



NOTICE OF OPEN MEETING
BOARD OF TRUSTEES
NBU Board Room, 263 Main Plaza, New Braunfels, Texas 78130
March 30, 2023, at 1:00 PM
www.nbutexas.com

AGENDA

PLEDGE OF ALLEGIANCE AND INVOCATION

Board Vice President Wayne Peters

PUBLIC COMMENT

PRESENTATION ITEMS

1. Presentation to Communities in Schools (CIS)

ITEMS FROM THE CHAIR

1. Report from the Investment Committee

ITEMS FROM STAFF

1. CEO's Update
 - a. Headwaters at the Comal Ground Breaking
 - b. Wyland National Mayor's Challenge for Water Conservation
 - c. 2023 Customer Satisfaction Survey
 - d. Rate Advisory Committee Roadshow Presentations
 - e. Other Items Permitted Under Section 551.415 of the Texas Government Code
2. Financial Update and Report
3. Annual Water Supply Fee Report
4. Monthly Update on Customer Accounts
5. Power Supply Update Including Changes to the Power Stabilization Fund
6. Quarterly Capital Update

CONSENT ITEMS FOR ACTION

1. Approve Minutes of the NBU Regular Board Meeting of February 23, 2023

- [2.](#) Approve a Public Calamity Declaration Relating to Supply Chain Disruptions Resulting from the Covid-19 Pandemic for Purchases over \$250,000
- [3.](#) Approve the Public Calamity Exemption Log from January 15, 2023, through February 15, 2023
- [4.](#) Approve the Reports for Water and Electric Engineering Contracts from August 1, 2022, through February 15, 2023
- [5.](#) Approve the Change Order Log from January 15, 2023, through February 15, 2023
- [6.](#) Approve the Electric Line of Business Alternative Procurements from January 15, 2023, through February 15, 2023
- [7.](#) Approve Previously Unreported Alternative Procurements for the Electric Line of Business
- [8.](#) Approve 2022 Third Quarter Charge-Off Accounts
- [9.](#) Authorize Proposed Changes to the New Braunfels Utilities Financial Policy
- [10.](#) Authorize CEO or His Designee to Adopt Resolution #2023-165 Authorizing Proposed Changes to the New Braunfels Utilities Investment Policy
- [11.](#) Authorize CEO or His Designee to Make Available the Standard Agreement for Negotiation and Execution of Agreements for Interconnection and Parallel Operation of Distributed Generation as Required by Senate Bill 398
- [12.](#) Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Senate Bill 3 Emergency Preparedness Plan Generators Phase 1 Project
- [13.](#) Authorize CEO or His Designee to Approve Additional Construction Contract Contingency with Harper Brothers Construction, LLC in the Amount of \$350,000 for the Construction of the FM 306 Pump Station Expansion and Discharge Line Project
- [14.](#) Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with MGC Contractors, Inc. for the Construction of the Sam C. McKenzie Water Reclamation Facility Headworks Conveyor and Discharge Outfall Replacement Project
- [15.](#) Approve Resolution Amending Authorized Representatives for the Texas Local Government Investment Pool and Authorize President and CEO/Secretary to Execute Documentation in Connection Therewith
- [16.](#) Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with WW Peerless, LLC DBA Peerless Equipment for Water Well Pump Diagnostic, Repair, and Replacement Services
- [17.](#) Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Weisinger Incorporated for Water Well Pump Diagnostic, Repair, and Replacement Services

- [18.](#) Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Austin Armature Works, LP for Water and Wastewater Systems Pump and Motor Repair, Maintenance, and Replacement Services
- [19.](#) Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Lonestar Armature, LLC for Water and Wastewater Systems Pump and Motor Repair, Maintenance, and Replacement Services
- [20.](#) Authorize CEO or His Designee to Negotiate and Execute a Master Support and Maintenance Agreement for the Northstar Customer Information System with Harris Computer Corporation
21. Authorize CEO or His Designee to Approve Resolution #2023-166 to Accept Restricted Prior Service Credits from Other Public Employers to Satisfy Length of Service Requirements for Texas Municipal Retirement System (TMRS) Retirement Eligibility

