop feed.

#### **A. NBU RESPONSIBILITY**

NBU shall provide and install all risers placed on NBU poles, wire, and cable at such cost to the customer as is specified herein.

NBU shall provide and install:

- Transformers
- Primary Pull Boxes
- Risers
- Primary Conductors
- Service Lateral Conductors



**B. CUSTOMER RESPONSIBILITY**

The customer shall mark and/or expose any underground obstacles.

The customer will furnish and install trench and service conduit for all services. NBU will provide service conductor cables and make all connections. The customer's service installation shall fully comply with all requirements of the NEC and those of NBU.

Install conduits in accordance with NBU specification EU-910. Trench route must be approved by NBU. Specified conduit depths shall be the minimum as measured from final grade. Special consideration is given to conduits installed in rock. Contact NBU regarding each of these installations. NBU will assume ownership of conduit and trench only after NBU has successfully installed conductors.

The customer shall furnish and install a pull string, whose length is at least 10 feet longer than the conduit run.

The customer shall supply and install plastic identification tape, red or yellow in color and with black lettering reading, "CAUTION: BURIED ELECTRIC CABLE BELOW", placed in the cable trench between 12 and 18 inches above electric conduit and below any communication cable or conduit.

The customer shall obtain and install all meter troughs and secondary pedestals or enclosures for permanent underground service according to NBU specifications as illustrated herein.

At the discretion of NBU, concrete encasement or special backfill may be required for any conduit at any depth carrying a primary and/or secondary line extension to ensure the longevity and integrity of the circuit and the safety of customers and personnel. Concrete encasement so required shall be furnished and installed by the customer. All concrete encasement must meet NBU specifications.

At the discretion of NBU, NBU may require additional conduit and enclosures for future communication systems.

All exposed conduit to be GRC, IMC, sunlight resistant Schedule 40 PVC, or rigid aluminum only per the following specifications. For installations subject to possible physical damage, substitute Schedule 80 PVC (per NEC). All PVC will meet NEMA PC-2 for electrical use.

## ELECTRICAL CONNECTION POLICY

NBU determines secondary conduit size according to the following minimum guidelines.

Single-phase, up to 200 amp	2"
Single-phase, over 200 amp	3"
Three-phase	3"
CT service	1 ¼"
Street light conduit	1 ¼"

Additional secondary conduit may be required for larger loads.

Secondary conduit sweeps shall have an 18-inch minimum radius.

All PVC service conduit elbows shall be preformed.

NBU determines all primary conduit sizes according to specific requirements. Primary sweeps shall have a 36 inch minimum radius.

For longer conduit runs containing three or more bends, the customer shall consult with NBU for the conduit size, and for the radius bend to use.

The customer will install the meter socket and the wiring from the meter socket to the service entrance equipment.

Service line conduit/conductor shall enter the meter socket through the bottom outermost knockout, further away from the main disconnect. Do not utilize the bottom center knockout of the socket. Load conductors shall exit the opposite side of the meter socket from the line conduit/conductors.

NBU shall inspect all conduits and its installations. NBU shall install conductors only after the conduit installation is approved.

**14.2 UNDERGROUND CONSTRUCTION FEES**

Fees listed below are the fees for conductor. This length is not ground distance. It includes riser cable and other conductors installed by NBU. NBU shall estimate any installation requiring larger than 1/0 aluminum wire.

**A. CONDUCTOR FEES**

<i>Single-Phase Primary</i> .....	<i>\$5.00 per linear foot</i>
<i>Single-Phase Secondary</i> .....	<i>\$8.50 per linear foot</i>
<i>Three-Phase Primary, Medium</i> .....	<i>\$16.00 per linear foot</i>
<i>Three-Phase Primary, Bulk</i> .....	<i>\$75.00 per linear foot</i>
<i>Three-Phase Secondary</i> .....	<i>\$9.00 per linear foot</i>

**B. RISER FEES**

<i>Single-Phase Primary Riser</i> .....	<i>\$1,025.00 per unit</i>
<i>Three-Phase Primary Riser</i> .....	<i>\$2,350.00 per unit</i>
<i>Secondary Riser (2"-3")</i> .....	<i>\$775.00 per unit</i>
<i>Secondary Riser (4")</i> .....	<i>\$1,025.00 per unit</i>

**14.3 UNDERGROUND ADJACENT TO RIGHT-OF-WAY**

All Underground Distribution (UD) conversion or extension requests, located adjacent to and fronting a publicly owned Right-Of-Way, shall be property line to property line.

In addition, as an integral part of the UD service request, any adjacent Right-Of-Way whether publicly owned such as a roadway or privately owned such as a gas transmission line, railroad line, or waterway, shall be crossed with UD as well. NBU shall contribute the electrical cost associated with any adjacent ROW crossing, however the associated civil work shall be contributed to NBU and constructed by the project as an integral part of the service request. Any and all ROW owner requirements for crossing their respective ROW shall be followed.

**15. STREET LIGHTING**

NBU may provide general lighting along the right-of-way of dedicated streets consistent with the certified service area of NBU. Installation within incorporated areas shall be in accordance with requirements and regulation of the AHJ.

NBU shall determine the location of street light fixtures, generally located at street intersections, cul-de-sacs, and at intervals not less than 300 feet. Street lighting is required along Residential and Mixed-Use Residential/Commercial Right-Of-Ways, fronting individually subdivided lots.

NBU may adjust the pole spacing, pole height, lamp wattage, or arm length depending on service conditions, street width and other design factors.

**15.1 STANDARD INSTALLATION**

NBU shall provide all necessary materials and labor for installation in overhead distribution areas.

The standard street lighting service is comprised of 150-watt high-pressure sodium equivalent Light Emitting Diode (LED) fixture mounted on a wood or metal pole.

In areas with underground distribution services, the customer is responsible for installation of all necessary conduits, including pole riser, in accordance with NBU specification EU-420.

**A. STANDARD INSTALLATION FEES**

The customer requesting street lighting service shall pay to NBU a CIAC according to the following fee schedule:

*Installation of fixture only on existing NBU distribution pole*  
..... **\$760.00 per fixture**

**15.2 ALUMINUM LIGHT STANDARD INSTALLATION**

At customer's request and with NBU approval, NBU will install street lighting on aluminum light standards. NBU shall provide and install:

150-watt high-pressure sodium equivalent LED fixture mounted on an aluminum light standard.

This style is available only in areas with underground distribution service. Customer is responsible for installation of all necessary conduits and foundations in accordance with NBU specification EU-410.

**A. ALUMINUM LIGHT STANDARD INSTALLATION FEES**

*The customer requesting street lighting service shall pay to NBU a CIAC.*

..... *\$2,560.00 per pole/fixture*

**15.3 ANTIQUE STYLE ORNAMENTAL STREET LIGHTS**

At customer's request and with NBU approval, NBU will install antique style ornamental standards. The specific style shall be based on available NBU inventory and will be provided to customer upon request. Spacing intervals shall be determined by NBU, but shall not be less than 150 feet. NBU shall provide and install:

150-watt high-pressure sodium equivalent LED decorative fixture, mounted on an antique style ornamental standard.

This style is available only in areas with underground distribution service. Customer is responsible for installation of all necessary conduits and foundations in accordance with NBU specification EU-410.

**A. ORNAMENTAL LIGHT INSTALLATION FEES**

*The customer requesting a standard ornamental street lighting service shall pay to NBU a CIAC.*

..... *\$3,760.00 per pole/fixture*

**15.4 PRIVATE RIGHT-OF-WAY SUBDIVISIONS**

For privately owned Right-Of-Way subdivisions within the City of New Braunfels, street lighting service shall be at the discretion of the property developer. If requested, NBU will provide street lighting service. NBU's standards shall then apply. For privately owned Right-Of-Way subdivisions within the City of Schertz, City of Schertz requirements shall apply.

**16. AREA LIGHTING**

NBU offers exterior lighting on private property as a service to our customers. The lighting systems provide automatic dusk-to-dawn operation. Area lighting is furnished with a 150-watt high-pressure sodium equivalent LED fixture. This service can be discontinued at any time at customer's request. Private lighting shall only be offered for residential customers and where NBU owns, operates, and maintains an existing utility pole present and available for lighting installation. No new utility poles shall be installed solely for private lighting service.

**16.1 AREA LIGHTING RATE**

See "Area Lighting (AL) Rate" in the City of New Braunfels Code of Ordinances.

**16.2 INSTALLATION FEE**

*Installation/connection on existing NBU distribution pole with up to 100 feet of service wire .....\$760.00 each fixture*  
*Excess Wire over 100 feet ..... \$1.00/ft.*

**16.3 MAINTENANCE/REPAIR**

NBU shall maintain the light for normal operation. Area lighting may not be available to customers at locations where persistent damage to the Area light occurs.



## **17. TEMPORARY STREET BANNERS**

The City of New Braunfels, in accordance with the City of New Braunfels Ordinance Section 106-17, has developed procedures for installation of Temporary Street Banners. New Braunfels Utilities (NBU) may install Temporary Street Banners supporting economic development, encouraging civic pride, and providing information or announcements about local community services, activities, programs, and events. Please refer to such standard.

In addition, NBU requires the following:

### **17.1 INSURANCE**

Current comprehensive liability policy naming City of New Braunfels and New Braunfels Utilities as the insured, specifying coverage of a minimum of \$1,000,000 per occurrence and \$2,000,000 in aggregate must be on file with NBU 30 days prior to the scheduled banner hang date.

### **17.2 BANNER CONSTRUCTION**

Banners shall be made of 3/16-inch to 1/2-inch nylon mesh with approximately 50% perforation. Banners cannot be made of solid sheet type material. A maximum area of 864 square inches is allowed of a solid non-breathable backing material for event date. Banners shall have 2-inch safety clips on the top spaced every 18 - 24 inches. Banners shall have a minimum 10 feet of nylon rope on each corner. Banners shall be 36 feet in length by 4 feet in height. Banners must be in good condition to be installed. Any damage detected by NBU personnel that jeopardizes the integrity of the banner will result in it not being installed. The owner is responsible for any needed repairs or changes to the banner. Each banner must have a permanently affixed tag that indicates the organization and the event/date of the event.

### **17.3 DESIGNATED LOCATIONS**

- South Seguin Avenue near Jahn Street
- Landa Street near Paradise Alley
- West San Antonio Street near Hackberry Avenue
- East San Antonio Street near Liberty Avenue

### **17.4 INSTALLATION FEES**

A \$60.00 charge will be assessed for each NBU installed Temporary Street Banners. Charges include the installation and removal of one banner from one location. Reservation fees are due upon receipt of the signed agreement and proof of liability insurance. Refund may be issued if cancellation occurs 14 days prior to scheduled installation date.



**17.5 RIGHT OF REFUSAL**

The City of New Braunfels and NBU reserve the right to refuse installation of any banner that the City of New Braunfels and/or NBU deem unsafe. The City of New Braunfels may be contacted at 830-221-4052 to discuss the appropriateness of potential wording on banners.

**18. PRIMARY METERING STANDARDS**

**18.1 GENERAL STANDARDS**

Primary metering is defined as a service where NBU meters the service at the primary voltage. Primary voltage installations use both current and voltage instrument transformers regardless of the load current. Installation of primary metering is solely at the discretion of NBU.

NBU is capable of supplying primary service directly to the customer through NBU metering equipment. Available voltage is 7.2/12.47 kV, 4-wire, grounded Y, or upon special application 138 kV 3-wire, delta.

NBU furnishes, installs, and maintains all service entrance facilities at the point of service including cabinets to house metering CT's and PT's. The customer shall make application to NBU for the proposed primary service and obtain approval of the location, equipment, and design before starting installation of the service entrance. Detailed shop drawings will be required for underground service terminations and metering sections in switchgear.

The customer will incur all costs for clearing the route, including tree removal, building and/or foundation or rubble removal and any other obstacles encountered. The customer shall provide the necessary easements, at no expense to NBU, for the installation and maintenance of the primary service. No permanent buildings or trees shall be placed in the easement area.

Customers requiring service at 7200 volts and above must provide an NBU approved disconnecting means and proper overload and short-circuit protection at the point of delivery.

For any demand loads at or above 4 MW, NBU shall require installation of a three-phase pole or padmounted breaker, installed at customer cost but owned, operated, and maintained by NBU.

For any demand loads at or above 6 MW, NBU reserves the right to construct an additional service feeder originating at the nearest NBU Substation. The cost of such a feeder extension shall be at customer expense.

**18.2 PRIMARY METERING EQUIPMENT FEES**

*Customer shall pay to NBU a CIAC for the installation of the primary PT/CT metering equipment.*

..... \$13,875.00 per unit

## **19. SECOND FEEDER SERVICE POLICY**

### **19.1 AVAILABILITY**

Second feeder service is available upon request of any customer served under the New Braunfels Utilities' (NBU) LGS, VLP or TSR rates, provided NBU agrees that such service can be feasibly and economically provided by NBU.

Second feeder service is the reservation of capacity on a second feeder in order to provide redundant feeder capacity and provide the capability to automatically transfer the customer's total load from a primary feeder to an alternate second feeder. Automatic transfer of load performed by NBU owned equipment will result in typical switching time of 60 seconds.

The reservation of capacity may entail the construction of a second distribution line or enhancement to an existing distribution line from a NBU substation in order to serve the customer's facility, including the installation of automatic switch gear that allows service from the main feeder serving the customer to be switched to the second feeder in case of an outage of the main feeder.

### **19.2 TERMS AND CONDITIONS**

If second feeder service is requested by the customer, the customer is obligated to pay the costs of an engineering study prior to the commencement of the study, if one is necessary to determine whether service from a second feeder can be provided by NBU, regardless of whether such second feeder service is actually provided. If the construction or installation of new facilities is necessary to provide second feeder service, the customer's payment for the engineering study will be included with the anticipated revenue credit and both will be applied against the costs of such construction or installation, including the cost of the engineering study.

If the reservation of capacity requires the construction of a second distribution feeder or enhancement of an existing distribution line, NBU and the customer will share in the cost. NBU will estimate the cost to construct and/or enhance NBU owned facilities from the substation to the customer's property. The customer will reimburse NBU the estimated cost to construct and/or enhance the distribution facilities less an estimated revenue credit equal to the sum of 48 monthly second feeder charge plus any engineering study costs paid by the customer in advance of the study. The customer will reimburse any cost to construct and/or enhance NBU owned facilities necessary for a second feeder service, including any automatic transfer switching equipment that resides on the customer's property.

NBU and the customer must enter into a written agreement identifying: (i) the quantity of the requested second feeder capacity reservation, measured in kW, to be provided by NBU through its distribution system; (ii) the equipment to be provided by NBU; and (iii) the term of the agreement. The agreement will remain in effect while automatic switching capability is in operation. NBU reserves the right to remove or disable any automatic switching capability equipment upon termination of the agreement.

NBU reserves the right to interrupt second feeder service for maintenance activities or when necessary for operational or emergency reasons.

Where appropriate, the customer will be required to maintain appropriate load balancing as determined by the NBU.

NBU's terms and conditions, where not inconsistent with any specific provisions hereof, are a part of this policy.

### **19.3 MONTHLY SECOND FEEDER CHARGE**

The monthly second feeder charge shall be the amount specified in the City of New Braunfels Code of Ordinances, Section 130, Utilities, rate class entitled SFS.

Notwithstanding the foregoing, if the customer's actual billing demand, as defined by the applicable rate in the City of New Braunfels Code of Ordinances, Section 130, Utilities, exceeds the second feeder service reservation, such reservation will be re-set at the actual billing demand for that month and for subsequent months through the term of the agreement unless superseded by a higher actual billing demand. To the extent the construction or installation of new facilities is required in order to provide the second feeder service at the re-set second feeder capacity reservation level, such construction or installation costs shall be subject to reimbursement by the customer.

Additionally, if a customer's second feeder capacity reservation requirement decreases over time or due to changes in business requirements below the customer's original second feeder capacity reservation, NBU will adjust the second feeder capacity reservation to the customer. The customer must provide the NBU a written request to have the second feeder capacity reservation lowered below the original contracted second feeder capacity reservation. The new second feeder capacity reservation will be based upon the actual billing demand of the latest month, beginning with the next month after such request, provided that the customer has been receiving second feeder service for a minimum period of five (5) years. For requests to decrease the second feeder capacity reservation prior to the end of the initial five year term of second feeder service, the NBU will charge the customer the highest actual billing demand for eleven (11) additional months, or until the end of the initial five year term, whichever occurs first. NBU will review the equipment necessary to supply second feeder service at the lower second feeder capacity reservation. The customer agrees to reimburse NBU for any costs incurred to appropriately alter the second feeder switchgear and equipment to provide second feeder service at the lower second feeder capacity reservation.

However, once the customer's second feeder capacity reservation has been adjusted to the lower, requested level in accordance with the preceding paragraph, the customer agrees not to exceed the capacity level. If the customer's actual billing demand exceeds the customer's new second feeder capacity reservation, the customer agrees to pay the difference between the actual billing demand and the new second feeder capacity reservation multiplied by the monthly second feeder charge as defined above, for the period of time since the customer's new second feeder capacity reservation has been in effect, up to 24 months. Additionally, such reservation will be re-set at the actual billing demand, in accordance with the provisions above. To the extent, the construction or installation of new facilities required in order to provide second feeder service at the re-set second feeder capacity reservation level, such construction or installation costs shall be subject to reimbursement by the customer.

**19.4 METERING**

NBU's existing metering equipment for electric delivery service to the customer will remain in place in order to continue to bill the customer's actual usage. If necessary, NBU will install metering equipment for second feeder service for the purpose of metering and billing actual deliveries on the second feeder.

**19.5 TERM OF SERVICE**

Second feeder service is provided under this provision for a period of at least five (5) years.



## **20. CUSTOMER-OWNED GENERATION**

### **20.1 NON-PARALLEL OPERATION**

In some cases, the customer may wish to provide an emergency generator to supply a portion or all of his electric service in the event of a power failure. In such cases, an approved double throw switch, either manually or automatically operated, must be provided in the service entrance equipment of the customer. This switch shall break the initial position before making the next position (open transition). This switch is necessary to prevent a dangerous back feed of energy into NBU lines and equipment that might create a hazard to equipment and personnel and could seriously damage the customer's wiring and generator. NBU shall not be responsible for customer equipment damage caused by a failure of customer equipment to maintain non-parallel operation.

In addition, no collar control device may be installed between a meter socket and NBU's meter. Such a device installation is considered meter tampering.

### **20.2 DISTRIBUTED ENERGY RESOURCES**

DER of 24 kW residential service or 999 kW commercial service may be connected for parallel operation with the electrical system of New Braunfels Utilities (NBU), with advance NBU approval. Interconnections will only be considered for permanent electric customers whose load profiles are expected to normally exceed DER capacity of the installation.

Larger DER interconnections 1 MW and above may also be considered, however additional approval up to and including registration by ERCOT may be necessary. Any applicable ERCOT fees shall be paid by the customer requesting such DER.

NBU assigns PV system ratings at Normal Operating Conditions (NOC) 800 Watts per Square Meter, which typically matches the irradiance of a Southward facing system. This number may be changed from time to time.

#### **A. INTERCONNECTION REQUIREMENTS**

Customer shall comply with all the latest applicable National Electric Code (NEC) requirements [NEC Articles 690 and 705], building codes, and shall obtain all City of New Braunfels, State, and Federal electrical permit(s) for the equipment installation.

## **ELECTRICAL CONNECTION POLICY**

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DER service shall be limited to no more than 50% maximum kW capacity on any series element serving the DER. As an example, total DER served by a 50kVA padmounted transformer shall not exceed 25kW. DER capacity is to be used on a first come first serve basis. As an additional example, total DER served by one distribution feeder shall not exceed 5MW. DER shall also be limited to where a substation Power Transformer does not backfeed the transmission grid, at any time including off-peak. Should a DER service request necessitate upgraded NBU infrastructure, the customer will be responsible for all costs associated with the design, equipment, and installation of the additional infrastructure.

Customer shall provide space for metering equipment. For all DER services 320 Amp or less, two meter bases are required. One meter shall register all consumption usage. The second meter shall register all generation usage. Under no circumstance may load-side electrical cross-connections be made between the consumption usage meter and the generation usage meter. Such a connection is considered an Unapproved DER Interconnection.

Customer's over-current device at the service panel shall be marked to indicate power source and connection to NBU's distribution system.

NBU requires a visible, lockable, labeled AC disconnect (“VLLD”) for interconnection. The AC disconnect must have a visual break (with external handle) that is appropriate to the voltage level, be accessible to utility personnel, and is capable of being locked in the open position. NBU personnel or company-authorized agents will operate the VLLD as needed to ensure the DER system is removed for operation and cannot backfeed or inadvertently energize company facilities during emergency switching or other conditions. NBU requires the VLLD be located on an exterior wall and within ten feet of the NBU meter(s). For commercial installations only, if the VLLD is more than ten feet from the NBU meter(s), then NBU requires a site directory placard (indicating the location of the VLLD) be placed on the customer’s equipment beside the NBU meter(s) or on the NBU meter base(s) showing the location of the VLLD. For more information, follow the NBU Placard Guideline within the NBU Procedures Manual.

NBU shall not be responsible for any restart failure of the DER system, which may occur from operation of the VLDD.

**ELECTRICAL CONNECTION POLICY**

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The Customer shall assume the full responsibility for all maintenance of the generation and protective equipment and keeping of records for such maintenance. These records shall be available to NBU for inspection upon request and reasonable notice. Failure to maintain such records may necessitate the customer engaging a licensed electrician to provide the documentation to NBU. In addition and in the absence of system documentation, NBU also reserves the right to assume a system size to be up to 265 Watts per panel.

Customer's power production control system shall comply with NEC Articles 690 and 705; and applicable and current Institute of Electrical and Electronics Engineers (IEEE) Standards 929, and/or the latest version of IEEE 1547, for parallel operation with NBU; in particular the:

Power output control system shall automatically disconnect from NBU power source upon loss of NBU voltage and not reconnect until NBU's voltage has been restored for at least 5 minutes continuously.

Power output control system shall automatically initiate a disconnect from the NBU source within 6 cycles if customer's voltage falls below 60 Volts rms to ground (nominal 120 V rms base) on any phase.

Power output control system shall automatically initiate a disconnect from the NBU system within 2 seconds if the voltage rises above 132 Volts rms phase to ground or falls below 104 Volts rms phase to ground (nominal 120 V rms base) on any phase.

Customer shall pay all costs associated with the design, installation, operation, and maintenance of the generation equipment on the customer's side of the meter(s).

Customer shall not commence parallel operation of the generation equipment until inspection and written approval of the interconnection facilities has been provided by NBU. Such approval shall not be unreasonably withheld. NBU shall have the right to have representatives present at the initial testing of the customer's protective apparatus, and shall retain the right to periodically inspect the facility to ensure that appropriate safety standards continue to be met.

Once in operation, customer shall make no changes or modifications in the equipment, wiring, or the mode of operation without the prior approval of NBU.

**ELECTRICAL CONNECTION POLICY**

DER equipment shall be in compliance with Underwriters Laboratories (UL) 1741, Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Systems; UL 1703, Standard for Safety: Flat-Plate Photovoltaic Modules and Panels; and IEEE 1262-1995, Recommended Practice for Qualification of Photovoltaic (PV) Modules; and the DER system shall be installed in compliance with IEEE Standard 929-2000, Recommended Practice for Utility Interface of Photovoltaic Systems, as well as the latest version of IEEE Standard 1547.

**B. SAFETY**

All Safety and operating procedures for joint use equipment shall be in compliance with the Occupational Safety and Health Administration (OSHA) standard 29 CFR 1910.269, the National Electrical Code (NEC), Washington Administrative Code (WAC) rules, the Washington Industrial Safety and Health Administration (WISHA) standard, NBU standards, and equipment manufacturer's safety and operating manuals.