ACTION ITEMS

1. Discuss and Consider Approval of the Fiscal Year 2024 Budget and Five-Year Operating Plan
2. Discuss and Consider Receiving the Electric, Water, and Wastewater Utility Revenues, Revenue Requirements, Cost of Service, and Rates Report, Including Rate Advisory Committee Feedback, from Freese & Nichols, Inc., NewGen Strategies & Solutions, LLC
- [3.](#) Discuss and Consider Adopting Resolution #2023-167 by the Board of Trustees of New Braunfels Utilities Approving Proposed Amendments to Chapter 130, Article IV, Section 130-167 of the Code of Ordinances of the City of New Braunfels Relating to Water Rates (i) Removing the Off Peak and Peak Season Monthly Charge Distinctions; (ii) Adjusting Volume Charges; (iii) Modifying Service Rate Classifications; (iv) Adjusting Water Rates and Charges for Fiscal Year 2024; (v) Providing for Adjustments of Water Rates and Charges for Fiscal Year 2025; (vi) Resolving Other Matters Incident and Related Thereto; and (vii) Authorizing Presentation of Same to the City Council of New Braunfels for its Consideration and Passage
4. Discuss and Consider Adopting Resolution #2023-168 by the Board of Trustees of New Braunfels Utilities Approving Proposed Amendments to Chapter 130, Article V, Section 130-257 of the Code of Ordinances of the City of New Braunfels (i) Adjusting Sewer Rates and Charges for Fiscal Year 2024; (ii) Providing for Adjustments of Sewer Rates and Charges for Fiscal Year 2025; (iii) Resolving Other Matters Incident and Related Thereto; and (iv) Authorizing Presentation Of Same To The City Council Of New Braunfels For Its Consideration And Passage
- [5.](#) Discuss and Consider Adopting Resolution #2023-169 by the Board of Trustees of New Braunfels Utilities Approving Proposed Amendments to Chapter 130, Article III, Sections 130-56, 130-57, and 130-58 of the Code of Ordinances of the City of New Braunfels (i) Adjusting Electric Rates and Charges for Fiscal Year 2024; (ii) Providing for Adjustments of Electric Rates and Charges for Fiscal Year 2025; (iii) Resolving Other Matters Incident and Related Thereto; and (iv) Authorizing Presentation of Same to The City Council of New Braunfels for its Consideration and Passage

6. Discuss and Consider Adopting Resolution #2023-170 by the Board of Trustees of New Braunfels Utilities Approving Proposed Amendments to Chapter 130, Article IV, Section 130-228, Code of Ordinances of the City of New Braunfels, Texas Relating to Drought Management Plan, and Authorizing the Presentation of Same to the New Braunfels City Council for Consideration and Passage

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. Power Supply Resources – Competitive Matters
(Section 551.086 – Texas Government Code)
 - a. Power Supply Update
 - b. Consider a Contract Related to Risk Management Strategies
2. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, or Other Matters Protected by Attorney Client Privilege; Power Supply Resources – Competitive Matters
(Section 551.071 – Texas Government Code; Section 551.086 – Texas Government Code)
 - a. Consider Matters Associated with Pricing Information, Risk Management, Claims Notices, Contracts Relating to, and Actions Taken by ERCOT in Response to the February 2021 Winter Storm
3. Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege
(Section 551.071 - Texas Government Code)
 - a. Discuss Legal Implications of *The City of San Antonio, by and through the San Antonio Water System v. Campbellton Road, LTD.*, 647 S.W.3d 751 (Tex. App.— San Antonio January 26, 2022, pet. filed).
 - b. Utility Construction Cost Sharing Agreement Between Southstar at Mayfair LLC, Together with Certain Affiliates, and New Braunfels Utilities

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’s Executive Assistant at least three (3) days prior to the scheduled meeting date, at (830) 629-8400, or NBU Main Office at 263 Main Plaza, New Braunfels, Texas, for additional information.

CERTIFICATE OF POSTING

I, Ian Taylor, 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 **24th day of March, 2023**, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.



Ian Taylor, Chief Executive Officer
Secretary to the Board of Trustees

Presentation to Communities in Schools (CIS)



2023 Kinderschuhe 5K Run & Walk

- 274 total registrants
- 209 race finishers
- 37 NBU volunteers
- \$2,852.43 raised for Communities in Schools





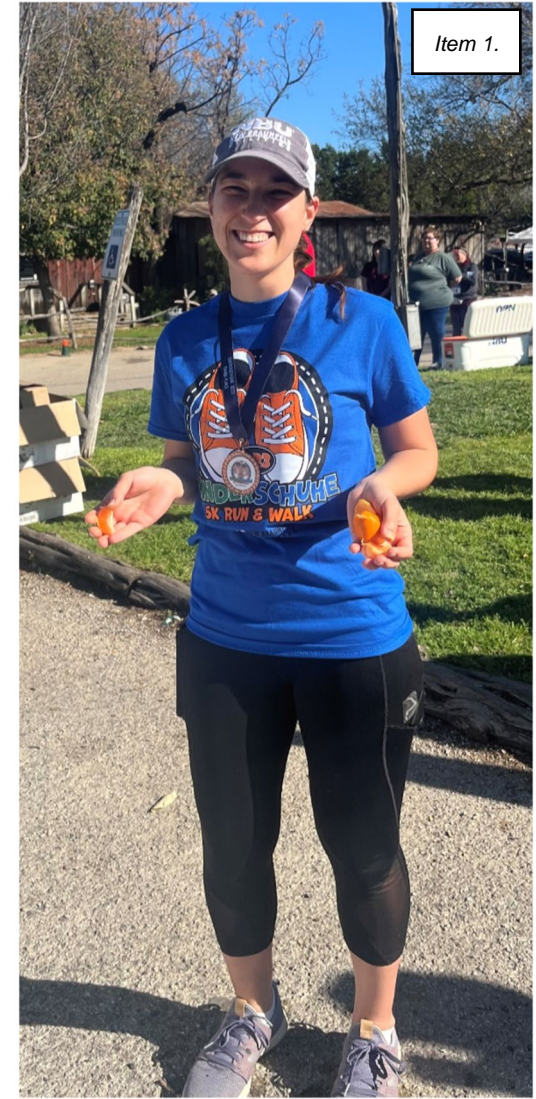
Wesley Hillard
1st place in age group



Andrew Cummings
3rd place in age group



Laura Loew
3rd place in age group



Anna Anderson
3rd place in age group

Dade Goode – 3rd place in age group (not pictured)

CEO's Update



Headwaters at the Comal Commemorates Next Phase March 21 Groundbreaking Event

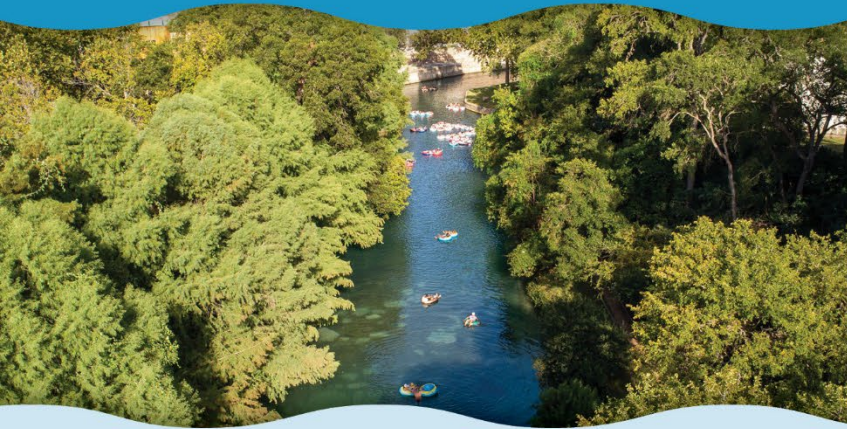
Item 1.



BECAUSE WE ALL LIVE DOWNSTREAM FROM SOMEONE ELSE.

Item 1.

MAKE A PLEDGE TO SAVE WATER. ENTER TO WIN HUNDREDS OF PRIZES, INCLUDING \$3,000 FOR YOUR HOME UTILITIES.



2023 WYLAND NATIONAL MAYOR'S CHALLENGE FOR WATER CONSERVATION, APRIL 1-30.

New Braunfels Mayor, Rusty Brockman, is joining mayors across the country and asking residents to pledge commitment to water conservation. The Wyland National Mayor's Challenge for Water Conservation is a friendly competition between cities to see which one can be the most water-wise.

It only takes one minute to pledge, and participants can win \$3,000 toward their home utility payments, water saving fixtures, and hundreds of other prizes in daily drawings.