NBU reserves the right to require certain and defined utility control over installed customer owned DC to AC inverters, at any time. For existing installations, written notice would be provided by NBU detailing the required changes and/or control integration to be made. Existing installations would be grandfathered "as is" for a period of 10 years from notice.

**C. DISCONNECTION OF DER**

It shall be the customer's responsibility to inform NBU 30 days in advance of a disconnection of DER. NBU shall not be responsible for refunding any rate ordinance based fees due to a failure to notify NBU.

**D. UNAPPROVED DER INTERCONNECTION**

Upon detection by NBU, any unapproved DER interconnection to the NBU distribution system is subject to immediate disconnection. Unapproved DER interconnections pose a safety risk to NBU crews and to the owners of such systems.

*Unapproved DER Interconnection Fee .....\$500.00*

**E. INSPECTION FEES**

Inspections shall occur during initial installation, and at a frequency of once per year thereafter. In addition, any failed DER system inspection, requiring corrections with a second inspection being necessary, shall require re-inspection fee(s) as follows. Inspection shall be performed by NBU, or by an NBU authorized representative.

*DER System Inspection Fee (Yearly).....\$100.00*

*DER System Re-Inspection Fee (Per Inspection, As Required) ....\$100.00*

**21. APPENDIX A (Comprehensive Fee Schedule)**

This section summarizes all applicable fees listed throughout the Electrical Connection Policy. In the event of any discrepancy, fees listed here shall supersede.

Any and all fees listed within this Electrical Connection Policy may automatically adjust by the Consumer Price Index (CPI) upon a yearly basis. CPI based increases shall not require NBU Board of Trustees approval.

<i>Fee Description</i>	<i>Policy Section</i>	<i>Unit</i>	<i>Unit Fee</i>
After Hours Connection	§3.1	Per Unit	\$150.00
D&R, less than 2 hours	§3.2	Per Unit	\$75.00
Accelerated Inspection	§10.1.A	Per Unit	\$75.00
Meter Loop Re-Inspection	§10.1.A	Per Unit	\$100.00
Non-Business Hour Inspection	§10.1.A	Per Unit	\$75.00
CT Metering, Standard	§12.2.F	Per Unit	\$925.00
CT Metering, Transocket	§12.2.F	Per Unit	\$1,125.00
Single-Phase Primary (OH)	§13.1.C	Per Foot	\$13.00
Single-Phase Secondary (OH)	§13.1.C	Per Foot	\$6.00
Three-Phase Primary, Medium (OH)	§13.1.C	Per Foot	\$27.25
Three-Phase Primary, Bulk (OH)	§13.1.C	Per Foot	\$50.00
Three-Phase Secondary (OH)	§13.1.C	Per Foot	\$6.25
Wood Service Pole	§13.1.C	Per Unit	\$550.00
Single-Phase Primary (UD)	§14.2.A	Per Foot	\$5.00
Single-Phase Secondary (UD)	§14.2.A	Per Foot	\$8.50
Three-Phase Primary, Medium (UD)	§14.2.A	Per Foot	\$16.00
Three-Phase Primary, Bulk (UD)	§14.2.A	Per Foot	\$75.00
Three-Phase Secondary (UD)	§14.2.A	Per Foot	\$9.00
Single-Phase Primary Riser	§14.2.B	Per Unit	\$1,025.00
Three-Phase Primary Riser	§14.2.B	Per Unit	\$2,350.00
Secondary Riser (2"-3")	§14.2.B	Per Unit	\$775.00
Secondary Riser (4")	§14.2.B	Per Unit	\$1,025.00
Public Light, Existing Pole	§15.1.A	Per Unit	\$760.00
Aluminum Light, Standalone	§15.2.A	Per Unit	\$2,560.00
Antique Light, Standalone	§15.3.A	Per Unit	\$3,760.00



**ELECTRICAL CONNECTION POLICY**

Area Lighting	§16.2	Per Unit	\$760.00
Area Lighting (Excess Wire)	§16.2	Per Foot	\$1.00
Banner Installation	§17.4	Per Unit	\$60.00
Primary Metering	§18.2	Per Unit	\$13,875.00
Unapproved DER Interconnection	§20.2D	Per Unit	\$500.00
DER Inspection	§20.2E	Per Unit	\$100.00
DER Re-Inspection	§20.2E	Per Unit	\$100.00





**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

**EXHIBITS**

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1. First Amendment to Professional Services Agreement with Public Relations Advertising Company  
Dbá Vladimir Jones

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(THREE YEAR STRATEGIC COMMUNICATION AND MARKETING PLAN)**

This **FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “First Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **PUBLIC RELATIONS ADVERTISING COMPANY DBA VLADIMIR JONES**, a Colorado corporation authorized to transact business in the State of Texas (the “Professional”) (collectively, “the Parties”).

**RECITALS**

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated December 7, 2023 (the “Agreement”), for all labor, material, and equipment necessary to provide (i) a three-year strategic communication and marketing plan to be completed within 90 days after the effective date, and (ii) account management, public relations services, crisis communication, digital/media services, creative services, and strategic insight services to be provided on an hourly basis within one year after the effective date (the “Services”);

WHEREAS, the Agreement did not require Board approval because the cost for the Services totaled \$242,000 and did not exceed the \$250,000 threshold for Board approval required by the NBU Purchasing Policy;

WHEREAS, NBU and the Professional have identified a need to increase (i) the travel expenses included in the Agreement related to the three-year strategic communication and marketing plan and (ii) the not to exceed amount for the Services related to immediate and on-going services;

WHEREAS, the Agreement requires the Parties to agree in writing to amend the Agreement; and

WHEREAS, NBU and the Professional agree to amend the Agreement to increase (i) the travel expenses listed in Table 1, Exhibit B to \$22,000 related to the three-year strategic communication and marketing plan; and (ii) the not to exceed amount of compensation for the Services listed in Table 2, Exhibit B, to \$64,000 related to immediate and on-going services.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

Section 1. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted in its entirety and replaced by Exhibit 1 to this First Amendment as of the effective date of this First Amendment.

Section 2. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 3. Entire Agreement. This First Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 4. Binding Effect. This First Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 5. Severability. If any term or provision of this First Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this First Amendment shall not be affected thereby, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 6. Governing Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

*(The remainder of this page is intentionally left blank.)*

**IN WITNESS WHEREOF**, the Parties hereto, upon lawful approval and authority, have executed this First Amendment on this the \_\_\_\_ day of \_\_\_\_\_, 2024.

**NBU:**  
**NEW BRAUNFELS UTILITIES,**  
a Texas municipally owned utility

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: CEO

**THE PROFESSIONAL:**  
**PUBLIC RELATIONS ADVERTISING COMPANY,**  
**DBA VLADIMIR JONES,**  
a Colorado corporation authorized to  
transact business in the State of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## Exhibit 1

## Exhibit B

### Compensation

**Table 1 – Preparation of Three-Year Strategic Communications and Marketing Plan**

NBU shall pay the Professional for the preparation of the Three-Year Strategic Communications and Marketing Plan and related Services described in Exhibit A, a total not to exceed amount of \$237,000.00.

Rates for Services	Est Hours	Rates
Three-Year Strategic Communications and Marketing Plan	970	\$185
OOP research costs for digital workbooks for stakeholder research and external message hierarchy study	N/A	N/A
Travel	N/A	N/A

Cost Breakdown	Original Agreement Amount	First Amendment	Total Amount
Three-Year Strategic Communications and Marketing Plan	\$180,000	\$0	\$180,000
OOP research costs for digital workbooks for stakeholder research and external message hierarchy study	\$35,000	\$0	\$35,000
Travel	\$2,000.00	\$20,000	\$22,000
<b>TOTAL</b>	<b>\$217,000.00</b>	<b>\$20,000</b>	<b>\$237,000</b>

**Table 2 - Rate Schedule for Immediate and Ongoing Services**

NBU shall pay the Professional for account management, public relations (“PR”) services and crisis communication, digital/media services, creative services and strategic insight services on an hourly basis at the following rates up to a total not to exceed amount of \$64,000.

List of Immediate Ad Agency Support and or Ongoing Services	Hourly Rates
Account Management	\$150
PR Services/Crisis Communication	\$150
Digital/Media Services	\$175
Creative Services	\$200



Strategic Insight Services	\$200

<b>Cost Breakdown</b>	<b>Original Agreement Amount</b>	<b>First Amendment</b>	<b>Total Amount</b>
Immediate Ad Agency Support and or Ongoing Services	\$25,000	\$39,000	\$64,000
<b>TOTAL</b>	<b>\$25,000.00</b>	<b>\$39,000</b>	<b>\$64,000</b>



**Meeting Date:** April 25, 2024      **Agenda Type:** Action Items  
**From:** Jesse Luna      **Reviewed by:** David Hubbard  
    Purchasing Manager      Chief Administrative Officer  
**Submitted by:** David Hubbard      **Approved by:** Ryan Kelso  
    Chief Administrative Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Reject All Proposals Submitted for the Purchase and Development of the Real Property and Improvements Located at 263 Main Plaza In Connection with RFQ# 02601 and RFP# 02601-2 and Authorize the CEO or His Designee to Terminate the Memorandum of Understanding Dated February 25, 2022, Between NBU and Seals Family Properties, LLC, Regarding the Same

## BACKGROUND

On January 11, 2021, New Braunfels Utilities (“NBU”) issued a request for qualifications, RFQ# 02601, for developers interested in the purchase and development of the real property and improvements located at 263 Main Plaza, New Braunfels, Texas 78130 (the “Main Plaza Property”). Proposals were due February 5, 2021. NBU received six responses and, after careful consideration, selected the three most qualified respondents. A subsequent request for proposals, RFP# 02601-2, was issued to those three respondents on May 24, 2021, with the proposals due July 28, 2021. NBU evaluated the three proposals and recommended entering into a memorandum of understanding (the “MOU”) with Seals Family Properties, LLC (the “Developer”) to proceed with negotiations for the purchase and development of the Main Plaza Property. The Board approved the proposed MOU at its regularly scheduled Board meeting on February 24, 2022, and the parties entered into the MOU on February 25, 2022.

The terms of the MOU require the parties to present a term sheet and a development agreement to the NBU Board no later than August 25, 2022, and April 2023, respectively. While NBU and the Developer engaged in a series of negotiations, the terms of the MOU have not been satisfied. As a result, NBU staff recommends that the Board end negotiations with the Developer and terminate the MOU. If the NBU Board approves termination of the MOU, NBU staff will provide notice of termination to the Developer in accordance with the terms of the MOU.

NBU staff requests that the Board of Trustees (i) reject all proposals submitted for the purchase and development of the Main Plaza Property in connection with RFQ# 02601 and RFP #02601-2 and (ii) authorize the CEO or his designee to terminate the MOU.

This item is being presented to the Board because the Purchasing Policy and Section 252.043(f) of the Local Government Code require the governing body to authorize the rejection of all bids submitted in

response to a solicitation. In addition, the Board must consider whether to approve termination of the MOU because the MOU is a previously Board-approved item.

**FINANCIAL IMPACT**

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There is no financial impact.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

**EXHIBITS**

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None



The Agreement further permits the City to obtain a survey of the Main Plaza Property or a title insurance policy at the City's expense if the City elects to do so. Other closing costs are equitably divided between the parties according to local custom. Corridor Title is expected to conduct the transfer.

NBU staff requests that the Board approve the transfer of the Main Plaza Property to the City and the lease of the Main Plaza Property from the City to NBU, and further requests that the Board authorize the CEO or his designee to execute all documents necessary to close the transaction contemplated by the Agreement, including but not limited to, the Deed and the Lease.

This item is being presented to the Board because NBU staff must present each conveyance of real property to the Board for approval.

## **FINANCIAL IMPACT**

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NBU is expected (i) to receive \$4,550,000 from the City for the Main Plaza Property; (ii) pay rent to the City in the amount of \$10.00 under the Lease; and (iii) pay closing costs in an amount not to exceed \$3,000.00.

## **LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Infrastructure and Technology**

**Financial Excellence**

**Stewardship**

## **EXHIBITS**

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1. Real Estate Transfer Agreement, together with the form Special Warranty Deed and form Lease Agreement, attached thereto as Appendix B and Appendix C, respectively.
2. Resolution #2024-184
3. Presentation

## Real Estate Transfer Agreement

This Real Estate Transfer Agreement (“Agreement”) is between New Braunfels Utilities (“NBU”) and the City of New Braunfels (“City”), and it is effective (“Effective Date”) as of the date last signed by NBU and the City.

**NBU:** NEW BRAUNFELS UTILITIES

**Address:** 263 Main Plaza  
New Braunfels, Texas 78130  
Attn: Connie C. Lock, General Counsel & Chief Ethics Officer

**Phone/Fax:** P: (830) 629-8428 F: (830) 629-8435

**Email:** clock@nbutexas.com

**CITY:** CITY OF NEW BRAUNFELS

**Address:** 550 Landa Street  
New Braunfels, Texas 78130  
Attn: Valeria Acevedo, City Attorney

**Phone/Fax:** P: (830) 221-4281 F: (830) 626-5578

**Email:** vacevedo@nbtexas.org

**Property:** All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being commonly known as 263 Main Plaza, New Braunfels, Comal County, Texas, 78130, and being more particularly described by metes and bounds in the attached **APPENDIX A**.

**Title Company:** Corridor Title  
Attn: Cindy Carroll  
410 W. San Antonio Street, Suite 100  
New Braunfels, Texas 78130  
P: (830) 387-4739 F: (830) 387-4739  
email: Cindy.Carroll@corridortitle.com

**Transfer Price:** **\$4,550,000**



## A. Deadlines and Other Dates.

All deadlines in this Agreement expire at 11:59 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to 11:59 P.M. the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. **Delivery of Title Commitment:** Within twenty (20) business days following the Effective Date, NBU, at NBU's sole cost and expense, will cause the Title Company to issue and deliver to the City a commitment for title insurance with a list of all encumbrances, easements and other matters affecting title to the Property (the "Commitment").

2. **Delivery of Survey:** NBU does not have a survey of the Property. If the City or the title insurance company requires a survey of the Property, the City will obtain a survey ("Survey") of the Property and provide a copy of the Survey to NBU no later than seven (7) days before the Transfer Date. If the City obtains a Survey under this provision, NBU and the City agree to use the metes and bounds description resulting from the Survey as the legal description of the Property in all Transfer Documents (defined below) upon the reasonable acceptance of the Survey by both parties.

3. **Transfer Date:** Subject to the approval of the NBU Board of Trustees and City Council, the transfer of the Property ("Transfer") will be conducted by the Title Company, on a date mutually agreed by the City and NBU ("Transfer Date"), no later than August 1, 2024. Operational control of the Property will transfer to the City on the Transfer Date, subject to NBU's right to lease the Property from the City from and after the Transfer Date, as set out in Section A.4. of this Agreement.

4. **Lease:** NBU will have the right to lease the Property from the City for the period starting on the Transfer Date and ending on the date that is one hundred twenty (120) days after the date NBU obtains a final certificate of occupancy for NBU's new headquarters, for rent in the amount of \$10.00. The terms of the lease will be set out in a written Lease Agreement ("Lease") in substantially the form attached hereto as **APPENDIX B**, to be executed by NBU and the City on the Transfer Date.

5. **Temporary Certificate of Occupancy.** Upon satisfactory completion of the inspection of the fire safety systems at NBU's new headquarters, the City agrees to issue a temporary certificate of occupancy to NBU to enable NBU to begin moving furniture, fixtures and equipment into the NBU headquarters prior to issuance of the final certificate of occupancy. The obligation set forth in this Section A.5. will survive the performance of this Agreement to include the effectuation of the Transfer of the Property.

## B. Conditions Precedent

This Agreement is subject to the approval of the NBU Board of Trustees and New Braunfels City Council, both of which are conditions precedent to the Transfer of the Property upon the terms set forth in this Agreement.

### C. Exhibits

The following are attached to and are a part of this Agreement:

**APPENDIX A** – Description of the Property

**APPENDIX B** – Lease Agreement Form

**APPENDIX C** – Special Warranty Deed Form

### D. Transfer of Property and Payment of Transfer Price

1. Subject to the terms and conditions of this Agreement, NBU agrees to convey the Property to the City on the Transfer Date, in exchange for which the City agrees to pay NBU the Transfer Price for the Property in the manner set forth in Section D.2 of this Agreement.

2. The City shall pay \$500,000 of the Transfer Price to NBU on the Transfer Date, by wire transfer or other immediately available funds. Thereafter, the balance of \$4,050,000 will be paid to NBU by the City in four (4) installments on or before the following dates:

- (a) \$500,000 on October 1, 2024;
- (b) \$500,000 on October 1, 2025;
- (c) \$500,000 on October 1, 2026; and
- (d) \$2,550,000 on the sooner of the following to occur (i) the date that NBU turns over possession of the Property to the City under the Lease; or (ii) the Lease Termination Date, as defined in the Lease.

3. NBU and the City will each account for the transfer of the Property and the associated payments as part of each party's respective accounting records. The obligation of the City to pay the Transfer Price to NBU under Section D of this Agreement will survive the performance of this Agreement to include the effectuation of the Transfer of the Property and will not require execution of a separate promissory note. NBU may use this Agreement in lieu of a promissory note as evidence of the debt for all purposes.

### E. Title and Survey

If the Commitment or the Survey, if applicable, reflects defects or exceptions that are objectionable to the City (the "Title Defects"), then the City shall notify NBU (the "Title Notice"), in writing, within ten (10) days following receipt of the Commitment and the Survey, but in no event later than the Transfer Date. If the City sends a Title Notice to NBU, then NBU shall have a period of fourteen (14) days from receipt of the Title Notice to notify the City of any Title Defects that NBU is unwilling or unable to cure ("NBU's Notice"). In the event that NBU elects to cure the Title Defects, NBU shall use commercially reasonable efforts to do so and shall have until the Transfer Date to do so. If NBU is unwilling or unable to cure some or all of the Title Defects in the Title Notice, the City shall be entitled to terminate this Agreement by delivering written notice to NBU prior to the Transfer Date or elect to accept the Property subject to any such Title Defects. If the City does not elect to terminate this Agreement pursuant to this section, then any matters

disclosed by the Commitment and the Survey which are not objected to by the City or which NBU is unable or unwilling to cure shall constitute "Permitted Exceptions." Notwithstanding anything to the contrary, whether or not objected to by the City, NBU shall endeavor to satisfy or remove any mortgage, tax, mechanics, or judgment lien attributable to NBU's period of operation of the Property, if any.

#### **F. Environmental Testing and Inspections**

The City shall have the right during the pendency of this Agreement to conduct such inspections and environmental studies regarding the Property as the City deems necessary or desirable, provided that the City will reasonably coordinate any such inspections and studies with NBU and will further conduct any such inspections and studies in a manner that does not interfere with NBU's business operations on the Property.

#### **G. Condition of the Property**

1. There is no litigation pending or threatened against the Property that might affect the Property or NBU's ability to perform its obligations under this Agreement, and NBU has not received notice of any violation of any law, ordinance, regulation, or requirement affecting the Property or NBU's use of the Property. In addition, NBU is not aware of any hazardous materials or toxic substances on the Property and has not received any inquiries or notices from any governmental authority or third party with respect to the presence of hazardous materials or toxic substances on the Property or the migration of hazardous materials or toxic substances from the Property.

**2. THE PROPERTY WILL BE TRANSFERRED TO THE CITY IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS. ALL REPRESENTATIONS OTHER THAN THE REPRESENTATION IN SECTION G.1. AND ALL WARRANTIES, EXCEPT THE LIMITED WARRANTY OF TITLE IN THE SPECIAL WARRANTY DEED, ARE EXPRESSLY DISCLAIMED.**

**3. AFTER THE TRANSFER, AS BETWEEN THE CITY AND NBU, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, CONDITIONS, AND CLAIMS, EVEN IF ARISING FROM EVENTS BEFORE THE TRANSFER, WILL BE THE SOLE RESPONSIBILITY OF THE CITY, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS, CONDITIONS, OR CLAIMS, WERE KNOWN OR UNKNOWN AT TRANSFER, SUBJECT ONLY TO NBU'S BREACH OF ITS EXPRESS REPRESENTATION SET OUT IN SECTION G.1. ABOVE ("EXPRESS REPRESENTATION"). SUBJECT ONLY TO NBU'S BREACH OF SUCH EXPRESS REPRESENTATION, ONCE TRANSFER HAS OCCURRED, THE CITY RELEASES NBU FROM LIABILITY FOR ANY DEFECTS, LATENT OR OTHERWISE, AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS, CONDITIONS, OR CLAIMS, AFFECTING THE PROPERTY, INCLUDING BUT NOT LIMITED TO LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE**

**DISPOSAL ACT, AND THE TEXAS WATER CODE.**

**4. EXCEPT FOR THE WARRANTY OF TITLE CONTAINED IN THE SPECIAL WARRANTY DEED AND THE REPRESENTATION IN SECTION G.1. OF THIS AGREEMENT, NBU HAS NOT, DOES NOT, AND WILL NOT MAKE ANY WARRANTIES, GUARANTIES, OR REPRESENTATIONS, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (I) THE CONDITION OF THE PROPERTY OR ANY ELEMENT THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO ENVIRONMENTAL CONDITIONS, SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (II) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL ELEMENTS, DESIGN, OR ENGINEERING OF THE IMPROVEMENTS; (III) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS, AND ELECTRICITY; (IV) GEOLOGICAL CONDITIONS, SOIL CONDITIONS, DRAINAGE, FLOODPLAIN DESIGNATION, ACCESS OR OTHER CONDITIONS; OR (V) ANY OTHER WARRANTIES OR REPRESENTATIONS WHATSOEVER.**

Language substantially similar to the language in Sections G.2., G.3. and G.4. of this Agreement will be included in the Special Warranty Deed (“Deed”) in the manner reflected in Appendix C.

**H. Condition of the Property until Transfer; Notice of Claims; No Recording of Agreement**

1. *Maintenance and Operation.* NBU will continue to operate and maintain the Property in the manner operated and maintained on the Effective Date through the Transfer Date.

2. *Casualty Damage.* If the Property is damaged by casualty on or before the Transfer Date, NBU will notify the City promptly after discovery of any casualty damage to the Property. NBU will have no obligation to repair or replace the Property if it is damaged by casualty before the Transfer. The City may terminate this Agreement in the event of a casualty by giving notice to NBU prior to the Transfer. If the City does not terminate this Agreement, NBU will (a) convey the Property to the City in its damaged condition, (b) assign to the City all of NBU’s rights under any casualty insurance policies covering the Property, and (c) pay to the City the amount of any deductible and/or coinsurance under any casualty insurance policies covering the Property, but not in excess of the cost to repair the casualty damage.

3. *Claims; Hearings.* NBU will notify the City promptly of any claim or administrative hearing that is threatened, filed, or initiated on or before the Transfer Date that affects the Property.

4. *No Recording.* Neither party will record this Agreement or any memorandum or notice of this Agreement in the real property records of any county.

5. *Representations.* NBU will promptly notify the City if any of the representations of NBU in Section G.1. is no longer accurate.

## I. Termination

The City or NBU may terminate this Agreement at any time prior to the consummation of the Transfer contemplated by this Agreement. Upon termination, neither party will have any further duties or obligations to the other under this Agreement.

## J. Transfer

1. *Transfer.* On the Transfer Date, the following will occur:
  - a. *Transfer Documents.* The parties will execute and deliver the Transfer Documents (defined below) described in Section J.3.
  - b. *Transaction Costs.* The parties will pay the Transaction Costs (defined below) described in Section J.2.
  - c. *Possession.* NBU will deliver operational control of the Property to the City, subject to the Lease with NBU.
  
2. *Transaction Costs.* On the Transfer Date, the costs incurred in connection with the transaction contemplated by this Agreement will be allocated by the Title Company as follows:
  - a. *NBU's Costs.* NBU will pay (i) the cost of the Commitment; (ii) the cost to prepare the Deed; (iii) \$10.00 for rent under the Lease; (iv) the cost to release any liens encumbering the Property, if any; (iv) one-half of the settlement fee owed to the Title Company for conducting the transaction; and (v) any other expenses and attorney's fees incurred directly by NBU in connection with the Transfer contemplated by this Agreement.
  - b. *City's Costs.* The City will pay (i) the cost of the Survey, if applicable; (ii) the premium of any title insurance policy desired by the City, if any; (iii) the cost to record the Deed to the City; (iv) the cost to record any documents relating to any financing obtained by the City, if any; (iv) one-half of the settlement fee owed to the Title Company; and (v) any other expenses and attorney's fees incurred by the City in connection with the Transfer contemplated by this Agreement.
  - c. *Ad Valorem Taxes.* The City and NBU are tax exempt entities; therefore, no taxes will be prorated or paid.
  
3. *Transfer Documents.*
  - a. On the Transfer Date, NBU will execute and deliver the following documents:

- (i) Lease in substantially the form attached in **APPENDIX B**;
  - (ii) Deed in substantially the form attached in **APPENDIX C**;
  - (iii) settlement statement reasonably approved by NBU; and
  - (iv) any other documents required by the Title Company or reasonably requested by the City to effectuate the Transfer.
- b. On the Transfer Date, the City will execute and deliver the following documents:
- (i) Lease in substantially the form attached in **APPENDIX B**;
  - (ii) Deed in substantially the form attached in **APPENDIX C**;
  - (iii) settlement statement reasonably approved by the City; and
  - (i) any other documents required by the Title Company or reasonably requested by the NBU to effectuate the Transfer.

The documents listed in Section J.3. of this Agreement are collectively referenced as the “Transfer Documents.”

#### **K. Miscellaneous Provisions**

1. *Notices.* Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be given by email, personal delivery, or courier delivery (FedEx, UPS or DHL) and will be effective when received.

2. *Entire Agreement.* This Agreement, together with its exhibits, constitutes the entire agreement of the parties concerning the proposed Transfer of the Property by NBU to the City. There are no representations, warranties, agreement, or promises pertaining to the Transfer not incorporated in writing in this Agreement.

3. *Amendment.* This Agreement may be amended only by an instrument in writing signed by the parties.

4. *Prohibition of Assignment.* Neither party may assign this Agreement. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. *Counterpart Execution.* This Agreement may be executed and delivered (including by facsimile or Portable Document Format (.pdf) transmission) in several counterparts, each of



which will be fully effective as an original and all of which together will constitute one and the same instrument. Facsimile and other electronic copies will have the same effect as manually-signed originals and will be binding on the undersigned parties.

6. *Choice of Law; Venue.* This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Comal County, Texas.

7. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this Agreement.

8. *Severability.* The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

9. *Ambiguities Not to Be Construed against Party Who Drafted Agreement.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

*[Signatures follow on next page]*

**NBU**

**CITY**

NEW BRAUNFELS UTILITIES

CITY OF NEW BRAUNFELS

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Ryan Kelso

Name: Robert Camareno

Title: Chief Executive Officer

Title: City Manager

APPENDIX A

## Description of the Property

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North 38° 42' 08" East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North 52° 00' West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North 38° 38' 24" East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South 52° 04' 19" East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North 38° 41' 47" East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

- 2 -

THENCE with the Southwest line of Comal Avenue, the Northeast line of Lot 42, South 52° 00' 02" East 96.04 feet to an iron pin set for the East corner of Lot 42, and the North corner of Lot 43;

THENCE with the Southeast line of Lot 42, the Northwest line of Lot 43, South 38° 32' 10" West 191.38 feet to an iron pin, said pin being the South corner of Lot 42, West corner of Lot 43, North corner of Lot 44 and the East corner of Lot 41;

THENCE with the Southwest line of Lot 42, the Northeast line of Lot 41, North 52° 18' 01" West 96.27 feet to an iron pin set for the West corner of Lot 42, the North corner of Lot 41, the East corner of Lot 40, and the South corner of Lot 36;

THENCE with the Southeast line of Lot 40 and the Northwest line of Lot 41, South 38° 41' 58" West 191.60 feet to a screw set in a concrete walk, said screw lying in the North line of Seguin Avenue and being the South corner of Lot 40 and the West corner of Lot 41;

THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

**APPENDIX B**  
**Lease Agreement Form**

**LEASE**  
**Basic Information**

Date: [Transfer Date]

Landlord: CITY OF NEW BRAUNFELS

Landlord's Address: 550 Landa Street  
New Braunfels, TX 78130

Tenant: NEW BRAUNFELS UTILITIES

Tenant's Address: 263 Main Plaza  
New Braunfels, TX 78130

Premises: All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds in **Lease Exhibit A**, attached hereto.

Lease Commencement Date: [Transfer Date]

Lease Termination Date: The date that is one hundred twenty (120) days after the date Tenant obtains a final certificate of occupancy for Tenant's new headquarters

Base Rent: Ten and No/100 Dollars (\$10.00) for the Term (defined below)

Permitted Use: Office and general business use reasonably related thereto

**A. Definitions**

- A.1. "Lease" means this Lease Agreement.
- A.2. "Rent" means Base Rent, which is the only type of rent applicable to this Lease.
- A.3. "Term" means the period beginning on the Lease Commencement Date and ending

on the Lease Termination Date.

**B. Tenant's Obligations**

**B.1. Tenant agrees to—**

B.1.a. Lease the Premises for the entire Term.

B.1.b. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

B.1.c. Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any common areas and (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises.

B.1.d. Obtain and pay for all utility services used by Tenant.

B.1.e. Repair, replace, and maintain any part of the Premises, normal wear excepted.

B.1.f. Submit in writing to Landlord any request for repairs, replacement and maintenance that are the obligations of Landlord, if any.

B.1.g. Vacate the Premises on the last day of the Term.

B.1.h. Use best efforts to relocate personnel from the Premises to Tenant's new headquarters upon receipt of the final certificate of occupancy for the new headquarters.

**B.2. Tenant agrees not to—**

B.2.a. Use the Premises for any purpose other than the Permitted Use.

B.2.b. Create a nuisance.

B.2.c. Permit any waste.

B.2.d. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

B.2.e. Alter the Premises, without the written approval of the City Manager or his designee.

B.2.f. Allow a lien to be placed on the Premises.



B.2.g. Assign this Lease or sublease any portion of the Premises without Landlord's written consent.

**C. Landlord's Obligations**

**C.1. Landlord agrees to—**

C.1.a. Lease to Tenant the Premises for the entire Term.

C.1.b. Obey all laws relating to Landlord's operation of the Premises.

**C.2. Landlord agrees not to—**

C.2.a. Interfere with Tenant's use and possession of the Premises as long as Tenant is not in default.

C.2.b. Alter the Premises.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

D.1. *Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord.

D.2. *Insurance.* Tenant will maintain commercial general liability insurance coverage and commercial property insurance (casualty) in commercially reasonable amounts through the Texas Municipal League (TML) throughout the Term.

D.3. *Casualty/Total or Partial Destruction.* If the Premises are damaged by an insured event, the parties will mutually agree if the buildings and structures should be restored, repaired or rebuilt and if they agree, Landlord will, utilizing proceeds from Tenant's insurance, restore the roof, foundation, and structural soundness of those structures on the Premises.

D.5. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this Lease within thirty days after written notice.

D.6. *Default by Tenant/Events.* Defaults by Tenant are failing to comply with any provision of this Lease within thirty days after written notice.

D.7. *Default/Waiver.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

D.8. *Holdover.* If Tenant does not vacate the Premises following termination of this

Lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

D.9. *Venue.* Exclusive venue is in Comal County, Texas.

D.10. *Entire Agreement.* This Lease, with its exhibits, and the Transfer Agreement and Transfer Documents (defined therein), between Landlord and Tenant concerning the Property, constitute the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant.

D.12. *Amendment of Lease.* This Lease may be amended only by an instrument in writing signed by Landlord and Tenant.

D.13. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO REPRESENTATIONS OR WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

D.14. *Notices.* Any notice required or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

D.15. *Abandoned Property.* Unless otherwise agreed by Landlord and Tenant in writing prior to expiration of the Term, Tenant will retain ownership of and remove all personal property prior to the expiration of the Term. Landlord may retain, destroy, or dispose of any personal property left on the Premises at the end of the Term and Tenant will be responsible for the reasonable costs relating thereto.

**LANDLORD**

**TENANT**

CITY OF NEW BRAUNFELS

NEW BRAUNFELS UTILITIES

\_\_\_\_\_  
By: Robert Camareno  
ITS: City Manager

\_\_\_\_\_  
By: Ryan Kelso  
ITS: Chief Executive Officer

**Lease Exhibit A**  
(page 1)

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North  $38^{\circ} 42' 08''$  East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North  $52^{\circ} 00'$  West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North  $38^{\circ} 38' 24''$  East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South  $52^{\circ} 04' 19''$  East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North  $38^{\circ} 41' 47''$  East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

**Lease Exhibit A**  
(page 2)

- 2 -

THENCE with the Southwest line of Comal Avenue, the Northeast line of Lot 42, South 52° 00' 02" East 96.04 feet to an iron pin set for the East corner of Lot 42, and the North corner of Lot 43;

THENCE with the Southeast line of Lot 42, the Northwest line of Lot 43, South 38° 32' 10" West 191.38 feet to an iron pin, said pin being the South corner of Lot 42, West corner of Lot 43, North corner of Lot 44 and the East corner of Lot 41;

THENCE with the Southwest line of Lot 42, the Northeast line of Lot 41, North 52° 18' 01" West 96.27 feet to an iron pin set for the West corner of Lot 42, the North corner of Lot 41, the East corner of Lot 40, and the South corner of Lot 36;

THENCE with the Southeast line of Lot 40 and the Northwest line of Lot 41, South 38° 41' 58" West 191.60 feet to a screw set in a concrete walk, said screw lying in the North line of Seguin Avenue and being the South corner of Lot 40 and the West corner of Lot 41;

THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

**APPENDIX C****Special Warranty Deed Form****SPECIAL WARRANTY DEED**

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

**Date:** [Transfer Date]

**Grantor:** NEW BRAUNFELS UTILITIES, acting by and through its Board of Trustees as agent of the City of New Braunfels  
263 Main Plaza  
New Braunfels, TX 78130

**Grantee:** CITY OF NEW BRAUNFELS  
550 Landa Street  
New Braunfels, TX 78130

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

**Property (including any improvements):** All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being commonly known as 263 Main Plaza, New Braunfels, Comal County, Texas, 78130, and being more particularly described by metes and bounds in the attached **Deed Exhibit A**.

**Recitals:** The Property was conveyed to Grantor in the name of City of New Braunfels (Utilities) by Deed executed June 9, 1975 in Vol. 228, Page 255, Official Public Records, Comal County, Texas. Grantor and Grantee acknowledge that Grantor is entitled to convey the Property despite the discrepancy between the name of the Grantor in the vesting deed and the name of the Grantor in this deed.

**Reservations from Conveyance:** None

**Exceptions to Conveyance and Warranty:** Those matters set forth on **Deed Exhibit B**, attached hereto.

Grantor, for the Consideration and subject to the Reservations from Conveyance and

Exceptions to Conveyance and Warranty, GRANTS, TRANSFERS, and CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, TO HAVE AND TO HOLD it to Grantee and Grantee’s heirs, successors, and assigns forever. Grantor binds Grantor and Grantor’s heirs and successors to WARRANT AND FOREVER DEFEND all and singular the Property to Grantee and Grantee’s heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part hereof when the claim is by, through or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

Except for the express representations of Grantor contained in Section G.1. of that certain Real Estate Transfer Agreement (“Transfer Agreement”) by and between Grantor and Grantee concerning the Property, Grantee, for itself, its successors and assigns, forever releases Grantor from liability for any property defects, latent or otherwise, and from any liability for environmental problems, conditions, or claims pertaining to the Property, including, but not limited to, liability under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), the Resource Conservation and Recovery Act (“RCRA”), the Texas Solid Waste Disposal Act (“TSWDA”), or the Texas Water Code (“TWC”).

The Property is conveyed “AS IS,” “WHERE IS,” and with all faults. Except for the warranty of title contained in the Special Warranty Deed and the representations in section G.1. of the Transfer Agreement, Grantor has not, does not, and will not make any warranties, guaranties, or representations, oral or written, past or present, express or implied, concerning (i) the condition of the Property or any element thereof, including, without limitation, warranties related to environmental conditions, suitability for habitation, merchantability or fitness for a particular purpose; (ii) the nature or quality of construction, structural elements, design, or engineering of the improvements; (iii) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas, and electricity; (iv) geological conditions, soil conditions, drainage, floodplain designation, access or other conditions; or (v) any other warranties or representations whatsoever.

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

**GRANTOR**

NEW BRAUNFELS UTILITIES,  
a Texas municipally owned utility

By: [DO NOT SIGN – FORM ONLY]

\_\_\_\_\_  
Ryan Kelso, Chief Executive Officer



**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF COMAL       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2024, by Ryan Kelso, Chief Executive Officer of New Braunfels Utilities, on behalf of same and in the capacity herein stated.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary Name Printed

Notary commission expires: \_\_\_\_\_

**GRANTEE**

CITY OF NEW BRAUNFELS

By: [DO NOT SIGN – FORM ONLY]

\_\_\_\_\_  
Robert Camareno, City Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS §

§

COUNTY OF COMAL §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_2024, by Robert Camareno, City Manager for the City of New Braunfels, on behalf of same and in the capacity herein stated.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary Name Printed

Notary commission expires: \_\_\_\_\_

**Deed Exhibit A**  
(page 1)

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THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North  $38^{\circ} 42' 08''$  East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North  $52^{\circ} 00'$  West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North  $38^{\circ} 38' 24''$  East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South  $52^{\circ} 04' 19''$  East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North  $38^{\circ} 41' 47''$  East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

**Deed Exhibit A**  
(page 2)

- 2 -

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THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

**Deed Exhibit B**

**Permitted Exceptions**

[To be derived from the Commitment]

**R-2024-184**

**A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING (I) THE TRANSFER OF APPROXIMATELY 1.126 ACRES OF REAL PROPERTY LOCATED AT 263 MAIN PLAZA, NEW BRAUNFELS, TEXAS (THE “MAIN PLAZA PROPERTY”), TO THE CITY OF NEW BRAUNFELS; (II) THE LEASE OF THE MAIN PLAZA PROPERTY FROM THE CITY OF NEW BRAUNFELS TO NEW BRAUNFELS UTILITIES; (III) EXECUTION OF ANY AND ALL DOCUMENTS NECESSARY TO CONVEY AND LEASE THE MAIN PLAZA PROPERTY; AND (IV) OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, New Braunfels Utilities (“NBU”) is a Texas municipally owned utility that provides water, wastewater, and electricity to customers in its service area;

WHEREAS, NBU performs a portion of its utility functions at the Main Plaza Property, said real property being more particularly described on **Exhibit A**;

WHEREAS, NBU recently purchased an approximately 76.618 acre tract of property to construct its new headquarters;

WHEREAS, due to the anticipated construction of its new headquarters, NBU has agreed to transfer the Main Plaza Property to the City to develop for the benefit of the community;

WHEREAS, the City has agreed to lease the Main Plaza Property to NBU while NBU’s new headquarters is being constructed and briefly thereafter while personnel, furniture, fixtures, and equipment are moved into the new headquarters; and

WHEREAS, the Board of Trustees has reviewed the Real Estate Transfer Agreement, together with the proposed forms of the Special Warranty Deed and the Lease Agreement attached thereto, in relation to the transfer and lease of the Main Plaza Property, and is of the opinion that the same should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES THAT:

SECTION 1. The Board of Trustees hereby approves (i) the transfer of the Main Plaza Property to the City for \$4,550,000, and (ii) the lease of the Main Plaza Property from the City, as landlord, to NBU, as tenant, both upon the terms and conditions set out in the Real Estate Transfer Agreement in substantially the form attached hereto as **Exhibit B**.

SECTION 2. The Chief Executive Officer of NBU or his designee is hereby authorized to negotiate and execute any and all documents necessary to transfer the Main Plaza Property to the City and lease the Main Plaza Property from the City, including without limitation, the Real



Estate Transfer Agreement, the Special Warranty Deed, and the Lease Agreement, each in a form substantially similar to those reviewed by the Board of Trustees. The Board of Trustees also authorizes the Chief Executive Officer or his designee to pay or arrange for payment of any costs reasonably necessary to close the transfer of the Main Plaza Property to the City and lease the Main Plaza Property from the City.

SECTION 3. The recitals contained in the preamble hereof are found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board of Trustees.

SECTION 4. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 6. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board of Trustees hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 8. This Resolution shall be in full force and effect from and after its final passage, and it is so resolved.

PASSED, APPROVED, AND ADOPTED, this the \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Wayne Peters  
President, Board of Trustees  
New Braunfels Utilities

ATTEST:

\_\_\_\_\_  
Ryan Kelso  
Secretary, Board of Trustees  
New Braunfels Utilities



## EXHIBIT A

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 58, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North  $38^{\circ} 42' 08''$  East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North  $52^{\circ} 00'$  West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North  $38^{\circ} 38' 24''$  East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South  $52^{\circ} 04' 19''$  East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North  $38^{\circ} 41' 47''$  East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

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- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
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- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

**Exhibit B****Real Estate Transfer Agreement**

This Real Estate Transfer Agreement (“Agreement”) is between New Braunfels Utilities (“NBU”) and the City of New Braunfels (“City”), and it is effective (“Effective Date”) as of the date last signed by NBU and the City.

**NBU:** NEW BRAUNFELS UTILITIES

**Address:** 263 Main Plaza  
New Braunfels, Texas 78130  
Attn: Connie C. Lock, General Counsel & Chief Ethics Officer

**Phone/Fax:** P: (830) 629-8428 F: (830) 629-8435

**Email:** clock@nbutexas.com

**CITY:** CITY OF NEW BRAUNFELS

**Address:** 550 Landa Street  
New Braunfels, Texas 78130  
Attn: Valeria Acevedo, City Attorney

**Phone/Fax:** P: (830) 221-4281 F: (830) 626-5578

**Email:** vacevedo@nbtexas.org

**Property:** All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being commonly known as 263 Main Plaza, New Braunfels, Comal County, Texas, 78130, and being more particularly described by metes and bounds in the attached **APPENDIX A.**

**Title Company:** Corridor Title  
Attn: Cindy Carroll  
410 W. San Antonio Street, Suite 100  
New Braunfels, Texas 78130  
P: (830) 387-4739 F: (830) 387-4739  
email: Cindy.Carroll@corridortitle.com

**Transfer Price:       \$4,550,000**

**A.     Deadlines and Other Dates.**

All deadlines in this Agreement expire at *11:59 P.M.* local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to *11:59 P.M.* the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1.     **Delivery of Title Commitment:** Within twenty (20) business days following the Effective Date, NBU, at NBU's sole cost and expense, will cause the Title Company to issue and deliver to the City a commitment for title insurance with a list of all encumbrances, easements and other matters affecting title to the Property (the "Commitment").

2.     **Delivery of Survey:** NBU does not have a survey of the Property. If the City or the title insurance company requires a survey of the Property, the City will obtain a survey ("Survey") of the Property and provide a copy of the Survey to NBU no later than seven (7) days before the Transfer Date. If the City obtains a Survey under this provision, NBU and the City agree to use the metes and bounds description resulting from the Survey as the legal description of the Property in all Transfer Documents (defined below) upon the reasonable acceptance of the Survey by both parties.

3.     **Transfer Date:** Subject to the approval of the NBU Board of Trustees and City Council, the transfer of the Property ("Transfer") will be conducted by the Title Company, on a date mutually agreed by the City and NBU ("Transfer Date"), no later than August 1, 2024. Operational control of the Property will transfer to the City on the Transfer Date, subject to NBU's right to lease the Property from the City from and after the Transfer Date, as set out in Section A.4. of this Agreement.

4.     **Lease:** NBU will have the right to lease the Property from the City for the period starting on the Transfer Date and ending on the date that is one hundred twenty (120) days after the date NBU obtains a final certificate of occupancy for NBU's new headquarters, for rent in the amount of \$10.00. The terms of the lease will be set out in a written Lease Agreement ("Lease") in substantially the form attached hereto as **APPENDIX B**, to be executed by NBU and the City on the Transfer Date.

5.     **Temporary Certificate of Occupancy.** Upon satisfactory completion of the inspection of the fire safety systems at NBU's new headquarters, the City agrees to issue a temporary certificate of occupancy to NBU to enable NBU to begin moving furniture, fixtures and equipment into the NBU headquarters prior to issuance of the final certificate of occupancy. The obligation set forth in this Section A.5. will survive the performance of this Agreement to include the effectuation of the Transfer of the Property.



## **B. Conditions Precedent**

This Agreement is subject to the approval of the NBU Board of Trustees and New Braunfels City Council, both of which are conditions precedent to the Transfer of the Property upon the terms set forth in this Agreement.

## **C. Exhibits**

The following are attached to and are a part of this Agreement:

**APPENDIX A** – Description of the Property

**APPENDIX B** – Lease Agreement Form

**APPENDIX C** – Special Warranty Deed Form

## **D. Transfer of Property and Payment of Transfer Price**

1. Subject to the terms and conditions of this Agreement, NBU agrees to convey the Property to the City on the Transfer Date, in exchange for which the City agrees to pay NBU the Transfer Price for the Property in the manner set forth in Section D.2 of this Agreement.

2. The City shall pay \$500,000 of the Transfer Price to NBU on the Transfer Date, by wire transfer or other immediately available funds. Thereafter, the balance of \$4,050,000 will be paid to NBU by the City in four (4) installments on or before the following dates:

- (a) \$500,000 on October 1, 2024;
- (b) \$500,000 on October 1, 2025;
- (c) \$500,000 on October 1, 2026; and
- (d) \$2,550,000 on the sooner of the following to occur (i) the date that NBU turns over possession of the Property to the City under the Lease; or (ii) the Lease Termination Date, as defined in the Lease.

3. NBU and the City will each account for the transfer of the Property and the associated payments as part of each party's respective accounting records. The obligation of the City to pay the Transfer Price to NBU under Section D of this Agreement will survive the performance of this Agreement to include the effectuation of the Transfer of the Property and will not require execution of a separate promissory note. NBU may use this Agreement in lieu of a promissory note as evidence of the debt for all purposes.

## **E. Title and Survey**

If the Commitment or the Survey, if applicable, reflects defects or exceptions that are objectionable to the City (the "Title Defects"), then the City shall notify NBU (the "Title Notice"), in writing, within ten (10) days following receipt of the Commitment and the Survey, but in no event later than the Transfer Date. If the City sends a Title Notice to NBU, then NBU shall have a period of fourteen (14) days from receipt of the Title Notice to notify the City of any Title Defects

that NBU is unwilling or unable to cure (“NBU’s Notice”). In the event that NBU elects to cure the Title Defects, NBU shall use commercially reasonable efforts to do so and shall have until the Transfer Date to do so. If NBU is unwilling or unable to cure some or all of the Title Defects in the Title Notice, the City shall be entitled to terminate this Agreement by delivering written notice to NBU prior to the Transfer Date or elect to accept the Property subject to any such Title Defects. If the City does not elect to terminate this Agreement pursuant to this section, then any matters disclosed by the Commitment and the Survey which are not objected to by the City or which NBU is unable or unwilling to cure shall constitute “Permitted Exceptions.” Notwithstanding anything to the contrary, whether or not objected to by the City, NBU shall endeavor to satisfy or remove any mortgage, tax, mechanics, or judgment lien attributable to NBU’s period of operation of the Property, if any.

#### **F. Environmental Testing and Inspections**

The City shall have the right during the pendency of this Agreement to conduct such inspections and environmental studies regarding the Property as the City deems necessary or desirable, provided that the City will reasonably coordinate any such inspections and studies with NBU and will further conduct any such inspections and studies in a manner that does not interfere with NBU’s business operations on the Property.