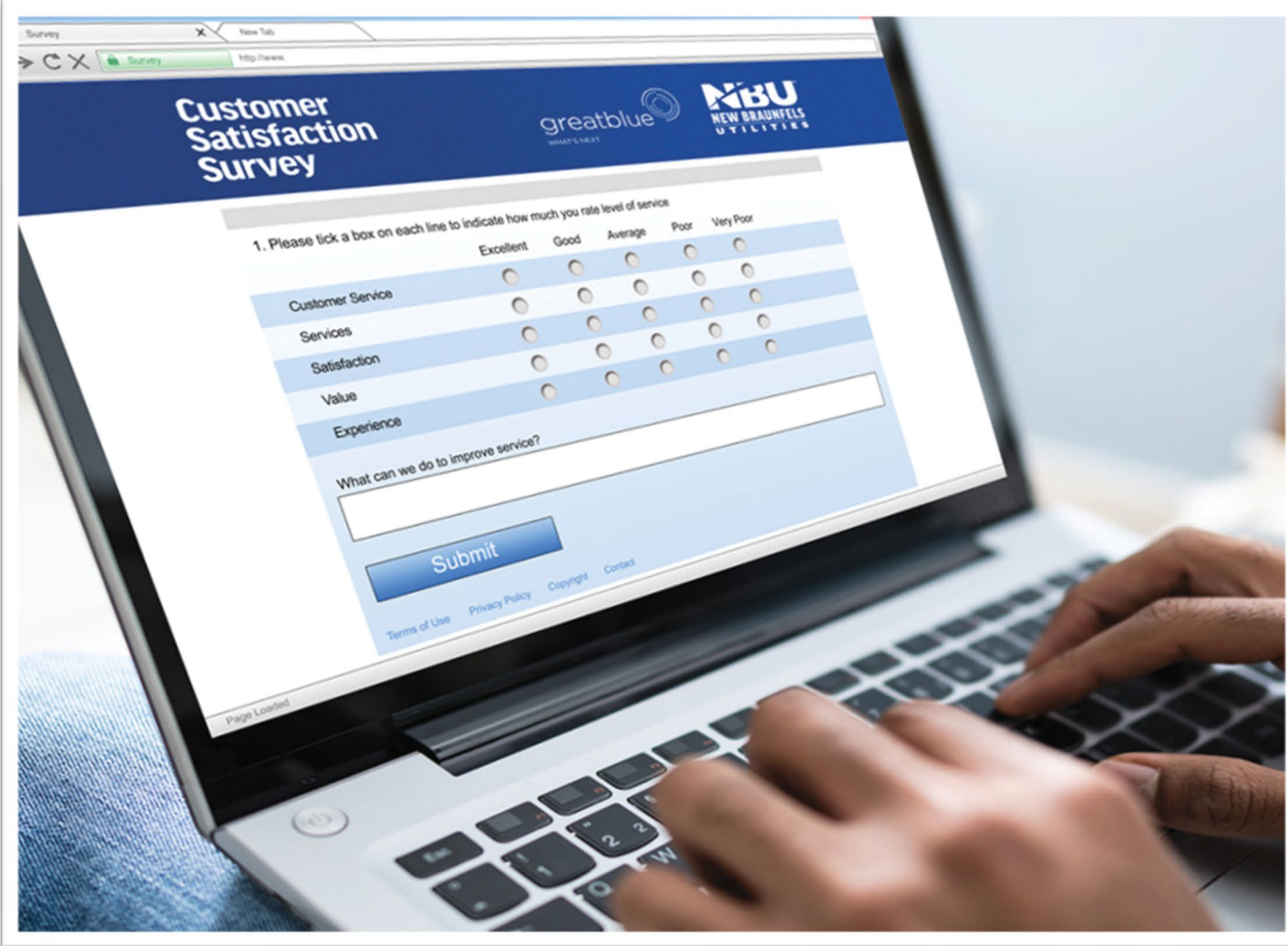


MYWATERPLEDGE.COM

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2023 Customer Satisfaction Survey

The survey, conducted by a third-party vendor, Great Blue, is being conducted through the month of March