#### **G. Condition of the Property**

1. There is no litigation pending or threatened against the Property that might affect the Property or NBU’s ability to perform its obligations under this Agreement, and NBU has not received notice of any violation of any law, ordinance, regulation, or requirement affecting the Property or NBU’s use of the Property. In addition, NBU is not aware of any hazardous materials or toxic substances on the Property and has not received any inquiries or notices from any governmental authority or third party with respect to the presence of hazardous materials or toxic substances on the Property or the migration of hazardous materials or toxic substances from the Property.

**2. THE PROPERTY WILL BE TRANSFERRED TO THE CITY IN AN “AS IS, WHERE IS” CONDITION, WITH ALL FAULTS. ALL REPRESENTATIONS OTHER THAN THE REPRESENTATION IN SECTION G.1. AND ALL WARRANTIES, EXCEPT THE LIMITED WARRANTY OF TITLE IN THE SPECIAL WARRANTY DEED, ARE EXPRESSLY DISCLAIMED.**

**3. AFTER THE TRANSFER, AS BETWEEN THE CITY AND NBU, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, CONDITIONS, AND CLAIMS, EVEN IF ARISING FROM EVENTS BEFORE THE TRANSFER, WILL BE THE SOLE RESPONSIBILITY OF THE CITY, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS, CONDITIONS, OR CLAIMS, WERE KNOWN OR UNKNOWN AT TRANSFER, SUBJECT ONLY TO NBU’S BREACH OF ITS EXPRESS REPRESENTATION SET OUT IN SECTION G.1. ABOVE (“EXPRESS REPRESENTATION”). SUBJECT ONLY TO NBU’S BREACH OF SUCH EXPRESS REPRESENTATION, ONCE TRANSFER HAS OCCURRED, THE CITY**

**RELEASES NBU FROM LIABILITY FOR ANY DEFECTS, LATENT OR OTHERWISE, AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS, CONDITIONS, OR CLAIMS, AFFECTING THE PROPERTY, INCLUDING BUT NOT LIMITED TO LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, AND THE TEXAS WATER CODE.**

**4. EXCEPT FOR THE WARRANTY OF TITLE CONTAINED IN THE SPECIAL WARRANTY DEED AND THE REPRESENTATION IN SECTION G.1. OF THIS AGREEMENT, NBU HAS NOT, DOES NOT, AND WILL NOT MAKE ANY WARRANTIES, GUARANTIES, OR REPRESENTATIONS, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (I) THE CONDITION OF THE PROPERTY OR ANY ELEMENT THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO ENVIRONMENTAL CONDITIONS, SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (II) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL ELEMENTS, DESIGN, OR ENGINEERING OF THE IMPROVEMENTS; (III) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS, AND ELECTRICITY; (IV) GEOLOGICAL CONDITIONS, SOIL CONDITIONS, DRAINAGE, FLOODPLAIN DESIGNATION, ACCESS OR OTHER CONDITIONS; OR (V) ANY OTHER WARRANTIES OR REPRESENTATIONS WHATSOEVER.**

Language substantially similar to the language in Sections G.2., G.3. and G.4. of this Agreement will be included in the Special Warranty Deed (“Deed”) in the manner reflected in Appendix C.

#### **H. Condition of the Property until Transfer; Notice of Claims; No Recording of Agreement**

1. *Maintenance and Operation.* NBU will continue to operate and maintain the Property in the manner operated and maintained on the Effective Date through the Transfer Date.

2. *Casualty Damage.* If the Property is damaged by casualty on or before the Transfer Date, NBU will notify the City promptly after discovery of any casualty damage to the Property. NBU will have no obligation to repair or replace the Property if it is damaged by casualty before the Transfer. The City may terminate this Agreement in the event of a casualty by giving notice to NBU prior to the Transfer. If the City does not terminate this Agreement, NBU will (a) convey the Property to the City in its damaged condition, (b) assign to the City all of NBU’s rights under any casualty insurance policies covering the Property, and (c) pay to the City the amount of any deductible and/or coinsurance under any casualty insurance policies covering the Property, but not in excess of the cost to repair the casualty damage.

3. *Claims; Hearings.* NBU will notify the City promptly of any claim or

administrative hearing that is threatened, filed, or initiated on or before the Transfer Date that affects the Property.

4. *No Recording.* Neither party will record this Agreement or any memorandum or notice of this Agreement in the real property records of any county.

5. *Representations.* NBU will promptly notify the City if any of the representations of NBU in Section G.1. is no longer accurate.

## **I. Termination**

The City or NBU may terminate this Agreement at any time prior to the consummation of the Transfer contemplated by this Agreement. Upon termination, neither party will have any further duties or obligations to the other under this Agreement.

## **J. Transfer**

1. *Transfer.* On the Transfer Date, the following will occur:
  - a. *Transfer Documents.* The parties will execute and deliver the Transfer Documents (defined below) described in Section J.3.
  - b. *Transaction Costs.* The parties will pay the Transaction Costs (defined below) described in Section J.2.
  - c. *Possession.* NBU will deliver operational control of the Property to the City, subject to the Lease with NBU.
  
2. *Transaction Costs.* On the Transfer Date, the costs incurred in connection with the transaction contemplated by this Agreement will be allocated by the Title Company as follows:
  - a. *NBU's Costs.* NBU will pay (i) the cost of the Commitment; (ii) the cost to prepare the Deed; (iii) \$10.00 for rent under the Lease; (iv) the cost to release any liens encumbering the Property, if any; (v) one-half of the settlement fee owed to the Title Company for conducting the transaction; and (vi) any other expenses and attorney's fees incurred directly by NBU in connection with the Transfer contemplated by this Agreement.
  - b. *City's Costs.* The City will pay (i) the cost of the Survey, if applicable; (ii) the premium of any title insurance policy desired by the City, if any; (iii) the cost to record the Deed to the City; (iv) the cost to record any documents relating to any financing obtained by the City, if any; (v) one-half of the

settlement fee owed to the Title Company; and (v) any other expenses and attorney's fees incurred by the City in connection with the Transfer contemplated by this Agreement.

- c. *Ad Valorem Taxes.* The City and NBU are tax exempt entities; therefore, no taxes will be prorated or paid.

3. *Transfer Documents.*

- a. On the Transfer Date, NBU will execute and deliver the following documents:

- (i) Lease in substantially the form attached in **APPENDIX B**;
- (ii) Deed in substantially the form attached in **APPENDIX C**;
- (iii) settlement statement reasonably approved by NBU; and
- (iv) any other documents required by the Title Company or reasonably requested by the City to effectuate the Transfer.

- b. On the Transfer Date, the City will execute and deliver the following documents:

- (i) Lease in substantially the form attached in **APPENDIX B**;
- (ii) Deed in substantially the form attached in **APPENDIX C**;
- (iii) settlement statement reasonably approved by the City; and
- (i) any other documents required by the Title Company or reasonably requested by the NBU to effectuate the Transfer.

The documents listed in Section J.3. of this Agreement are collectively referenced as the "Transfer Documents."

**K. Miscellaneous Provisions**

1. *Notices.* Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be given by email, personal delivery, or courier delivery (FedEx, UPS or DHL) and will be effective when received.

2. *Entire Agreement.* This Agreement, together with its exhibits, constitutes the entire agreement of the parties concerning the proposed Transfer of the Property by NBU to the City. There are no representations, warranties, agreement, or promises pertaining to the Transfer not incorporated in writing in this Agreement.

3. *Amendment.* This Agreement may be amended only by an instrument in writing signed by the parties.

4. *Prohibition of Assignment.* Neither party may assign this Agreement. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. *Counterpart Execution.* This Agreement may be executed and delivered (including by facsimile or Portable Document Format (.pdf) transmission) in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Facsimile and other electronic copies will have the same effect as manually-signed originals and will be binding on the undersigned parties.

6. *Choice of Law; Venue.* This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Comal County, Texas.

7. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this Agreement.

8. *Severability.* The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

9. *Ambiguities Not to Be Construed against Party Who Drafted Agreement.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

*[Signatures follow on next page]*



**NBU**

**CITY**

NEW BRAUNFELS UTILITIES

CITY OF NEW BRAUNFELS

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Ryan Kelso  
Title: Chief Executive Officer

Name: Robert Camareno  
Title: City Manager

APPENDIX A  
Description of the Property

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North  $38^{\circ} 42' 08''$  East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North  $52^{\circ} 00'$  West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North  $38^{\circ} 38' 24''$  East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South  $52^{\circ} 04' 19''$  East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North  $38^{\circ} 41' 47''$  East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

- 2 -

THENCE with the Southwest line of Comal Avenue, the Northeast line of Lot 42, South 52° 00' 02" East 96.04 feet to an iron pin set for the East corner of Lot 42, and the North corner of Lot 43;

THENCE with the Southeast line of Lot 42, the Northwest line of Lot 43, South 38° 32' 10" West 191.38 feet to an iron pin, said pin being the South corner of Lot 42, West corner of Lot 43, North corner of Lot 44 and the East corner of Lot 41;

THENCE with the Southwest line of Lot 42, the Northeast line of Lot 41, North 52° 18' 01" West 96.27 feet to an iron pin set for the West corner of Lot 42, the North corner of Lot 41, the East corner of Lot 40, and the South corner of Lot 36;

THENCE with the Southeast line of Lot 40 and the Northwest line of Lot 41, South 38° 41' 58" West 191.60 feet to a screw set in a concrete walk, said screw lying in the North line of Seguin Avenue and being the South corner of Lot 40 and the West corner of Lot 41;

THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

**APPENDIX B**  
**Lease Agreement Form**

**LEASE**  
**Basic Information**

Date: [Transfer Date]

Landlord: CITY OF NEW BRAUNFELS

Landlord's Address: 550 Landa Street  
New Braunfels, TX 78130

Tenant: NEW BRAUNFELS UTILITIES

Tenant's Address: 263 Main Plaza  
New Braunfels, TX 78130

Premises: All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds in **Lease Exhibit A**, attached hereto.

Lease Commencement Date: [Transfer Date]

Lease Termination Date: The date that is one hundred twenty (120) days after the date Tenant obtains a final certificate of occupancy for Tenant's new headquarters

Base Rent: Ten and No/100 Dollars (\$10.00) for the Term (defined below)

Permitted Use: Office and general business use reasonably related thereto

**A. Definitions**

- A.1. "Lease" means this Lease Agreement.
- A.2. "Rent" means Base Rent, which is the only type of rent applicable to this Lease.
- A.3. "Term" means the period beginning on the Lease Commencement Date and ending on the Lease Termination Date.

**B. Tenant's Obligations****B.1. Tenant agrees to—**

B.1.a. Lease the Premises for the entire Term.

B.1.b. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

B.1.c. Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any common areas and (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises.

B.1.d. Obtain and pay for all utility services used by Tenant.

B.1.e. Repair, replace, and maintain any part of the Premises, normal wear excepted.

B.1.f. Submit in writing to Landlord any request for repairs, replacement and maintenance that are the obligations of Landlord, if any.

B.1.g. Vacate the Premises on the last day of the Term.

B.1.h. Use best efforts to relocate personnel from the Premises to Tenant's new headquarters upon receipt of the final certificate of occupancy for the new headquarters.

**B.2. Tenant agrees not to—**

B.2.a. Use the Premises for any purpose other than the Permitted Use.

B.2.b. Create a nuisance.

B.2.c. Permit any waste.

B.2.d. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

B.2.e. Alter the Premises, without the written approval of the City Manager or his designee.

B.2.f. Allow a lien to be placed on the Premises.

B.2.g. Assign this Lease or sublease any portion of the Premises without Landlord's written consent.

**C. Landlord's Obligations**

**C.1. Landlord agrees to—**

C.1.a. Lease to Tenant the Premises for the entire Term.

C.1.b. Obey all laws relating to Landlord's operation of the Premises.

**C.2. Landlord agrees not to—**

C.2.a. Interfere with Tenant's use and possession of the Premises as long as Tenant is not in default.

C.2.b. Alter the Premises.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

D.1. *Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord.

D.2. *Insurance.* Tenant will maintain commercial general liability insurance coverage and commercial property insurance (casualty) in commercially reasonable amounts through the Texas Municipal League (TML) throughout the Term.

D.3. *Casualty/Total or Partial Destruction.* If the Premises are damaged by an insured event, the parties will mutually agree if the buildings and structures should be restored, repaired or rebuilt and if they agree, Landlord will, utilizing proceeds from Tenant's insurance, restore the roof, foundation, and structural soundness of those structures on the Premises.

D.5. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this Lease within thirty days after written notice.

D.6. *Default by Tenant/Events.* Defaults by Tenant are failing to comply with any provision of this Lease within thirty days after written notice.

D.7. *Default/Waiver.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.



D.8. *Holdover.* If Tenant does not vacate the Premises following termination of this Lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

D.9. *Venue.* Exclusive venue is in Comal County, Texas.

D.10. *Entire Agreement.* This Lease, with its exhibits, and the Transfer Agreement and Transfer Documents (defined therein), between Landlord and Tenant concerning the Property, constitute the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant.

D.12. *Amendment of Lease.* This Lease may be amended only by an instrument in writing signed by Landlord and Tenant.

D.13. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO REPRESENTATIONS OR WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

D.14. *Notices.* Any notice required or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

D.15. *Abandoned Property.* Unless otherwise agreed by Landlord and Tenant in writing prior to expiration of the Term, Tenant will retain ownership of and remove all personal property prior to the expiration of the Term. Landlord may retain, destroy, or dispose of any personal property left on the Premises at the end of the Term and Tenant will be responsible for the reasonable costs relating thereto.

**LANDLORD**

**TENANT**

CITY OF NEW BRAUNFELS

NEW BRAUNFELS UTILITIES

\_\_\_\_\_  
By: Robert Camareno  
ITS: City Manager

\_\_\_\_\_  
By: Ryan Kelso  
ITS: Chief Executive Officer

**Lease Exhibit A**  
(page 1)

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North  $38^{\circ} 42' 08''$  East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North  $52^{\circ} 00'$  West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North  $38^{\circ} 38' 24''$  East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South  $52^{\circ} 04' 19''$  East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North  $38^{\circ} 41' 47''$  East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

**Lease Exhibit A**  
(page 2)

- 2 -

THENCE with the Southwest line of Comal Avenue, the Northeast line of Lot 42, South 52° 00' 02" East 96.04 feet to an iron pin set for the East corner of Lot 42, and the North corner of Lot 43;

THENCE with the Southeast line of Lot 42, the Northwest line of Lot 43, South 38° 32' 10" West 191.38 feet to an iron pin, said pin being the South corner of Lot 42, West corner of Lot 43, North corner of Lot 44 and the East corner of Lot 41;

THENCE with the Southwest line of Lot 42, the Northeast line of Lot 41, North 52° 18' 01" West 96.27 feet to an iron pin set for the West corner of Lot 42, the North corner of Lot 41, the East corner of Lot 40, and the South corner of Lot 36;

THENCE with the Southeast line of Lot 40 and the Northwest line of Lot 41, South 38° 41' 58" West 191.60 feet to a screw set in a concrete walk, said screw lying in the North line of Seguin Avenue and being the South corner of Lot 40 and the West corner of Lot 41;

THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

**APPENDIX C**  
**Special Warranty Deed Form**

**SPECIAL WARRANTY DEED**

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

**Date:** [Transfer Date]

**Grantor:** NEW BRAUNFELS UTILITIES, acting by and through its Board of Trustees as agent of the City of New Braunfels  
 263 Main Plaza  
 New Braunfels, TX 78130

**Grantee:** CITY OF NEW BRAUNFELS  
 550 Landa Street  
 New Braunfels, TX 78130

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

**Property (including any improvements):** All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being commonly known as 263 Main Plaza, New Braunfels, Comal County, Texas, 78130, and being more particularly described by metes and bounds in the attached **Deed Exhibit A**.

**Recitals:** The Property was conveyed to Grantor in the name of City of New Braunfels (Utilities) by Deed executed June 9, 1975 in Vol. 228, Page 255, Official Public Records, Comal County, Texas. Grantor and Grantee acknowledge that Grantor is entitled to convey the Property despite the discrepancy between the name of the Grantor in the vesting deed and the name of the Grantor in this deed.

**Reservations from Conveyance:** None

**Exceptions to Conveyance and Warranty:** Those matters set forth on **Deed Exhibit B**, attached hereto.

Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Conveyance and Warranty, GRANTS, TRANSFERS, and CONVEYS to Grantee

the Property, together with all and singular the rights and appurtenances thereto in any way belonging, TO HAVE AND TO HOLD it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to WARRANT AND FOREVER DEFEND all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part hereof when the claim is by, through or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

Except for the express representations of Grantor contained in Section G.1. of that certain Real Estate Transfer Agreement ("Transfer Agreement") by and between Grantor and Grantee concerning the Property, Grantee, for itself, its successors and assigns, forever releases Grantor from liability for any property defects, latent or otherwise, and from any liability for environmental problems, conditions, or claims pertaining to the Property, including, but not limited to, liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Texas Solid Waste Disposal Act ("TSWDA"), or the Texas Water Code ("TWC").

The Property is conveyed "AS IS," "WHERE IS," and with all faults. Except for the warranty of title contained in the Special Warranty Deed and the representations in section G.1. of the Transfer Agreement, Grantor has not, does not, and will not make any warranties, guaranties, or representations, oral or written, past or present, express or implied, concerning (i) the condition of the Property or any element thereof, including, without limitation, warranties related to environmental conditions, suitability for habitation, merchantability or fitness for a particular purpose; (ii) the nature or quality of construction, structural elements, design, or engineering of the improvements; (iii) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas, and electricity; (iv) geological conditions, soil conditions, drainage, floodplain designation, access or other conditions; or (v) any other warranties or representations whatsoever.

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

## **GRANTOR**

NEW BRAUNFELS UTILITIES,  
a Texas municipally owned utility

By: [DO NOT SIGN – FORM ONLY]

\_\_\_\_\_  
Ryan Kelso, Chief Executive Officer

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF COMAL       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2024, by Ryan Kelso, Chief Executive Officer of New Braunfels Utilities, on behalf of same and in the capacity herein stated.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary Name Printed

Notary commission expires: \_\_\_\_\_



**GRANTEE**

CITY OF NEW BRAUNFELS

By: [DO NOT SIGN – FORM ONLY]

\_\_\_\_\_  
Robert Camareno, City Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF COMAL   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_2024, by Robert Camareno, City Manager for the City of New Braunfels, on behalf of same and in the capacity herein stated.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary Name Printed

Notary commission expires: \_\_\_\_\_

**Deed Exhibit A**  
(page 1)

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North  $38^{\circ} 42' 08''$  East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North  $52^{\circ} 00'$  West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North  $38^{\circ} 38' 24''$  East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South  $52^{\circ} 04' 19''$  East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North  $38^{\circ} 41' 47''$  East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

**Deed Exhibit A**  
(page 2)

- 2 -

THENCE with the Southwest line of Comal Avenue, the Northeast line of Lot 42, South 52° 00' 02" East 96.04 feet to an iron pin set for the East corner of Lot 42, and the North corner of Lot 43;

THENCE with the Southeast line of Lot 42, the Northwest line of Lot 43, South 38° 32' 10" West 191.38 feet to an iron pin, said pin being the South corner of Lot 42, West corner of Lot 43, North corner of Lot 44 and the East corner of Lot 41;

THENCE with the Southwest line of Lot 42, the Northeast line of Lot 41, North 52° 18' 01" West 96.27 feet to an iron pin set for the West corner of Lot 42, the North corner of Lot 41, the East corner of Lot 40, and the South corner of Lot 36;

THENCE with the Southeast line of Lot 40 and the Northwest line of Lot 41, South 38° 41' 58" West 191.60 feet to a screw set in a concrete walk, said screw lying in the North line of Seguin Avenue and being the South corner of Lot 40 and the West corner of Lot 41;

THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

**Deed Exhibit B**

**Permitted Exceptions**

[To be derived from the Commitment]

# Transfer of Main Plaza

- Presented by Ryan Kelso
- Chief Executive Officer

• April 25, 2024





# Conveyance of Main Plaza – Proposed Terms

## Property

- NBU will convey to the City of New Braunfels (“City”) the property commonly known as 263 Main Plaza, New Braunfels, Texas 78130, which is approximately 1.126 acres in area and comprised of Lots 40, 42, and part of Lot 36, Block 1005, City of New Braunfels, Comal County, Texas (“Main Plaza Property”) through a Special Warranty Deed

## Transfer Date

- A date mutually agreed by NBU and the City, no later than August 1, 2024

## Transfer Price:

- \$4,550,000, which represents the fair market value of the Main Plaza Property, as reflected in an appraisal obtained by NBU dated April 4, 2024, from Valbridge Property Advisors

## Payment Terms

- The transfer price will be paid by the City in installments as follows: (i) \$500,000 on the transfer date; (ii) \$500,000 on October 1, 2024; (iii) \$500,000 on October 1, 2025; (iv) \$500,000 on October 1, 2026; and (v) \$2,550,000 when NBU turns over possession of the Main Plaza Property to the City





# Conveyance of Main Plaza – Proposed Terms

## Lease of Main Plaza Property

- NBU will lease the Main Plaza Property from the City under a written lease agreement (“Lease”) from the Transfer Date until the date that is one hundred twenty (120) days after NBU obtains a final certificate of occupancy for NBU’s new headquarters
- NBU will pay rent in the amount of \$10 for the entire term of the Lease

## Next Steps

- Staff expects the City to present this item to City Council in May or June
- Upon approval by City Council and the NBU Board of Trustees, staff for NBU and the City will work toward a closing to occur on or before August 1, 2024





# QUESTIONS?

**Mission**

Strengthening our community by providing resilient essential services



**Vision**

Be a trusted community partner dedicated to excellence in service



**Core Values**

Safety, Team, Integrity, Culture, and Stewardship

# Action Item:

**Approve Resolution #2024-184 authorizing (i) the transfer of approximately 1.126 acres of real property located at 263 Main Plaza, New Braunfels, Texas (the “Main Plaza Property”), to the City of New Braunfels; (ii) the lease of the Main Plaza Property from the City of New Braunfels to New Braunfels Utilities; (iii) execution of any and all documents necessary to convey and lease the Main Plaza Property; and (iv) Other Matters in Connection Therewith**





# Three-Year Strategic Marketing and Communications Plan

*April 25, 2024: Board Meeting Pre-Read*

# Brand Strategy



# NBU Discovery + Learning Plan Overview

	NBU Brand		Customer Need State	
	NBU Audit	Community Exploration	Customer Deep Dive	Industry/Market Analysis
Research Activity	Brand Immersion	Social Listening	Customer Segments	Public Relations
	Key Stakeholder Interviews	Community Stakeholder Interviews	Message Hierarchy Study	Great Blue/Cogent/J.D. Power Winner Exploration
	Employee Workbooks		Customer Intercepts	Secondary Utility Research

# For decades, we've had it good.

Off-the-chart reliability. Year after year.

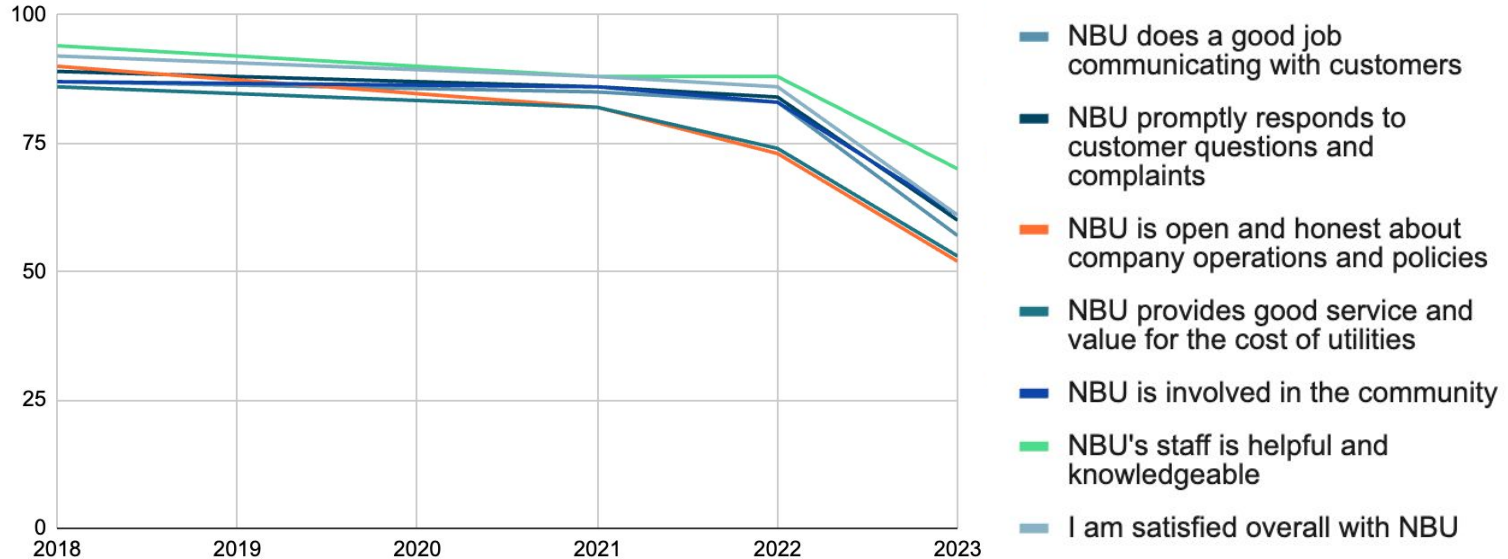
Unprecedented affordability.

Water awards.

A beacon of the community.

# But the last few years have been tough.

Strongly Agree



Source: NBU Customer Satisfaction Study, GreatBlue Research, 2023

Q. For each statement please use a scale of 1 to 5 where one is strongly disagree and five is strongly agree.

# What used to work doesn't seem to work anymore. And we're scrambling.

Our Mission and Vision are *internal* points of clarity, but seem to have also been serving as the foundation for our *external* communications.

*“We believe we’re being transparent, we’re not hiding anything, we’re putting out all the facts—it’s just not working.”*

*—NBU Key Stakeholder*

*“The real issue is when trust is broken, do people want to listen to the facts? The first step is to regain trust and then have a conversation, but just putting out information when they’ve stopped listening; stopped reading...they didn’t get your message.”*

*—NBU Key Stakeholder*

Source: NBU Key Stakeholder Interviews, 2024

Q. What is working/not working with communications from NBU to customers?

# We've become too functional. And it's affected our relationship with residents.

We've stopped being an *emotional* part of people's lives, their businesses, and part of our unique community.



# Once at the heart of the community, NBU now feels like a Cable TV provider.

*Overall favorable opinion of NBU is on par with Cable TV providers.*

	Streaming TV	Mobile Phone	Internet	<b>NBU</b>	Cable TV
Top 2 Box	55%	55%	52%	<b>36%</b>	36%
Extremely Positive	29%	27%	17%	<b>15%</b>	17%
Extremely Negative	3%	5%	5%	<b>11%</b>	15%

Source: Message Hierarchy Study, 2024

Q: How would you describe your overall opinion of each of the following service providers?

**And no perceived void would exist if we were to “go away.”**

**Some nameless, careless and corporate utility would take over... and that might be okay.**



**NBU**

Source: NBU Employee Workbook, 2024

Q. If New Braunfels Utilities were to go away, what void would exist?

# We need a shift from an ‘inside-out’ approach to an ‘outside-in’ focus.

## “INSIDE OUT”

- Leading with our agenda
- Functional *only* communications
- Overcommunicating to rebuild trust –  
More = confusion
- Customers as ratepayers
- Transparency = facts
- Let our employees drive human connection

## “OUTSIDE IN”

- Leading with customers’ needs
- Emotional *and* functional communications
- Salient messages to rebuild trust
- Customers as citizen owners
- Transparency = empathy and honesty
- Let our “why” drive human connections

# It's time to think about the New Braunfels Utilities **brand.**

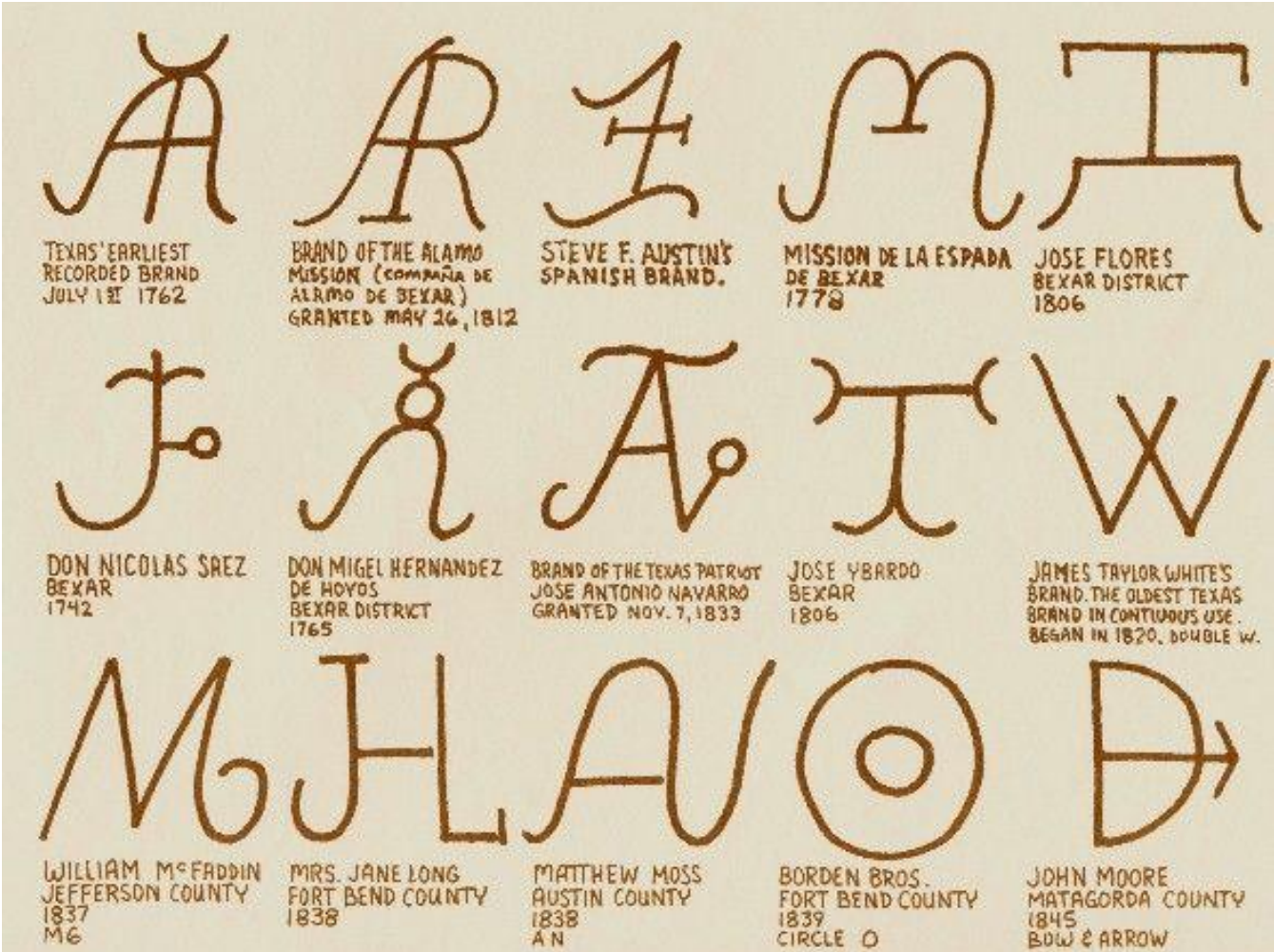
The answer to *what* our brand *will be* lies in:

- What our customers want from us
- What our customers expect from us
- Our DNA
- A cohesive connection with all community key stakeholders

# A strong brand has many dimensions

*Vision • Mission • Purpose • Position • Character • Personality • Platform*

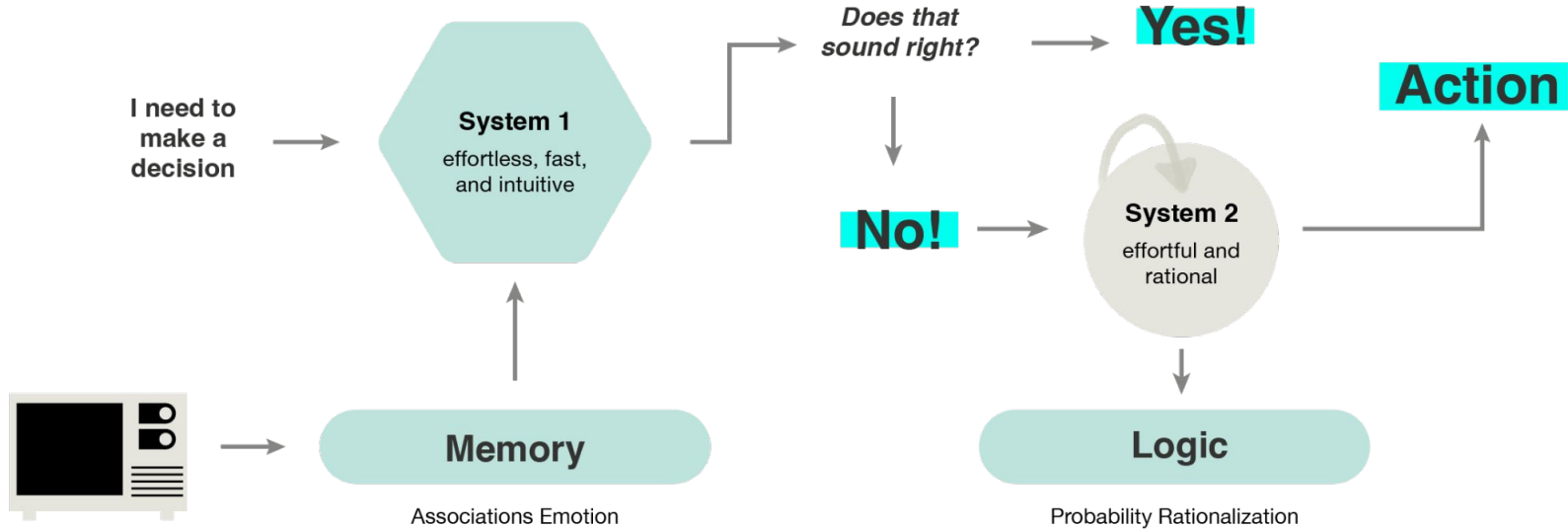
**All leading to a future brand idea that will take us from where we are today, to a loved brand tomorrow.**





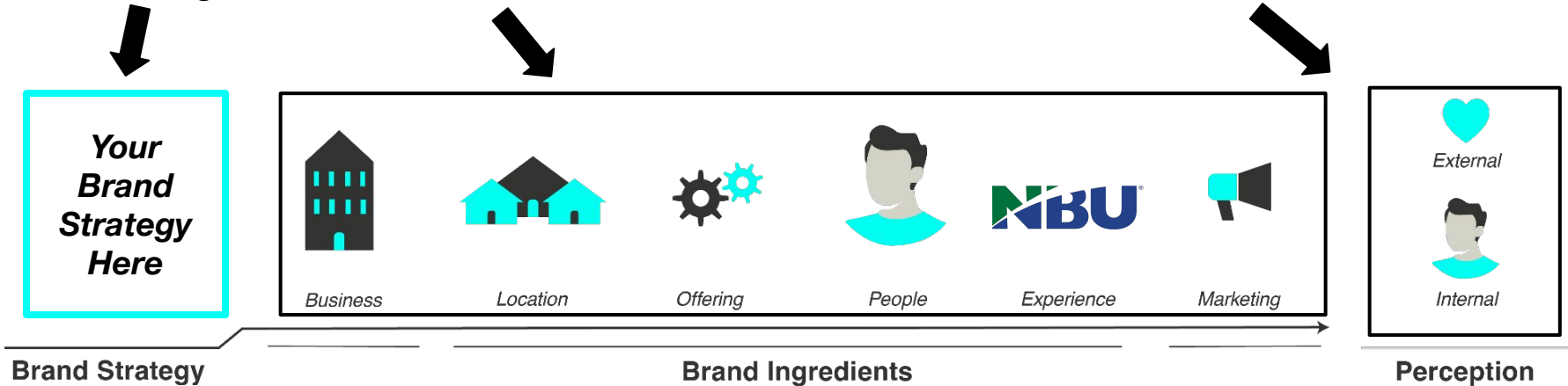
# Brands give meaning to companies and impact the way we make choices

There are two ways we process information, decisions that come to us easily because they are associated with emotion and memory (as seen on the left of this chart) and those that require more effort and rational thinking, and are instead based more on logic than emotion (as seen on the right).



# So, what exactly *is* a brand?

**A Strong Brand** has all **facets of its business** consistently aligned and influencing **consumers' perception**.

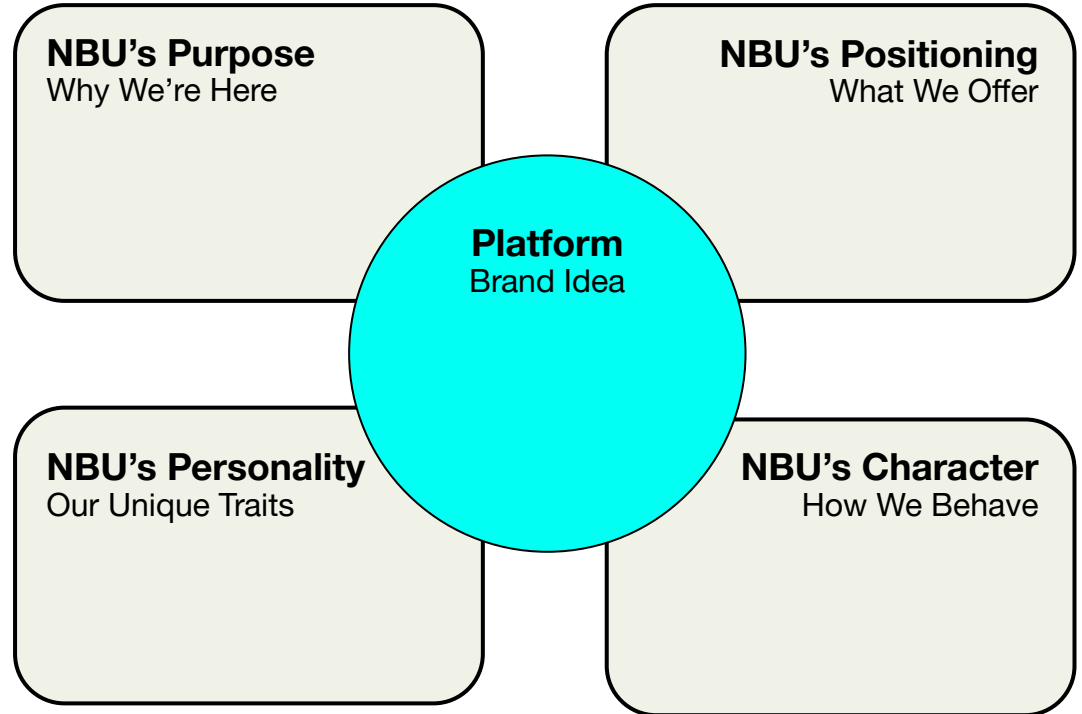


Our brand is who we are and why we matter. It's infused into everything we do so that the right experiences and beliefs are created in our outside and inside communities.

# Brand Dimensions

*We have our Vision and Mission in place and in action.*

*We're now creating the external brand components of...*



# Brand Purpose

Why are we here?  
For whom?

**Brand Purpose:**

**Opportunity targets highlight  
our greatest need.**

## Brand Purpose:

**Established residents in New Braunfels are experiencing *growing pains*, which is calling into question NBU's leadership in this changing community.**



# Established residents, 18–54, are our most critical audience.

## Why are they important?

Because they are the backbone of the community who have seen New Braunfels at our best and therefore expect better.

	Male	Female	18–34	35–54	55+	Lived in New Braunfels <3 Years	3–6 Years	7+ Years	Own Home	Rent
<b>NBU FAVORABILITY (Top 2 Box: 36%)</b>										
Extremely Favorable Positive	14%	18%	0%	13%	20%	19%	11%	12%	11%	25%
Favorable (Top 2 Box)	35%	39%	12%	25%	48%	42%	32%	32%	32%	44%

Source: Message Hierarchy Study, 2024

Q: How would you describe your overall opinion of each of the following service providers?

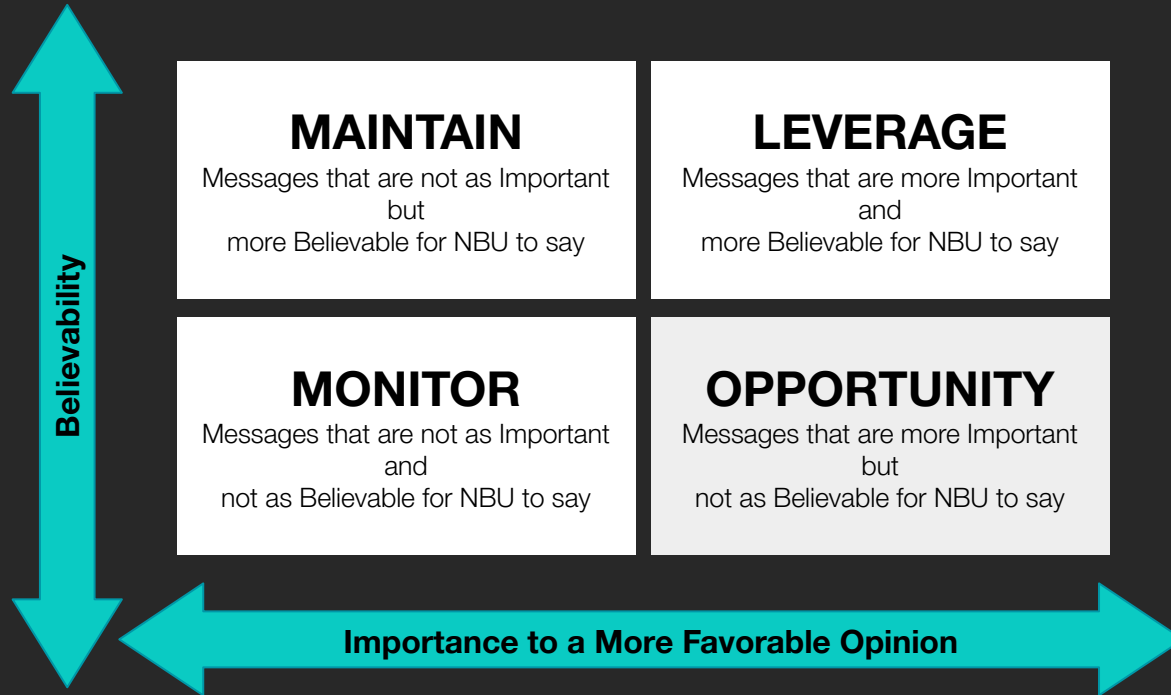
New Braunfels Median Age: 35.1 y/o Data



# We tested 42 messages for potential customer connecti

Item 1.

The results were analyzed and plotted in four quadrants. Each quadrant represents a different engagement potential for NBU.



# Connecting with customers = focusing on what's important to them.

These messages are highly important, but not currently believable from NBU



Weaker Correlation

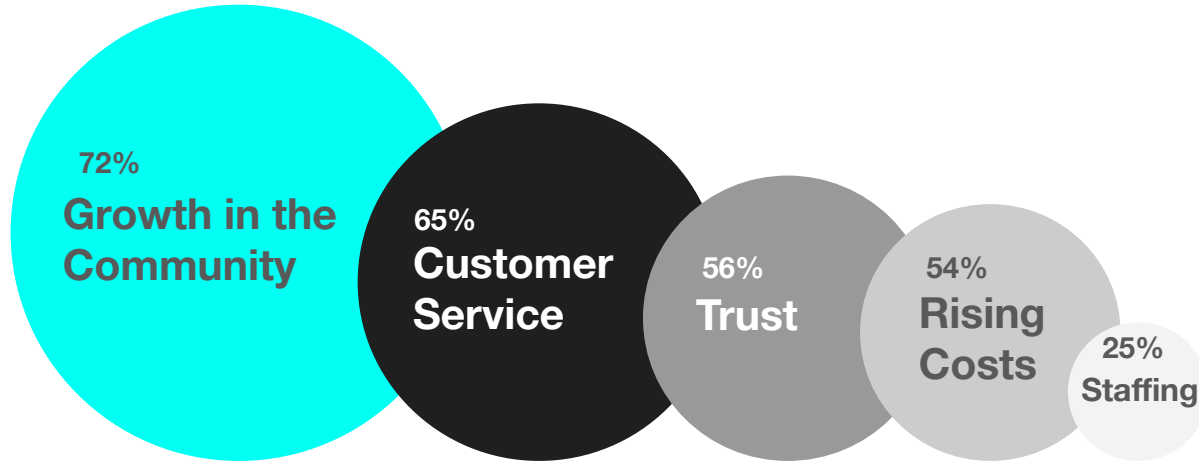
**IMPORTANCE TO MORE FAVORABLE OPINION**

Stronger Correlation

Source: Message Hierarchy Study, 2024

Q: Please read the statements below and tell us how believable each is to you/how each impacts your overall opinion. New Braunfels Utilities...

# According to NBU employees, growth is the #1 challenge facing NBU.



## Challenge #1

“Keeping up with the current growth of the town and maintain the current infrastructure.”

## Challenge #2

“Serving our customers with Amazon-like customer service.”

Source: NBU Employee Workbook, 2024  
Q. What are the most difficult challenges facing NBU?

# **Customers think we've stopped caring.**

We haven't come alongside them in this growth journey.

**Through our hard work, we actively care for every household and business in New Braunfels, because we're the human utility.**

We do what we do for our employees

We do what we do for our residential customers

We do what we do for our commercial customers



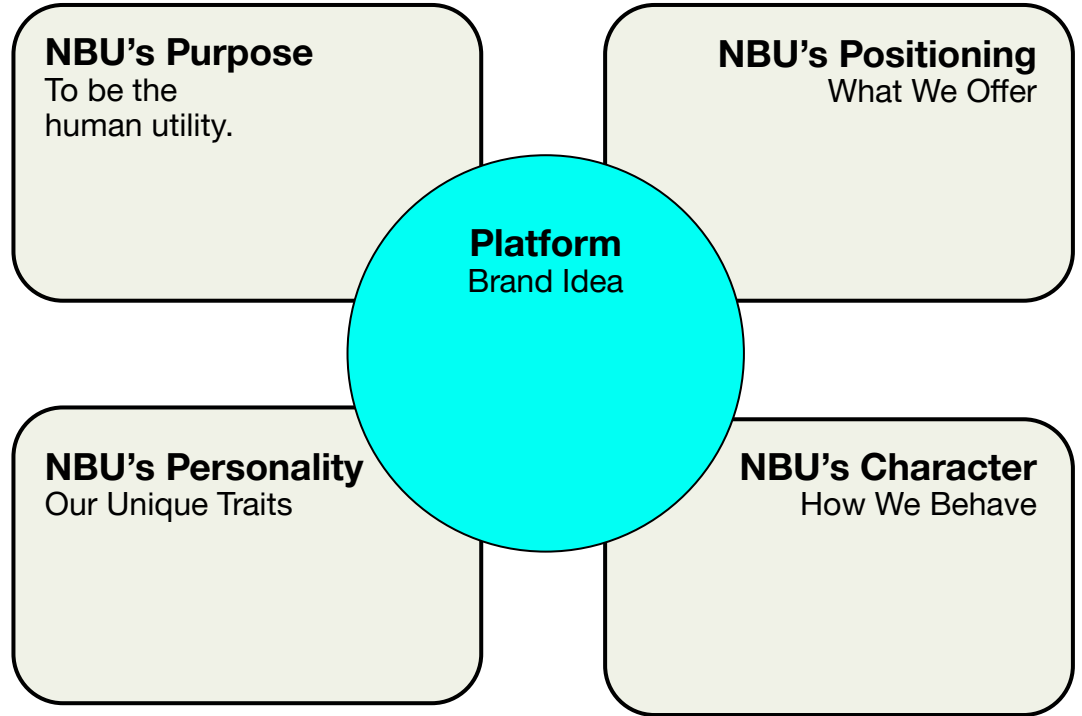
# Brand Dimensions

**Brand Purpose:**  
To be the human utility.

**Brand Position:**

**Brand Character:**

**Brand Personality:**



# Brand Position

What do we offer customers?