Roadshow Recap



Date	Committee/Organization	Location	≈ Attendees
November 11, 2022	New Comers Club	McKenna Events Center	50
January 25, 2023	Community Impact and New Braunfels Herald Zeitung	Videoconference	2
February 7, 2023	New Braunfels Downtown Association	McKenna Events Center	50
February 15, 2023	Retirees Are Progressive	Headwaters at the Comal	30
February 21, 2023	Greater New Braunfels Chamber Board	Honors Hall	20
March 8, 2023	Rotary Club of New Braunfels	Columbus Hall	80
March 21, 2023	Area Realtor/Lender Associates	Headwaters at the Comal	20



Meeting Date: March 30, 2023 **Agenda Type:** Items from Staff

From: Kimberly Huffman **Reviewed by:** Dawn Schriewer
Accounting Manager Chief Financial Officer

Submitted by: Dawn Schriewer **Approved by:** Ian Taylor
Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Financial Update and Report

BACKGROUND

NBU's service territory experienced lower rainfall and higher temperatures during the month of February. The average temperature was 57.3 degrees, which was 3.0 degrees higher than the historical average temperature of 54.3 degrees. Rainfall totaled 1.37 inches for the month of February, which was .63 inches lower than the historical average rainfall of 2.0 inches.

For the month of February 2023, NBU recorded a change in net position after contributions ("CNPAC") of \$6,802,000 which represents an increase of \$4,754,000 compared to the budgeted monthly CNPAC of \$2,048,000. Operating service revenues of \$21,005,000 was greater than budget by \$1,501,000, or 8%, for the month of February. A \$1,982,000 increase in electric revenue, \$410,000 decrease in water revenue, and a \$71,000 decrease in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$587,000 were greater than budget by \$148,000 for the month of February. Purchased power costs were \$1,073,000 less than budget for February 2023 due to timing in invoice processing this month and \$19,007,000 greater for Year-to-Date ("YTD"). A decrease in other operating expenses of \$1,446,000 resulted in total operating expenses to be \$2,519,000, or 14%, less than the budgeted amount of \$18,007,000. The net revenue and operating expense variances contributed to a favorable net operating income variance of \$4,168,000 from budget. Net non-operating items had a \$148,000 favorable variance compared to budget. Impact fees were greater than budget by \$791,000, services income was less than budget by \$305,000, and capital participation fees were less than budget by \$46,000. February 2023 YTD CNPAC was \$27,178,000 which was \$5,230,000 greater than the budgeted amount of \$21,948,000.

FINANCIAL IMPACT

Electric

The Electric Line of Business reported total operating revenues of \$16,766,000, a \$2,126,000 increase, or 15%, from the February budgeted amount of \$14,640,000. The net rate realized per kWh was \$0.1242, which was 27% greater than the budgeted rate of \$0.0978. February kWh sales were 130.9 million kWh, a 15.1 million kWh decrease, or 10%, in comparison to the budgeted amount of 146.0 million kWh. Purchased power costs totaled \$8,590,000, which was \$1,073,000 less than the budgeted amount of \$9,663,000 due to timing in invoice processing this month. Electric gross margin, which is total operating revenues minus

purchased power, resulted in the amount of \$8,176,000 for the month of February and \$33,108,000 YTD. These amounts were \$3,199,000 greater and \$4,420,000 less than the budgeted amount of \$4,977,000 Month-to-Date (“MTD”) and \$37,528,000 YTD. Other operating expenses were less than budget by \$490,000. These items resulted in the Electric Line of Business reporting net operating income of \$5,894,000 which was \$3,689,000 greater than the budgeted amount of \$2,205,000. Net non-operating items provided a favorable variance from budget of \$434,000. Services income was less than budget by \$273,000. The Electric Line of Business reported February 2023 CNPAC of \$5,101,000 and YTD CNPAC of \$13,277,000. These amounts were \$3,850,000 and \$1,791,000 greater than their respective February 2023 MTD and February 2023 YTD budget amounts.