## Brand Position:

Item 1.

# Because we're already delivering on Reliability, Safety, Customer Service and Responsiveness, we have permission to do and be more.

These messages are highly important, and already believable from NBU

NBU BELIEVABILITY

### LEVERAGE

(More Important, More Believable)

- Provides reliable energy needed to power my business and keep my family comfortable
- Places safety and security as the highest priorities for every employee and customer
- Has 24/7 phone and email support for outstanding customer service
- Fixes it fast and keeps me informed every step of the way when there's an outage or interruption
- Ensures I know what to do if an electrical or water emergency occurs
- Responds to customers with speed and agility

Weaker Correlation

**IMPORTANCE TO MORE FAVORABLE OPINION**

Stronger Correlation

Source: Message Hierarchy Study, 2024

Q: Please read the statements below and tell us how believable each is to you/how each impacts your overall opinion. New Braunfels Utilities...

“At a minimum we need to take care of our customers’ needs, **but really we want them to love us, to completely trust us.**”

—NBU Key Stakeholder

Source: Key Stakeholder Interviews, 2024, NBU Employee Workbook, 2024


# Trusted brands do four things to show love:

Source: NBU Employee Workbook, 2024

Q. When you think of strong companies or organizations in our own backyard of New Braunfels, which ones come to mind? What do you most admire about them and why?

# VALUE BEYOND COMMODITIES

Getting involved and doing things for the community,  
because locals care about their town.



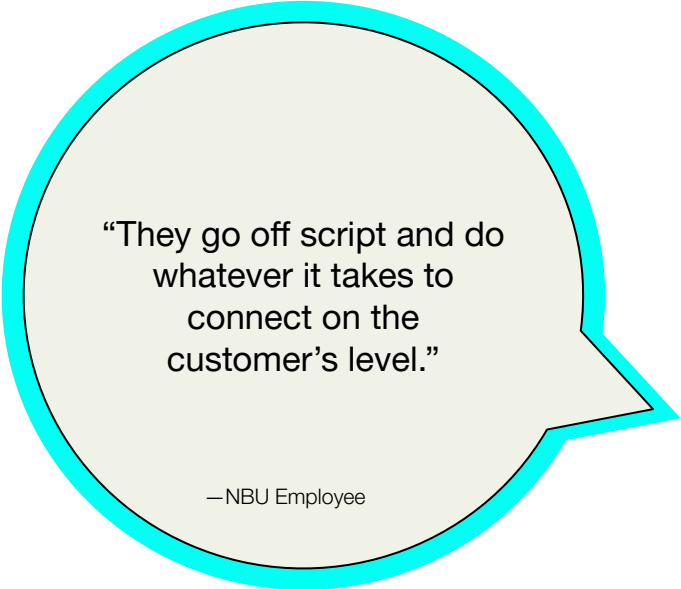
“They always go above and  
beyond for the community.  
Not just in NB, but in every  
town they’re in.”

—NBU Employee



# THEIR SCRIPT IS OUR SCRIPT

Care about people and then DO something to show that care. Treating everyone like an individual. No empty promises.

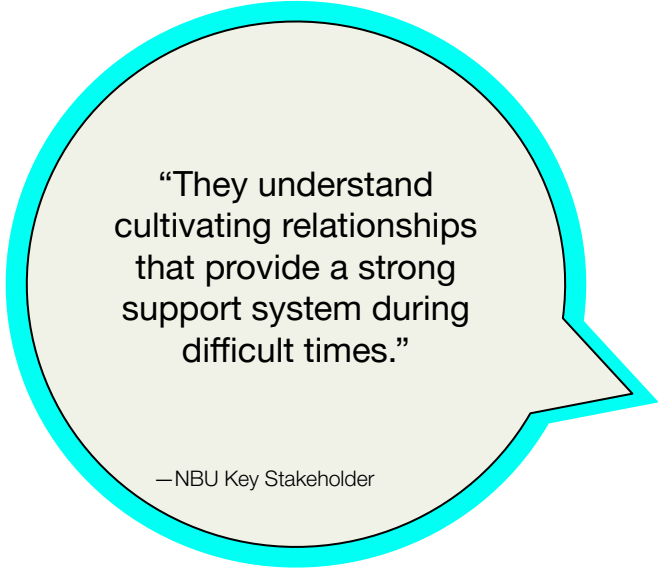


“They go off script and do whatever it takes to connect on the customer’s level.”

—NBU Employee

# DOUBLE DOWN IN MOMENTS OF NEED

Show up as your most supportive, best self when you're the most needed.




“They understand cultivating relationships that provide a strong support system during difficult times.”

—NBU Key Stakeholder

# DON'T SNEAK IN— BE INVITED IN

Create interactions and experiences that people want you to be a part of.



“They don’t treat them like customers, they make everyone feel equal like one of the family.”

—NBU Key Stakeholder

# We're being asked, even expected, to get out of JUST our utility lane and provide more meaningful engagement with New Braunfels.

These messages are less important, but currently believable from NBU

NBU BELIEVABILITY

## MAINTAIN

(Less Important, More Believable)

- Provides safety precautions for customers when near power lines and waterways
- Showcases how hard employees work to restore power in the event of a power outage
- **Is an important part of the fabric of the New Braunfels community, and what makes us unique**
- Shares expert advice so that me and my family are safe around power lines and waterways
- Is innovative in anticipating modern customer energy and water demands
- Illustrates how I, as a customer, can conserve energy in my home or business
- Partners with the community to volunteer, support charities, and build a better future

Weaker Correlation

IMPORTANCE TO MORE FAVORABLE OPINION

Stronger Correlation

Source: Message Hierarchy Study, 2024

Q: Please read the statements below and tell us how believable each is to you/how each impacts your overall opinion. New Braunfels Utilities...

**The community is asking us to do more than provide ‘essential services’; they’re asking for us to help them love the place and the people in it.**

- Demonstrate that we are in it with our customers.
- Communicate that we are a leader that has the community’s best interest at heart.

***“Growing up, I cared for my utility because they took care of my family and my community... I was taught to look for the NBU guys if you couldn’t find a policeman or a firefighter.”***

—New Braunfels Resident

Source: Key Stakeholder Interviews, 2024, NBU Employee Workbook, 2024  
Q. What is the one thing you love about NBU?



## Brand Position:

Item 1.

Our brand position must meet our customers where they are, based on what they currently find meaningful about us...

**The confidence to believe in New Braunfels again.**

For our employees

For our residential customers

For our commercial customers

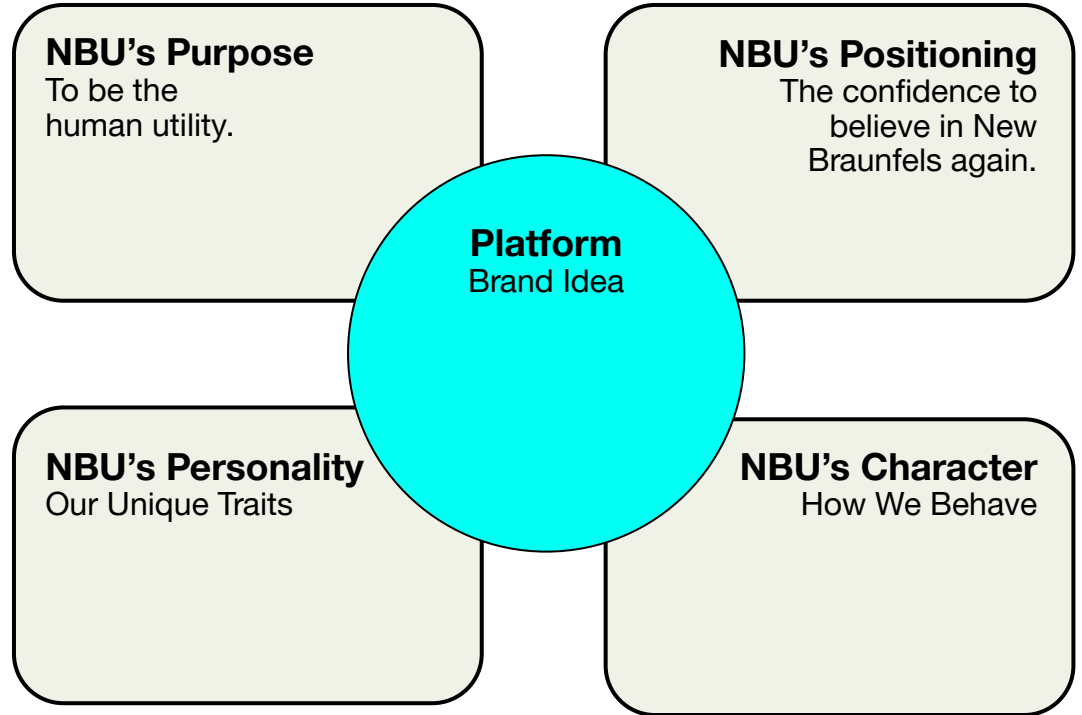
# Brand Dimensions

**Brand Purpose:**  
To be the human utility.

**Brand Position:**  
The confidence to believe in New Braunfels again.

**Brand Character:**

**Brand Personality:**



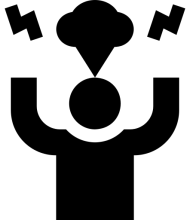
# Brand Character

How do we behave?

**Currently our employees are *just* as frustrated with customers as customers are with NBU.**

## Brand Character:

Item 1.



**NBU employees are tired  
of being mistreated**

“But when I am getting yelled at, customers make me feel a little scared. I know they are just frustrated, but they’re angry.”



**This has led to  
an US vs. THEM**

“Consumer and developer customers all seem to be unhappy with NBU. NBU customers seem to feel unheard and uncared for.”



**And feelings of less  
friendliness and empathy**

“We struggle to provide understandable information to our customers. It seems that currently nothing I say helps.”

Source: NBU Employee Workbook, 2024  
Q. How would you define our New Braunfels Utilities brand today?

**Frustrations being felt by everyone can be turned around by getting to know each other.**



“We’re disconnected. I think there is a large portion of our customers who don’t know anything about us as a company other than we send them a high monthly bill for services “anyone” can provide to them.”

– NBU Employee

Source: NBU Employee Workbook, 2024  
Q. What are key challenges facing NBU today?

**In a more acute way than for most municipal utilities, there is no discernible difference between NBU and the community of New Braunfels.**

# Characteristics that are authentically shared with our customers are those brand characteristics that will create relationships and prove our difference.

### Lead by Example

Everything we do is with our customer and community in mind. From improving the bottom line of our business customers, to improving the lives of our residential customers, we don't do anything without asking how our work can have a positive impact.

### Exuberant

Confident, friendly and engaging in everything we do, NBU reflects the best of our community through our actions and words. We love where we live and work, and we want everyone to know how lucky we all are to share this great Texas town.

### Superhero

When someone calls the help desk in need of assistance, or even just sees someone in an NBU uniform, it means something more than just being an employee. Everything we do is with intent, and we leave every engagement in a better state than when we entered it. We do everything we can to make the community thrive.

# Collaborative solutions are less important than leading by example (modeling).

These messages are not important to customers, and are simultaneously not currently believable from NBU.

NBU BELIEVABILITY

## MONITOR

(Not as Important, Not as Believable)

- Partners with me on solutions for my personal/business energy use
- Partners with you to identify unique and personalized solutions for your energy use
- Understands that having access to renewable energy sources is important for the future of New Braunfels
- Provides access to renewable energy sources customers can use (like hydro power, wind power and solar power)
- Is equipped to meet increasing use of electric vehicles

Weaker Correlation

IMPORTANCE TO MORE FAVORABLE OPINION

Stronger Correlation

Source: Message Hierarchy Study, 2024

Q: Please read the statements below and tell us how believable each is to you/how each impacts your overall opinion. New Braunfels Utilities...

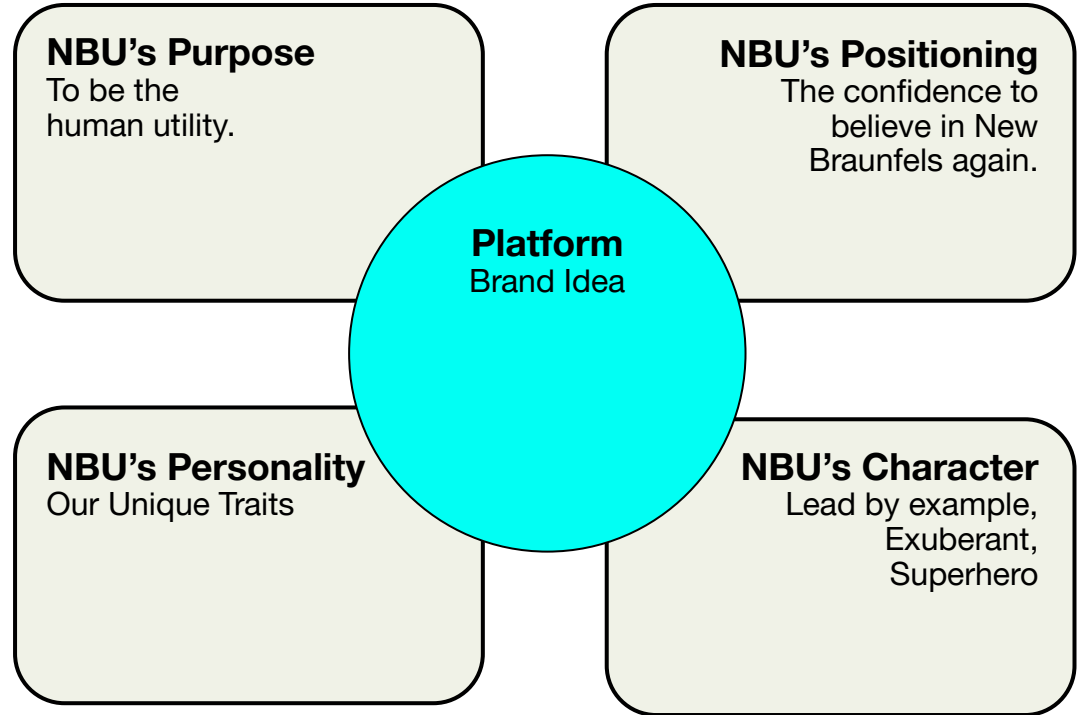
# Brand Dimensions

**Brand Purpose:**  
To be the human utility.

**Brand Position:**  
The confidence to believe in New Braunfels again.

**Brand Character:**  
Lead by Example, Exuberant, Superhero

**Brand Personality:**



# Brand Personality

How are we unique?



# Modern brands are like people.

People have depth and character and so too do strong brands.

**The best brands are personified, with their own unique personality.**

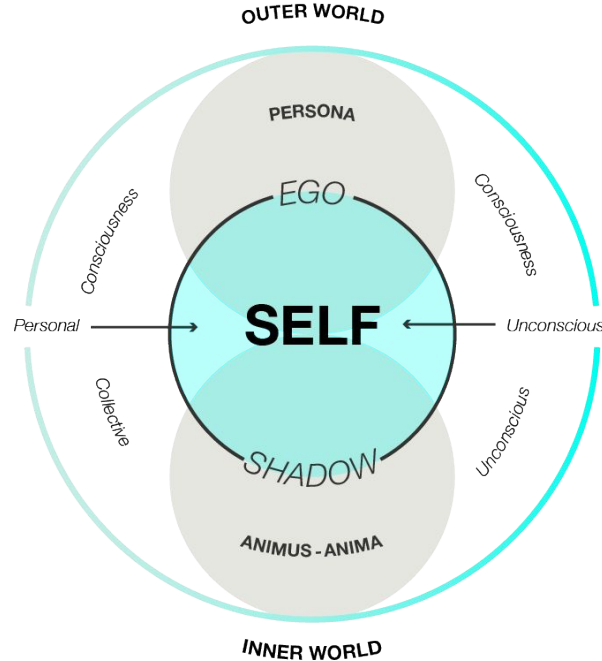
Like a person, you can respect, like and even love a brand.

**Therefore our Brand Personality is built from NBU's BRAND CHARACTER + NBU's BRAND PERSONIFICATION.**

**Also, known as a Brand Archetype.**

# The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes

Item 1.



# *The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes*

Item 1.

Change

Self-knowledge

Group Belonging

Order

# *The Intersection of Commercial Brands and Human Psyche:* **Jungian Archetypes**

Self-knowledge

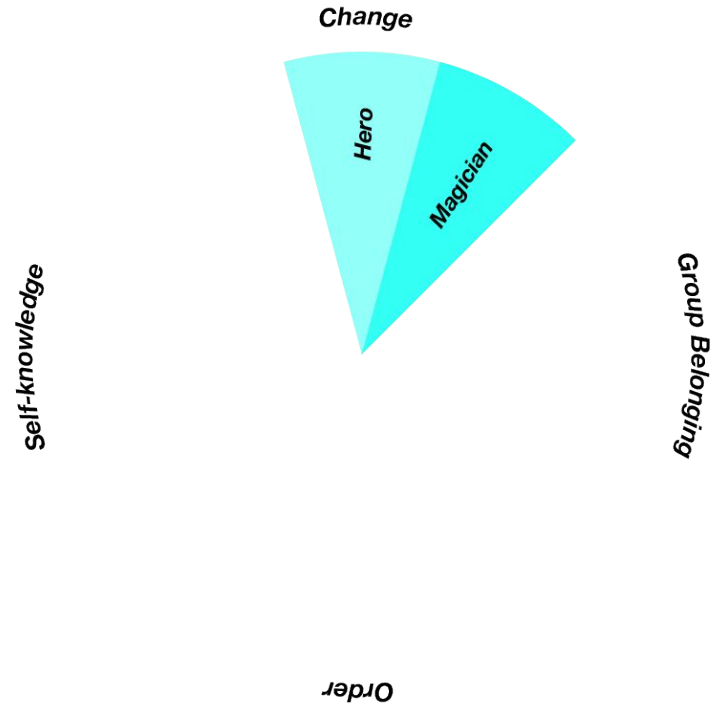


Group Belonging

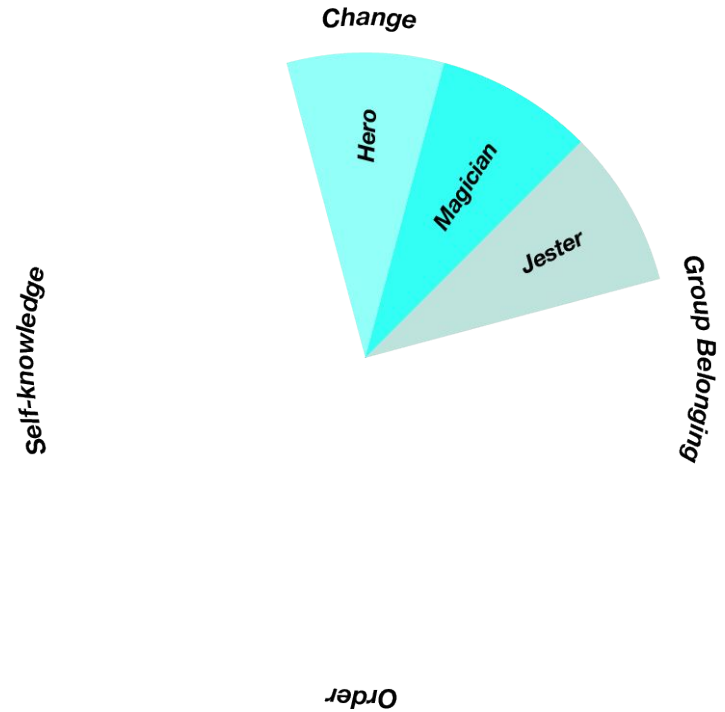
Item 1.