Water

The Water Line of Business reported total operating revenues of \$2,223,000, a \$416,000 decrease, or 16%, from the February budgeted amount of \$2,639,000. In February, water gallons sold of 268,053,000 was less than the budgeted amount of 282,546,000 (a 14,493,000 gallon variance from budget, or 5%). NBU’s net realized price per 1,000 gallons sold in February was 8.08, which was less than the budgeted amount of \$9.12. Operating expenses for February were \$2,586,000, which was \$577,000 less than the budgeted amount of \$3,163,000. The net effect of lower revenues and lower operating expenses than budgeted resulted in the Water’s net operating income of (\$363,000), which was less than budget. Net non-operating items provided an unfavorable variance of \$219,000 from budget. Impact fees of \$1,623,000 were greater than budget by \$694,000, and services income was less than budget by \$31,000. The Water Line of Business reported February 2023 CNPAC of \$826,000 and YTD CNPAC of \$9,477,000. These amounts were \$605,000 and \$2,595,000 greater than their respective February 2023 MTD and February 2023 YTD budget amounts.

Wastewater

The Wastewater Line of Business reported total operating revenues of \$2,603,000, a \$61,000 decrease, or 2%, from the February budgeted amount of \$2,664,000. Total operating expenses of \$2,030,000 were \$379,000 less than the budgeted amount of \$2,409,000. As a result, the Wastewater Line of Business reported net operating income of \$573,000, which was \$318,000 greater than the budgeted amount of \$255,000. Net non-operating items provided an unfavorable variance of \$67,000 from budget. Impact fees were greater than budget by \$97,000, service income was less than budget by \$1,000 and since we did not receive any capital participation fees in the month, they were less than budget by \$46,000. The Wastewater Line of Business reported February 2023 CNPAC of \$875,000 and YTD CNPAC of \$4,424,000. These amounts were \$299,000 and \$844,000 greater than their respective February 2023 MTD and February 2023 YTD budget amounts.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. YTD 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 February 28, 2023

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV	Variance Explanation +/-30%
ELECTRIC						
Sales Volume (MWh)	Actual	1,036.0				
	Budget	1,122.6	(86.6)	-8%		
	Prior Year	1,022.6	13.4	1%		
Revenues (\$M)	Actual	\$ 119.8				
	Budget	\$ 105.2	\$ 14.6	14%		Increased revenues compared to prior year due to customer count and weather contributors.*Generation revenue
	Prior Year	\$ 81.9	\$ 37.9	46%		
Gross Margin (\$M) (Total Operating Revenues Minus Purchased Pwr)	Actual	\$ 33.1				
	Budget	\$ 37.5	\$ (4.4)	-12%		Increased revenues compared to prior year due to customer count and weather contributors.*Generation revenue
	Prior Year	\$ 15.9	\$ 17.3	*		
Operating Income (\$M)	Actual	\$ 16.7				
	Budget	\$ 18.2	\$ (1.5)	-8%		Increased revenues compared to prior year due to customer count and weather contributors.*Generation revenue
	Prior Year	\$ 1.2	\$ 15.5	*		
WATER						
Sales Volume (Million Gallons)	Actual	2.5				
	Budget	2.6	(0.1)	-5%		
	Prior Year	2.3	0.2	7%		
Revenues (\$M)	Actual	\$ 20.8				
	Budget	\$ 24.3	\$ (3.5)	-14%		
	Prior Year	\$ 17.5	\$ 3.3	19%		
Gross Margin (\$M) (Total Operating Revenues Minus Purchased Water)	Actual	\$ 16.1				
	Budget	\$ 18.1	\$ (2.0)	-11%		
	Prior Year	\$ 13.8	\$ 2.3	17%		
Operating Income (\$M)	Actual	\$ 1.6				
	Budget	\$ 1.7	\$ (0.1)	-6%		
	Prior Year	\$ 1.4	\$ 0.2	13%		
WASTEWATER						
Revenues (\$M)	Actual	\$ 18.7				
	Budget	\$ 18.6	\$ 0.1	1%		
	Prior Year	\$ 15.7	\$ 3.0	19%		
Operating Income (\$M)	Actual	\$ 4.0				
	Budget	\$ 1.3	\$ 2.6	*		Operating expenses under budget making up 2.6M variance
	Prior Year	\$ 2.6	\$ 1.4	55%		Higher revenues in FY23 than prior year due to increased customers served.
COMBINED						
Operating Expenses (\$M)**	Actual	\$ 26.2				
	Budget	\$ 30.2	\$ (4.0)	-13%		
	Prior Year	\$ 22.8	\$ 3.4	15%		
Operating Income (\$M)	Actual	\$ 22.2				
	Budget	\$ 21.2	\$ 1.0	5%		
	Prior Year	\$ 5.2	\$ 17.1	*		Much higher electric revenues than prior year.
Change in Net Position Before Contributions (\$M)	Actual	\$ 14.1				
	Budget	\$ 8.2	\$ 5.9	71%		Non-operating revenues/expenses coming in favorable to budget/prior year
	Prior Year	\$ (5.8)	\$ 19.8	*		Non-operating revenues/expenses coming in favorable to budget/prior year
Impact Fees (\$M)	Actual	\$ 10.2				
	Budget	\$ 10.5	\$ (0.3)	-3%		
	Prior Year	\$ 12.0	\$ (1.8)	-15%		
Change in Net Position After Contributions (\$M)	Actual	\$ 27.2				
	Budget	\$ 21.9	\$ 5.2	24%		
	Prior Year	\$ 10.6	\$ 16.6	*		Non-operating revenues/expenses coming in favorable to budget/prior year

*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 February 28, 2023
Amounts Shown in Thousands

	February 28 2023	January 31 2023	Variance	% Change
ASSETS				
UTILITY PLANT				
Utility Plant in Service	\$ 1,080,123	\$ 1,076,754	\$ 3,369	0%
Less: Accumulated Depreciation	(338,392)	(335,557)	(2,834)	1%
Construction in Progress	130,715	126,431	4,283	3%
TOTAL UTILITY PLANT	\$ 872,446	\$ 867,628	\$ 4,818	1%
CURRENT & ACCRUED ASSETS				
Cash & Temporary Investments	\$ 57,701	\$ 64,543	\$ (6,842)	-11%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	18,596	17,944	651	4%
Accounts Receivable - Other	6,850	7,258	(408)	-6%
Accrued Unbilled Revenue	14,033	14,920	(887)	-6%
Inventory	6,939	6,000	939	16%
Prepaid Expenses	13,627	13,012	615	5%
Accrued Interest Receivable	320	328	(8)	-2%
Rents Receivable	483	277	206	75%
TOTAL CURRENT & ACCRUED ASSETS	\$ 118,549	\$ 124,281	\$ (5,732)	-5%
RESTRICTED ASSETS & DEFERRED DEBITS				
Restricted Funds	\$ 83,966	\$ 80,958	\$ 3,009	4%
Designated Funds	81,712	79,687	2,025	3%
Pension Deferred Outflows	8,263	8,263	-	0%
Mid-Basin Regulatory Asset	2,517	2,463	55	2%
TOTAL RESTRICTED ASSETS & DEFERRED DEBITS	\$ 176,458	\$ 171,370	\$ 5,088	3%
TOTAL ASSETS	\$ 1,167,454	\$ 1,163,280	\$ 4,174	0%
LIABILITIES & NET POSITION				
BONDS PAYABLE				
Long-Term Debt	\$ 380,174	\$ 380,164	\$ 10	0%
Unamortized Bond Discount/Premium	26,401	26,625	(224)	-1%
TOTAL BONDS PAYABLE	\$ 406,575	\$ 406,789	\$ (214)	0%
CURRENT & ACCRUED LIABILITIES				
Accounts Payable	\$ 6,885	\$ 8,726	\$ (1,841)	-21%
Accrued Purchased Power	10,265	13,417	(3,153)	-23%
Commercial Paper Payable	35,250	35,250	-	0%
Note Purchase Payable	35,000	35,000	-	0%
Customer Deposits	11,114	10,760	353	3%
Accrued Payroll & Benefits (Including Compensated Absences)	4,820	4,991	(170)	-3%
Accrued Interest Expense	3,136	1,762	1,373	78%
Current Portion of Long Term Debt	6,765	6,765	-	0%
Other Payables	2,910	2,853	56	2%
TOTAL CURRENT & ACCRUED LIABILITIES	\$ 116,143	\$ 119,524	\$ (3,381)	-3%
NONCURRENT LIABILITIES & DEFERRED CREDITS				
Accumulated Provision for Pension	\$ 12,319	\$ 12,319	\$ -	0%
Pension & OPEB Deferred Inflows	6,124	6,124	-	0%
Power Cost Adjustments - Over-Recovered	8,139	8,430	(291)	-3%
Other Deferred Credits	20,103	20,376	(273)	-1%
TOTAL NONCURRENT LIABILITIES & DEFERRED CREDITS	\$ 46,685	\$ 47,249	\$ (564)	-1%
TOTAL LIABILITIES	\$ 569,404	\$ 573,562	\$ (4,158)	-1%
NET POSITION				
Reserve for Restricted Assets	\$ 69,540	\$ 67,622	\$ 1,918	3%
Reserve for Intergovernmental	10,966	9,707	1,259	13%
Unrestricted Assets	275,604	271,978	3,626	1%
Contributed Capital	241,940	240,410	1,530	1%
TOTAL NET POSITION	\$ 598,050	\$ 589,717	\$ 8,332	1%
TOTAL LIABILITIES & NET POSITION	\$ 1,167,454	\$ 1,163,280	\$ 4,174	0%