# *The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes*

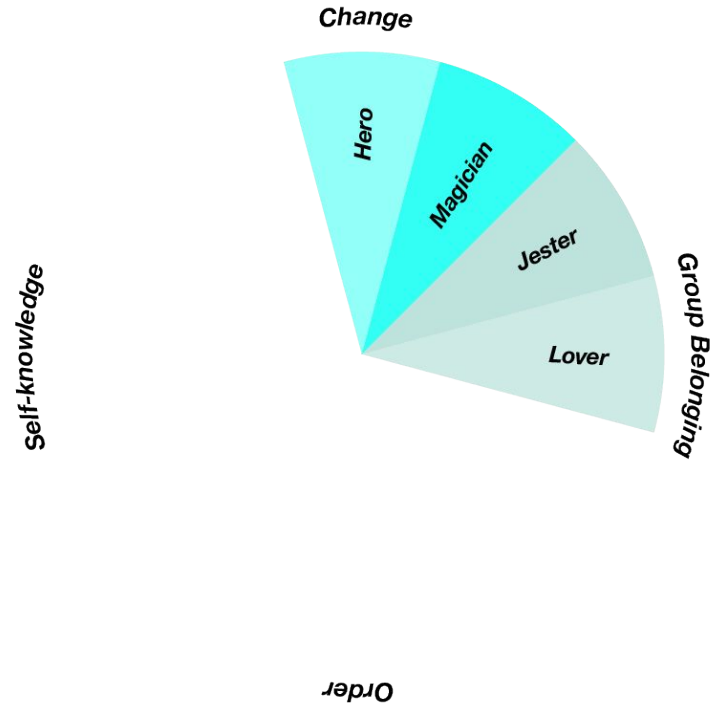
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# *The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes*

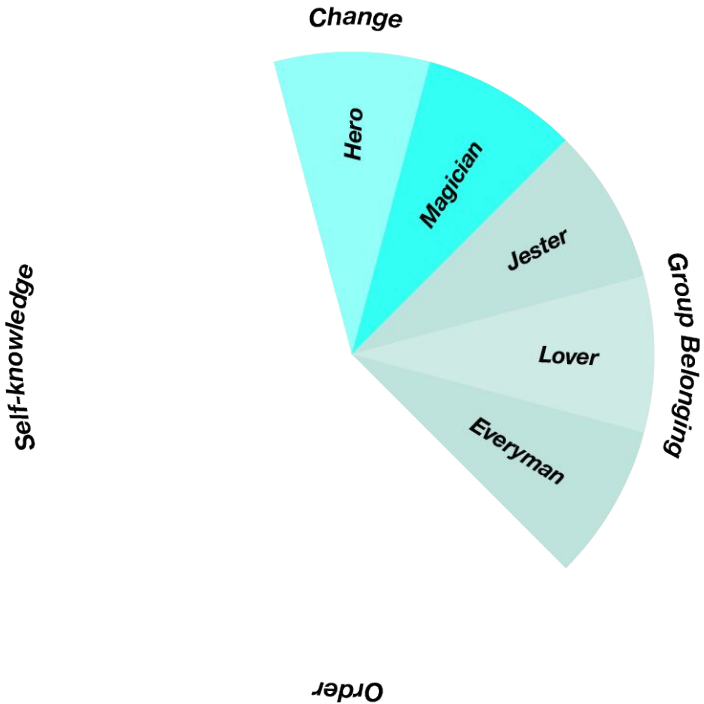


# *The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes*

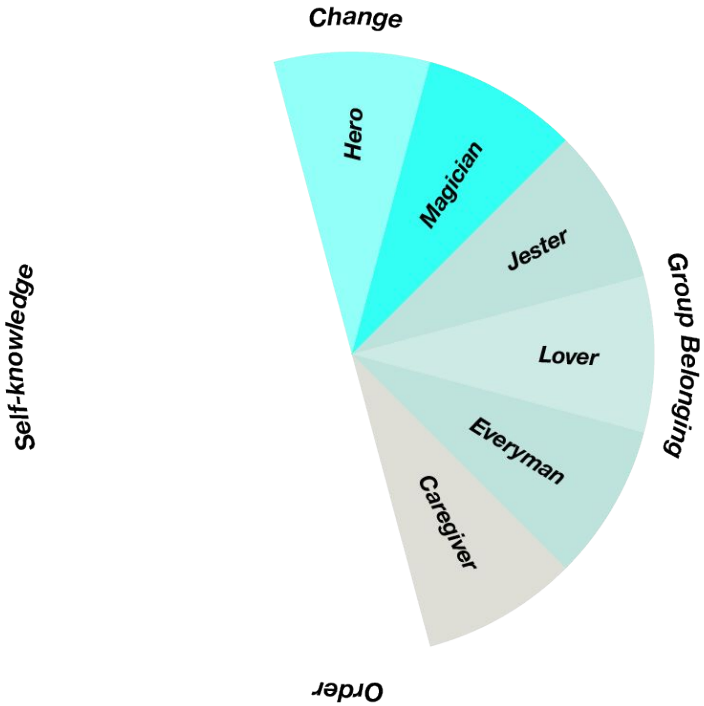




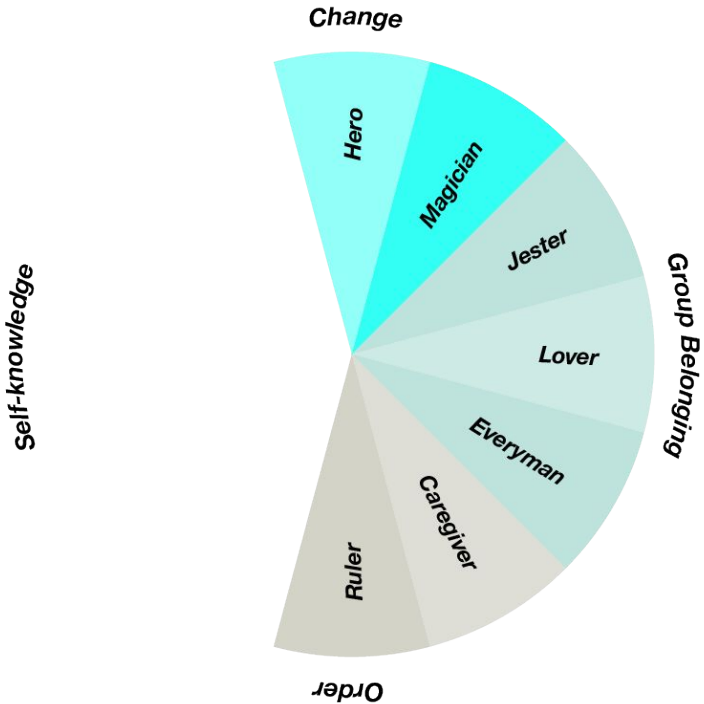
# The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes



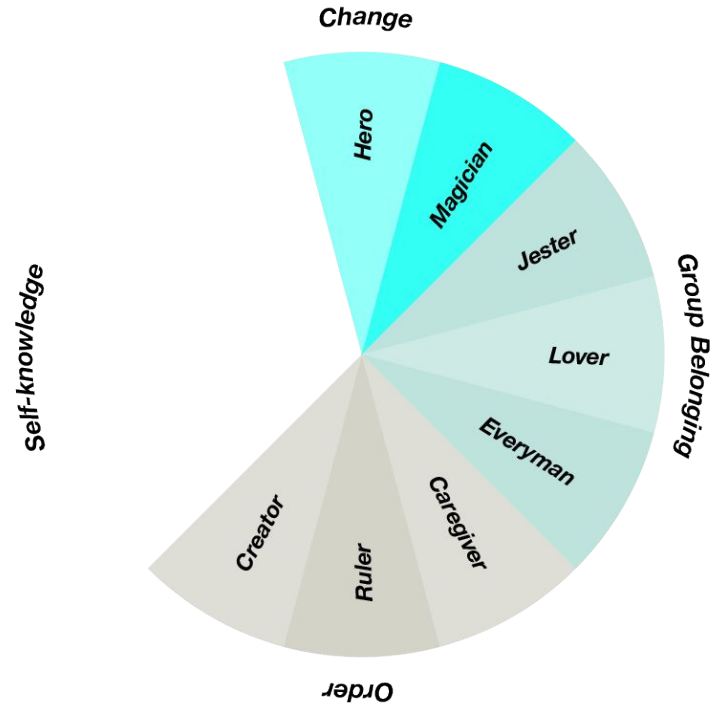
# The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes



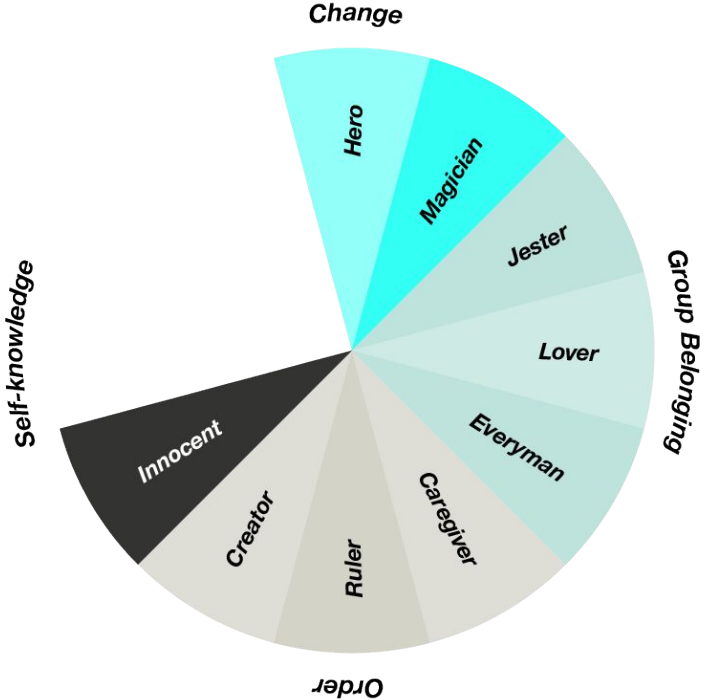
# The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes



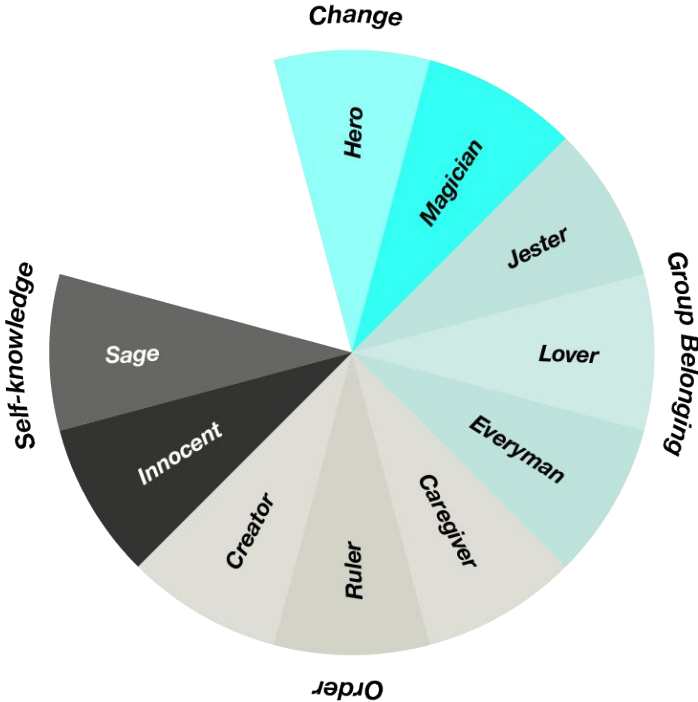
# *The Intersection of Commercial Brands and Human Psyche:* **Jungian Archetypes**



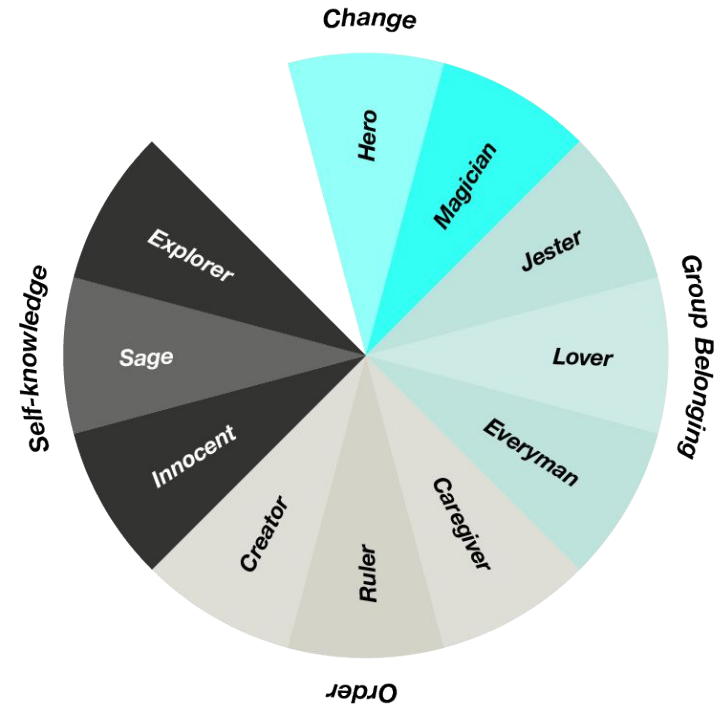
# The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes



# The Intersection of Commercial Brands and Human Psyche: Jungian Archetypes

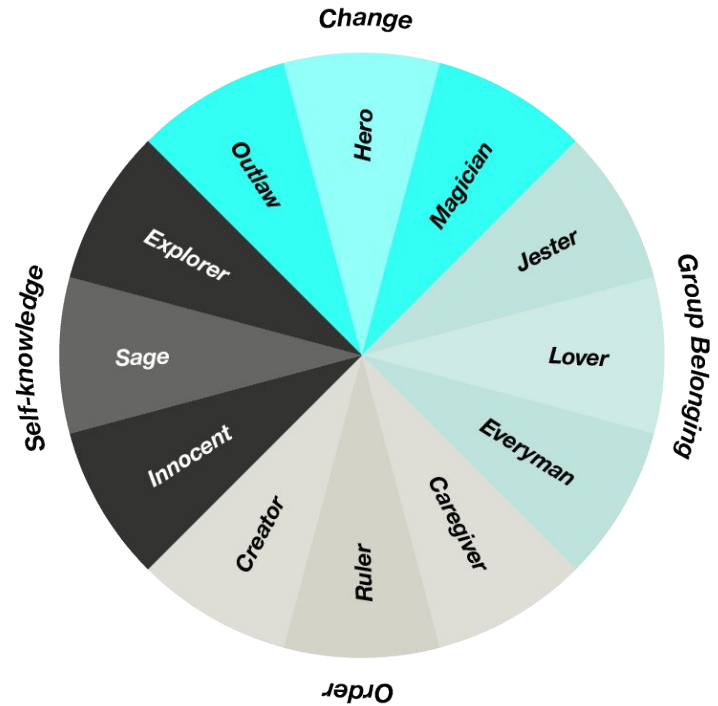


# *The Intersection of Commercial Brands and Human Psyche:* **Jungian Archetypes**





# *The Intersection of Commercial Brands and Human Psyche:* **Jungian Archetypes**









ARCHETYPAL PERSONALITY	DESCRIPTION	HELPS US.
<b>The Hero</b>	Proves self through amazing physical acts. Strong, but uses a controlled strength to benefit others.	Act courageously
<b>The Caregiver</b>	The protective nurturer and gentle provider: Helps others by providing for their needs. Much respected and trusted, icons of home, security and continuity.	Care for others
<b>The Outlaw</b>	Rebel, outlaw, rogue: Achieves freedom (from the establishment) through defiance, disobedience and nonconformity. Enjoys being a little bit bad. Often admired; may be intimidating because they're not for everyone.	Break the rules
<b>The Everyman</b>	Good old boy, girl next door, average joe, down to earth. Bonds with others by being humble, hardworking and friendly.	Be okay just the way you are
	Intellectual solutions to problems, expert advice, serious objective tone. Finds truth through research, objectivity.	
ARCHETYPAL PERSONALITY	DESCRIPTION	HELPS US...
<b>The Innocent</b>	Achieves a pure life by always doing the right thing.	Retain and renew faith
<b>The Innocent</b>	Achieves a pure life by always doing the right thing.	Retain and renew faith
<b>The Magician</b>	Creates transformation, overcomes the impossible, creates delight with his/her imagination and cleverness.	Effect transformation
<b>The Ruler</b>	Leader, part of the establishment, sets the rules that others play by. Powerful.	Exert control
<b>The Jester</b>	Element of energy and fun, overthrowing the established way of doing things, speaks the truth when no one else does, adds levity to tense situations.	Have a good time
<b>The Creator</b>	Nonconformist, not motivated by fitting in but by self-expression.	Craft something new

Item 1.

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# Brand Personality:

ARCHETYPAL PERSONALITY	Examples
The Hero	
The Caregiver	TOMS
The Outlaw	HARLEY — DAVIDSON
The Everyman	
The Sage	Google
The Lover	CHANEL
The Explorer	patagonia <sup>®</sup>
The Innocent	
The Magician	
The Ruler	 Mercedes-Benz
The Jester	<i>Old Spice</i>
The Creator	

Item 1.

# Brand Personality

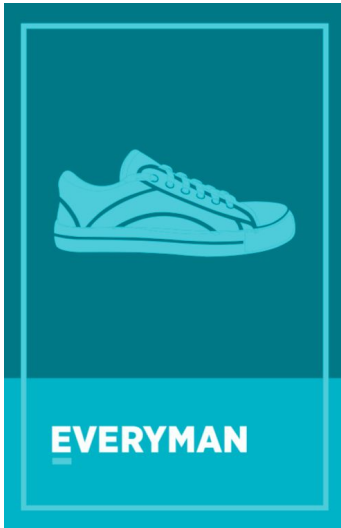


# Brand Personality

ARCHETYPAL PERSONALITY	DESCRIPTION	HELPS US...
<b>The Everyman</b>	Good old boy, girl next door, average joe, down to earth. Bonds with others by being humble, hardworking and friendly.	Be okay just the way you are
<b>The Hero</b>	Proves self through amazing physical acts. Strong, but uses a controlled strength to benefit others.	Act courageously
<b>The Caregiver</b>	The protective nurturer and gentle provider: Helps others by providing for their needs. Much respected and trusted, icons of home, security and community.	Care for others

# Brand Personality

*We're among the most visible people in the community. Let's be the most approachable.*



## Relatable

We're hardworking, reliable, get the job done right. As our community changes, one thing doesn't—our commitment to doing what's best for the people we serve.

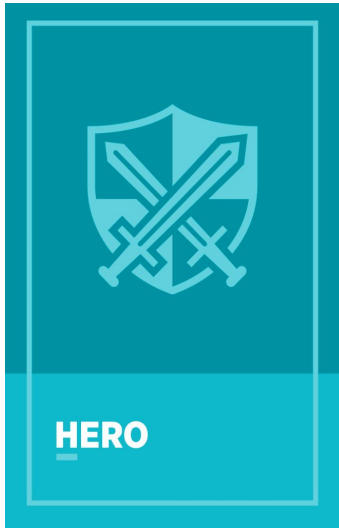
## Relatable for NBU

**IS:**  
Thoughtful  
A Role Model  
Responsible

**IS NOT:**  
Arrogant  
Complicated

# Brand Personality

Let's return to the beacon for the community we once were.



## Focused

It's part of our long-standing DNA to look for ways to be a north star within our community. In times of immense change our customers are looking to us for courage and confidence to lead the way into the future and unify New Braunfels.

## Focused for NBU

### IS:

Courageous  
Unifying  
A Leader  
Confident  
Action-oriented

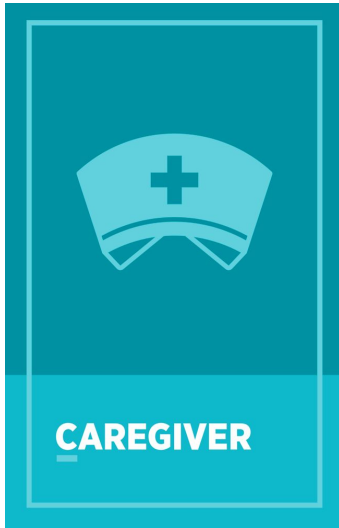
### IS NOT:

Controlling  
Shy/Timid  
Inconsistent



# Brand Personality

*Our community needs a hug.*



## Caring

We have our customers' best interest at heart at all times. We do what we do not because we have to, but because we *truly* care. We are New Braunfels and New Braunfels is us.

## Caring for NBU

### IS:

Supportive  
Relationship-focused  
Listens  
Committed  
A Leader

### IS NOT:

Selfish  
Rigid  
One-dimensional

*What makes us, us? What are our personality traits?*

**Relatable, Focused, and Caring.**

For our employees

For our residential customers

For our commercial customers

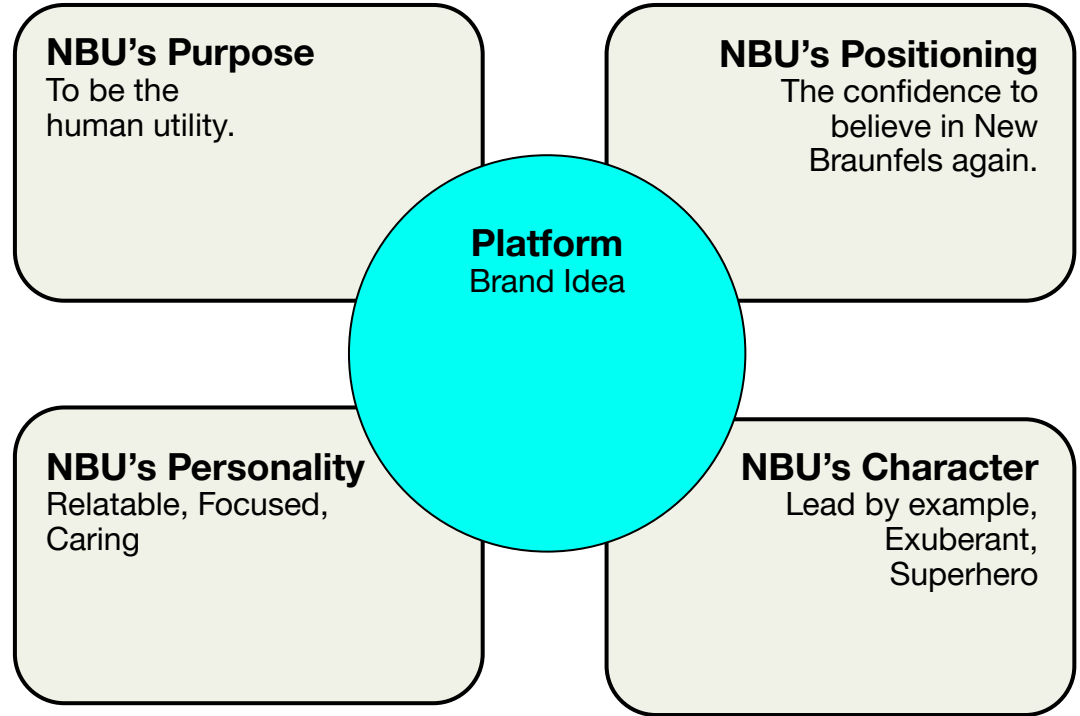
# Brand Dimensions

**Brand Purpose:**  
To be the human utility.

**Brand Position:**  
The confidence to believe in New Braunfels again.

**Brand Character:**  
Lead by Example, Exuberant, Superhero

**Brand Personality:**  
*Relatable, Focused, Caring*



# Thank you.



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**Meeting Date:** April 25, 2024      **Agenda Type:** Presentation Items

**From:** Michael G. Short, P.E.  
Director of Water Services  
and Compliance      **Reviewed by:** Michael G. Short, P.E.  
Director of Water Services and  
Compliance

**Submitted by:** Michael G. Short, P.E.  
Director of Water Services  
and Compliance      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Presentation on the Guadalupe-Blanco River Authority’s Drought Contingency Plan for Wholesale Customers and its Impact on NBU

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# **Guadalupe – Blanco River Authority Drought Contingency Plan**

**Presented by:  
Michael G. Short, P.E.  
Director of Water Services**



April 25, 2024



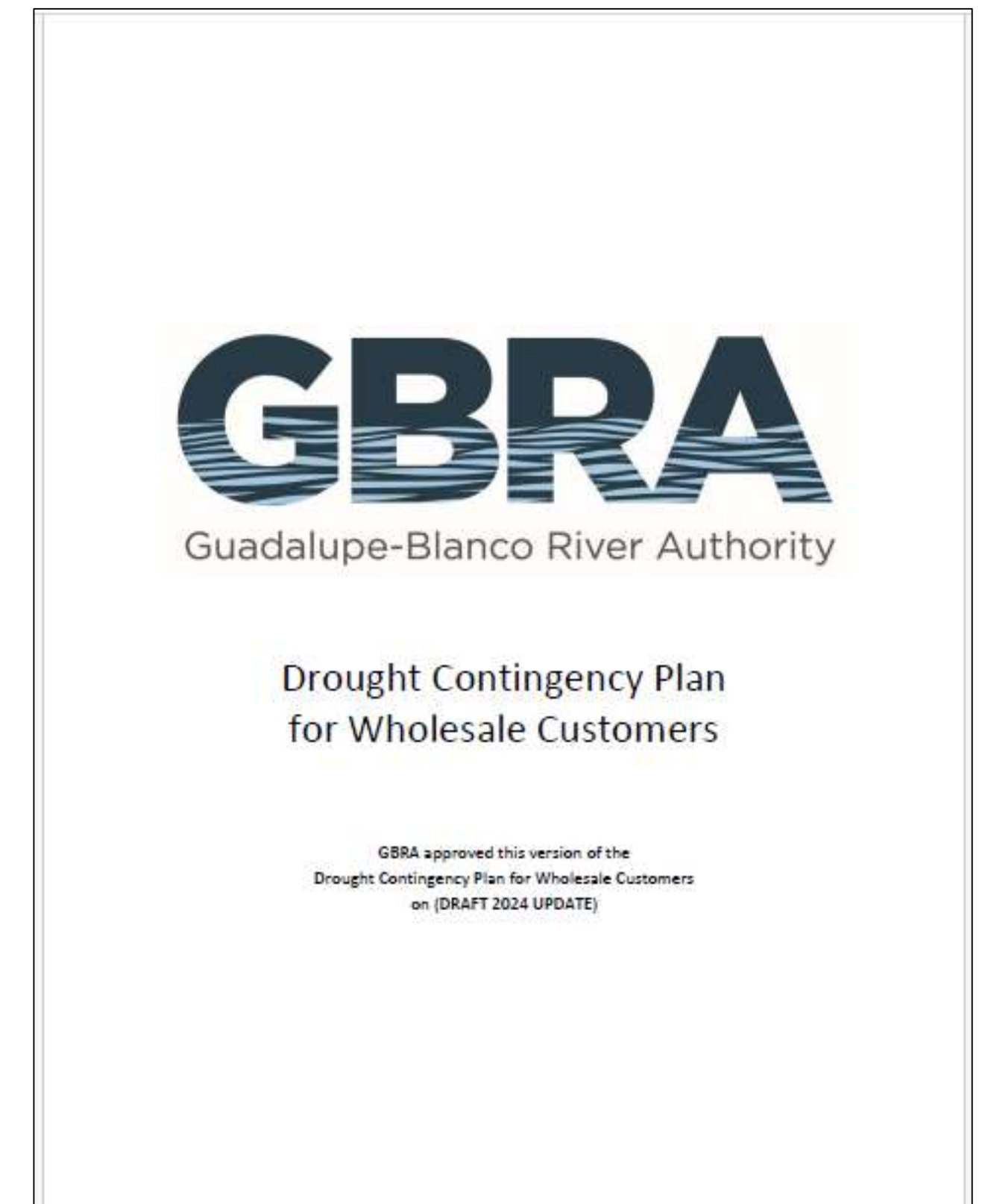
# GBRA – Drought Contingency Plan

- **Purpose of this presentation**
  - Create awareness
  - No action required
- **Basis requirements of DCP**
- **GBRA's DCP**
- **What it means to NBU**



# GBRA – Drought Contingency Plan

- **Basic requirements of a Wholesale DCP**
  - Initiating and terminating drought stages
  - Notification procedures
  - Targets for water use reductions
  - Pro rata curtailments
  - Enforcement
- **GBRA's Draft DCP**
  - Draft DCP presented to the GBRA Board on March 20, 2024
  - NBU received a draft on March 22, 2024 for review
  - Final due in May



# GBRA – Drought Contingency Plan

- **What it means to NBU**

- Impacts our firm Contracted Canyon Water Supply of 18,070 AFY
- Adds:
  - Stage 4 - 880 ft-msl, 49% full mandatory, 15% reduction 15,360 AFY
  - Stage 5 - 865 ft-msl, 31% full mandatory, 30% reduction 12,649 AFY
- Abandons the requirement for GBRA to demonstrate that a drought greater than the DOR is occurring prior to imposing mandatory curtailments as determined by the GBRA Board



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**Meeting Date:** April 25, 2024      **Agenda Type:** Presentation Items

**From:** Adam Willard      **Reviewed by:** Michael G. Short, P.E.  
Chief Engineer of Water      Director of Water Services and  
Systems      Compliance

**Submitted by:** Adam Willard      **Approved by:** Ryan Kelso  
Chief Engineer of Water      Chief Executive Officer  
Systems

**RECOMMENDED ACTION:** Presentation on the Revised Water Engineering Design Standards  
Effective June 2024

---



# Revised Water Engineering Design Standards

Presented by:  
Adam Willard, P.E.  
Chief Engineer of Water Systems



• April 25, 2024



# Water Engineering Design Standards

- Purpose
- What are Design Standards?
- How have they changed
- What it means to NBU and the community

**Ductile Iron Pipe** Sheet **W1.0.0**

**Description:**  
DI water pipe and DI wastewater force main pipe complying with AWWA C 151 (and C 115 for flanged pipe only). DI pipe shall have factory-applied asphaltic coating or zinc/asphaltic coating and cement-mortar lining with bituminous seal coat complying with AWWA C 104. Wastewater force main pipe shall be lined with approved corrosion-resistant material. Lining to be used shall be shown on submittal, with type, brand, and lot number marked on each pipe. No more than one type or brand of lining shall be used for any project. This pipe is not to be used for gravity flow wastewater lines.

Listing Date	Manufacturer	Product Identification	Approval
	American Cast Iron Pipe Co.	See notes	CE
	U.S. Pipe Co.	See notes	CE
	McWane Ductile	See notes	CE

**Notes:**

1. DI water pipe, except flanged pipe, to 12" diameter shall be Class 350 as defined by AWWA C 150; sizes 16" and larger shall be Class 250 minimum. Flanged DI pipe shall be Special Thickness Class S3 meeting AWWA C 115, and shall comply with requirements of SPL W1.0.1.
2. Materials shall meet applicable specification requirements. Acceptable sizes for potable and reclaimed water pipes are 8", 12", 16", 20", 24", 30", and multiples of 6" in larger sizes. 14", 18", and 20" are acceptable for repair only. Sizes for wastewater force mains shall be determined based on specific project requirements.
3. Submittal shall include results of independent laboratory testing showing that seal coating on pipe meets test requirements of Section 5.2 of AWWA Standard C 104, and is in compliance with Section 4.12 of that Standard.
4. For pipe larger than 24" in diameter, manufacturer must provide one of the following with project submittal: a) evidence of current ISO registration or b) name and qualifications of independent, third-party firm that will test and inspect pipe produced for NBU.
5. Pipe manufacturer shall certify that wastewater pipe lining will withstand, without damage, high pressure jet washing that is used to flush lines prior to CCTV inspection and as required for normal maintenance purposes.
6. Zinc coating for DI pipe will be considered on a case-by-case basis and only as approved by NBU. When used, pipe shall be identified as "Zinc Coated" (or similar), and zinc coating shall be applied as a base layer under asphaltic seal coat that complies with AWWA C 104. The use of polywrap is required with zinc coated pipe.

**CAUTION!**  
UNDERGROUND GAS, WATER, ELECTRIC, TELEPHONE, CABLE TV AND OTHER UTILITIES MAY EXIST WITHIN THE WORK AREA. THE UTILITIES SHOWN ON THESE PLANS ARE APPROXIMATE AND FOR INFORMATION ONLY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE UTILITIES CAUSED BY THE CONTRACTOR'S OPERATION.

**NEW BRAUNFELS UTILITIES**  
MCKENZIE INTERCEPTOR  
SANITARY SEWER  
STA. 370+00 TO END



# Water Engineering Design Standards

- **Water/Wastewater Design Criteria**
  - Construction Plan Requirements
  - Construction Inspection, Acceptance, and Warranty
  - Design Requirements for Water/Wastewater Systems
- **Lift Station Design Criteria**
- **Standard Specifications**
- **Standard Details**
- **Standard Product List**
- **Standard Construction Notes**

New Braunfels Utilities Specifications

120.3 Materials

A. Standard Bedding Materials

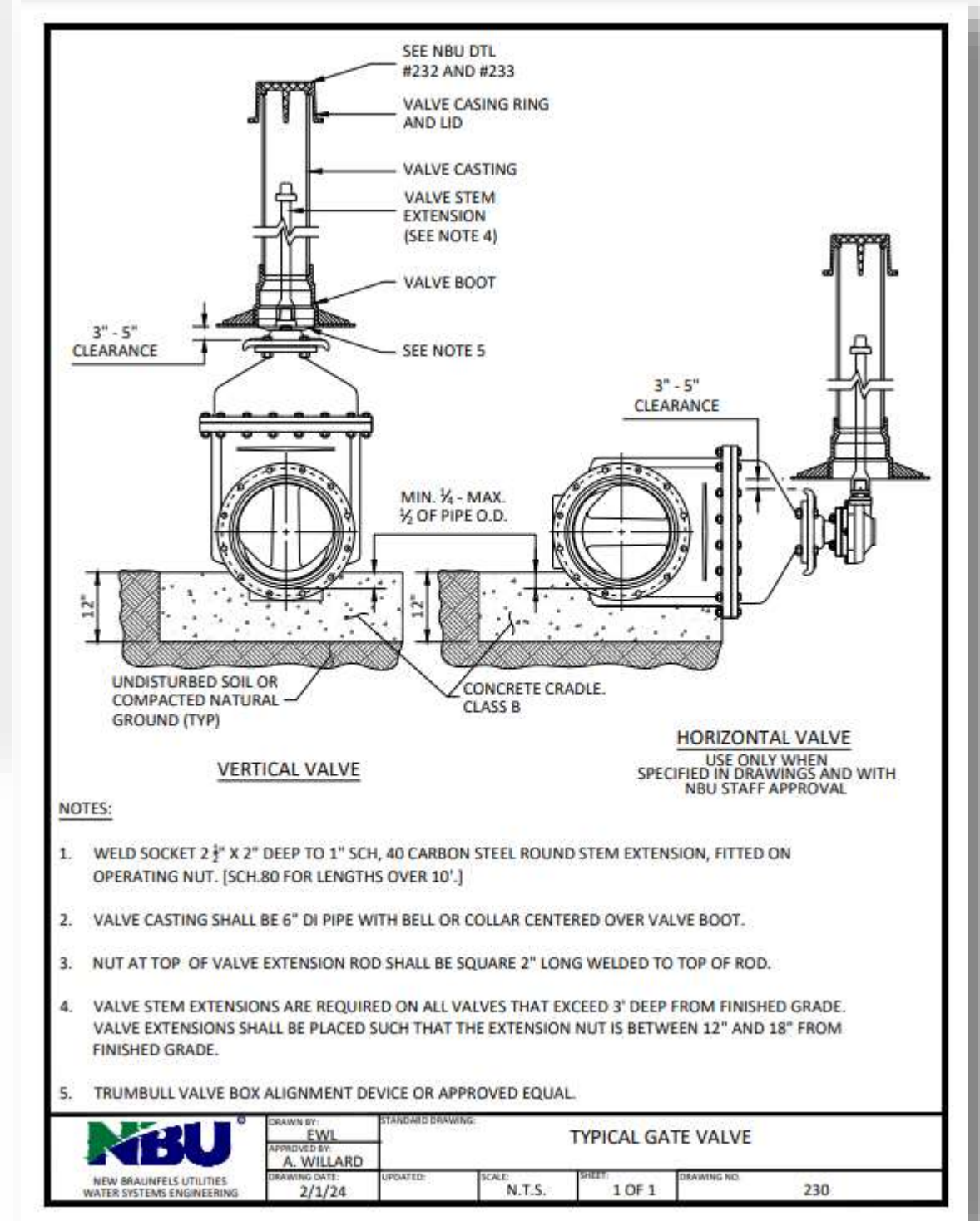
USE / PIPE MATERIAL	Cement Stabilized Backfill	Natural or M'rd Sand	Stone Screenings	Pea Gravel	Course Aggregate
<b>WATER</b>					
Service Tubing 1" to 2"		X	X	X	
<b>WATER and WASTEWATER (PVC)</b>					
Up to 15 Inch ID		X	X		
Larger Than 15 Inch ID			X	X	
<b>WATER and FORCEMAINS (DUCTILE IRON)</b>					
Up to 15 Inch ID			X	X	X
Larger Than 15 Inch ID				X	X
<b>WASTEWATER (FRP)</b>					
Larger Than 30 Inch ID			X		

- General requirements and limitations governing bedding selection.
  - Crushed gravel or crushed stone shall not be used with polyethylene tubing or polyethylene film wrap.
  - Pea Gravel or bedding stone shall be used in blasted trenches.
- Requirements to prevent particle migration.
 

Bedding material shall be compatible with the materials in the trench bottom, walls and backfill so that particle migration from, into or through the bedding is minimized. The Engineer may require one or more of the following measures to minimize particle migration: use of impervious cut-off collars; selected bedding materials, such as pea gravel or bedding stone mixed with sand; filter fabric envelopment of the bedding; cement stabilized backfill; or other approved materials or methods. Measures to minimize particle migration will be shown on the Drawings or designated by the Engineer, and, unless provisions for payment are provided in the contract documents, the cost of these measures shall be agreed by change order. The following limitations shall apply.

  - Sand, alone, shall not be used in watercourses, in trenches where groundwater is present, or in trenches with grades greater than 5 percent.
  - Pea gravel or bedding stone, alone, shall not be used in the street right-of-way within 5 feet of subgrade elevation in trenches that are 3 feet or wider.
  - Each gravel or bedding stone, alone, shall not be used where the trench bottom, sides, or backfill is composed of non-cementitious, silty or sandy soils having plasticity indices less than 20, as determined by the Engineer.

120 Accepted 2/1/24 Page 2 Utility Trenching and Backfill





# Water/Wastewater Design Criteria Updates

- **Updated Criteria:**

- System capacity sections updated to match Master Plans
- W/WW criteria revised per staff feedback and consultant recommendations
- Abandonment of facilities revised to match NBU standard practice
- Miscellaneous clarifications of common design inquiries

- **New Criteria:**

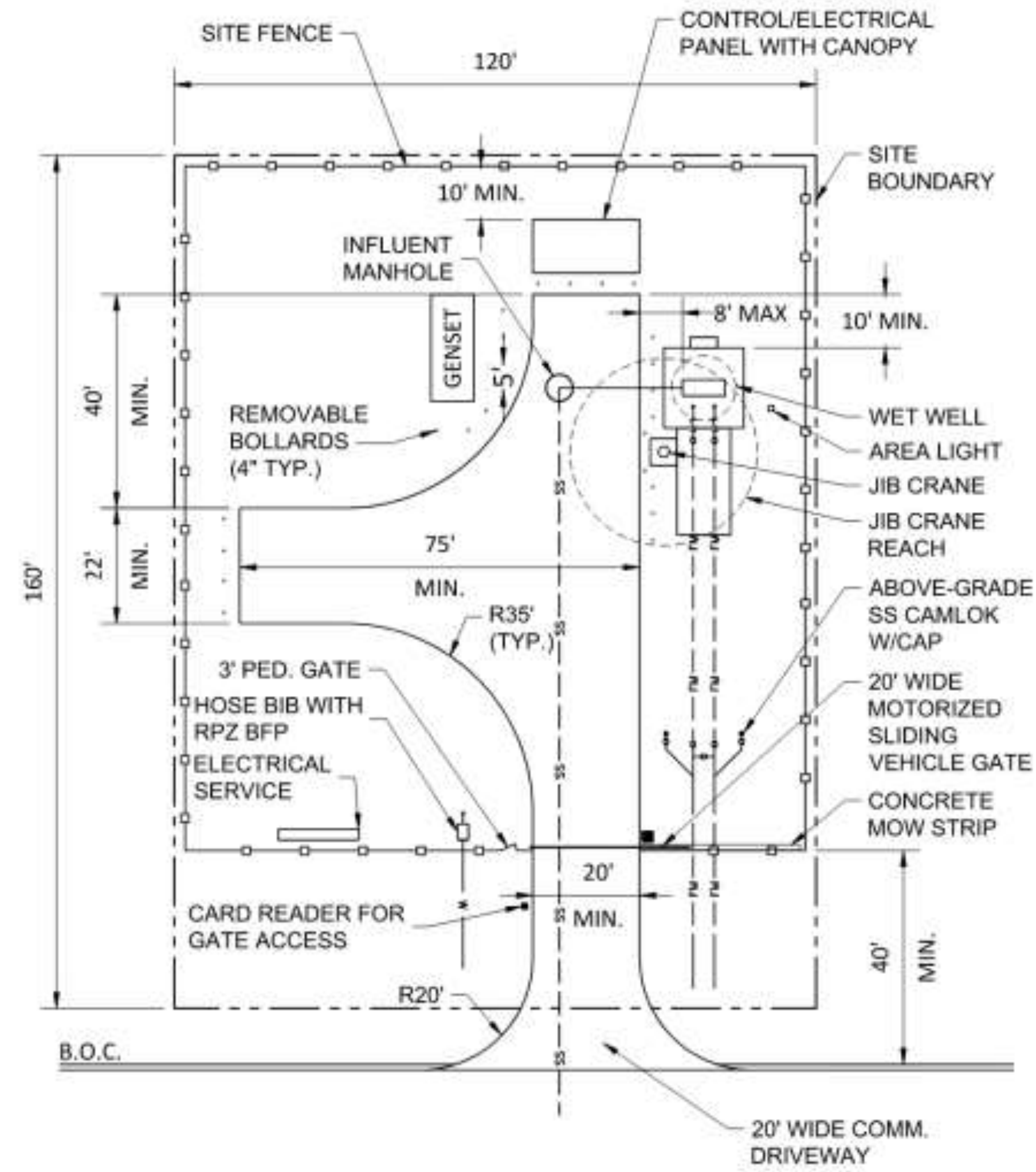
- Easements: Identified width, slope, and access
- Polymer concrete manholes





# Lift Station Design Criteria

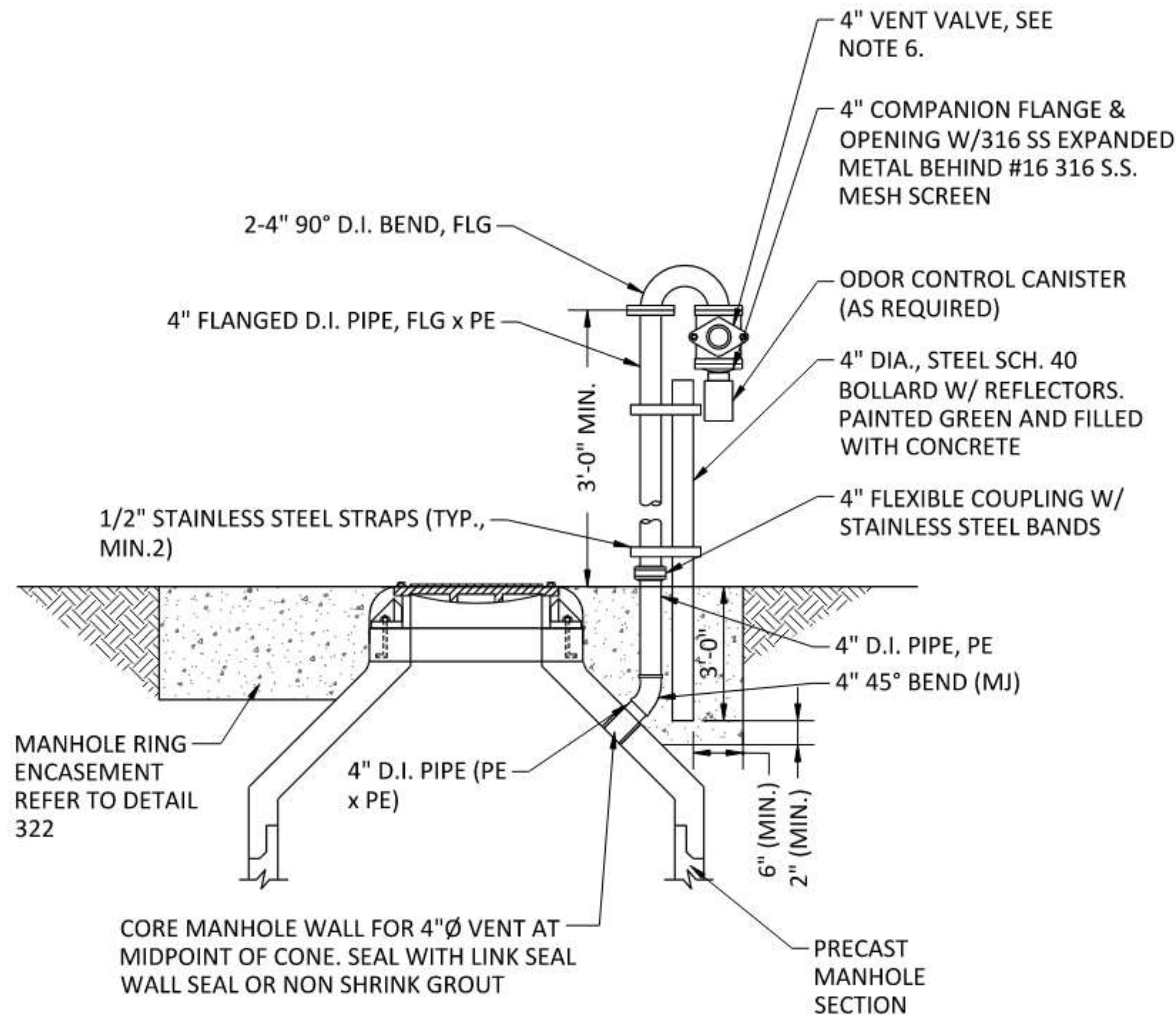
- Need for standard identified by issues at existing lift stations
- Enhanced requirements:
  - Dual force mains for resiliency/reliability
  - Fiber communications for SCADA and security
  - Site access: turnarounds and paved access roads
  - Odor control, aeration, & bypass considerations
  - Security: Cameras, solid perimeter fencing, and gates





# Standards and Specifications Updates

- **Standard Specifications Revisions:**
  - Updated 20+ year old existing NBU specifications to address inconsistencies noted during project construction and to match current industry standards
- **New Standard Specifications:**
  - Added specifications for pumps, storage tanks, coatings, fiberglass gravity sewer pipe, polymer concrete manholes, vaults, vault hatches, and cathodic protection
- **Standard Detail Updates:**
  - Addressed operational issues per NBU staff feedback
  - Added and updated details to match new specifications
- **New Standard Products List:**
  - Updated draft Standards Products List for use by engineers and contractors to streamline submittals process and consistency for O&M





# NBU and the Community

## • NBU


- Efficient review and inspection
- Standard products
- Less meetings

## • Developers/Community

- Clear direction
- Less interpretation
- Consistency
- No surprises

## • Outreach and Implementation





April 15, 2024

Mr. Matthew Geistweidt, P.E.  
 Pape-Dawson Engineers  
 2000 NW Loop 410  
 San Antonio, TX 78213  
 MGeistweidt@pape-dawson.com

**RE: Trail Creek Subdivision  
 Approval of Water and Wastewater Construction Plans  
 Project Number(s): W – 232264 / WW – 232266**

Dear Mr. Geistweidt,

Please be advised that New Braunfels Utilities has reviewed and approved the water and wastewater construction plans for Trail Creek Subdivision (Sealed plans dated 1/04/2024.)


The approved plans show:

- Water:
  - 8" Main Extension
  - 14 - Fire Hydrant Assemblies
  - 139 - 1" Services
    - 130 - 5/8" domestic water meters
    - 9 - 1" irrigation water meters
- Sewer:
  - 8" main extension
  - 12" main extension
  - 37 Manholes
  - 130 - 6" services

This approval is good for one year from the date of the initial approval 4/15/2024. If you make any revisions or changes to the referenced plans, you will be required to submit a new Application for Construction Plan Review and Approval prior to construction.

**PLEASE NOTE:**

- The construction plan approval by NBU for public improvements associated with Trail Creek Subdivision is not a construction permit. The applicant is required to apply for a public improvement permit to allow for construction through the City of New Braunfels.
- **APPROVAL OF AN APPLICATION FOR CONSTRUCTION PLAN REVIEW DOES NOT RESERVE WATER CAPACITY. NBU WILL DETERMINE AVAILABILITY OF CAPACITY AT FINAL PLAT APPROVAL.**
- *Coordinate with NBU Easements*, at 830.608.8999 or 830.606.8894, regarding any new easements or easement conflicts that may need to be addressed prior to establishing NBU utility services.
- *Coordinate with NBU New Construction*, at 830.608.8992 or 830.608.8919 or email at [newconstruction@nbutexas.com](mailto:newconstruction@nbutexas.com), regarding the application process and any applicable fees.
- *A 48-hour notice is required before construction may begin.* Please call 830.608.8831 or email [wtrassadmin@nbutexas.com](mailto:wtrassadmin@nbutexas.com) to advise the approximate start date and contractor information. A water/wastewater inspector will be assigned at that time.
- *Upon completion of any vertical water and/or wastewater infrastructure, please contact our Water Services Planner at [waterservicesplanning@nbutexas.com](mailto:waterservicesplanning@nbutexas.com) to schedule an inspection. This inspection will be completed within 15 business days of the request.*



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355 FM 306, New Braunfels, Texas 78130 | 830.629.8400 | [nbutexas.com](http://nbutexas.com)  
**Our Mission:** Enhancing the quality of our community by providing innovative essential services.

### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service



### Core Values

Safety, Team, Integrity, Culture, and Stewardship





# QUESTIONS?

**Mission**

Strengthening our community by providing resilient essential services



**Vision**

Be a trusted community partner dedicated to excellence in service



**Core Values**

Safety, Team, Integrity, Culture, and Stewardship