NEW BRAUNFELS UTILITIES
Statement of Revenues & Expenses
For the Period Ending February 28, 2023
Amounts Shown in Thousands

	MTD	MTD		%		YTD	YTD		%
	Actual	Budget	Variance	Variance		Actual	Budget	Variance	Variance
VOLUME/RATES									
Electric Sales kWh	130,930	146,007	(15,077)	-10%		1,036,041	1,122,592	(86,551)	-8%
Electric Sales Rate Per kWh	\$ 0.1242	\$ 0.0978	\$ 0.0264	27%		\$ 0.1136	\$ 0.0915	\$ 0.0221	24%
Purchased kWh	122,257	148,591	(26,335)	-18%		2,890,446	1,137,561	1,752,885	*
Purchased Rate per kWh	\$ 0.0703	\$ 0.0650	\$ 0.0052	8%		\$ 0.0300	\$ 0.0595	\$ (0.0295)	-50%
Gallons Sold	268,053	282,546	(14,493)	-5%		2,509,869	2,647,587	(137,718)	-5%
Rate per 1,000 Gallons Sold	\$ 8.08	\$ 9.12	\$ (1.04)	-11%		\$ 8.19	\$ 9.02	\$ (0.83)	-9%
OPERATING REVENUES									
SERVICE REVENUE									
Electric Service	\$ 16,267	\$ 14,285	\$ 1,982	14%		\$ 117,687	\$ 102,720	\$ 14,967	15%
Water Service	2,167	2,577	(410)	-16%		20,557	23,881	(3,324)	-14%
Wastewater Service	2,571	2,642	(71)	-3%		18,627	18,399	228	1%
TOTAL SERVICE REVENUE	\$ 21,005	\$ 19,504	\$ 1,501	8%		\$ 156,871	\$ 145,000	\$ 11,871	8%
OTHER OPERATING REVENUE									
Electric Other	\$ 145	\$ 102	\$ 43	42%		\$ 235	\$ 712	\$ (477)	-67%
Water Other	38	49	(11)	-22%		139	341	(202)	-59%
Wastewater Other	32	22	10	45%		63	155	(92)	-59%
Transmission System Revenue	220	217	3	1%		1,542	1,518	24	2%
Electric Pole Attachments	134	36	98	*		326	253	73	29%
Water Tower Antenna Lease	18	13	5	38%		126	93	33	35%
TOTAL OTHER OPERATING REVENUE	\$ 587	\$ 439	\$ 148	34%		\$ 2,431	\$ 3,072	\$ (641)	-21%
TOTAL OPERATING REVENUE	\$ 21,592	\$ 19,943	\$ 1,649	8%		\$ 159,302	\$ 148,072	\$ 11,230	8%
OPERATING EXPENSES									
ELECTRIC									
Purchased Power	\$ 8,590	\$ 9,663	\$ (1,073)	-11%		\$ 86,682	\$ 67,675	\$ 19,007	28%
Electric O&M Expenses	534	754	(220)	-29%		3,486	4,892	(1,406)	-29%
Electric Depreciation & Amortization	1,019	1,094	(75)	-7%		7,063	7,659	(596)	-8%
Electric Support Services Allocated Operating Expenses	729	924	(195)	-21%		5,899	6,814	(915)	-13%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 10,872	\$ 12,435	\$ (1,563)	-13%		\$ 103,130	\$ 87,040	\$ 16,090	18%
WATER									
Purchased Water	\$ 688	\$ 890	\$ (202)	-23%		\$ 4,736	\$ 6,230	\$ (1,494)	-24%
Water O&M Expenses	542	655	(113)	-17%		4,649	4,836	(187)	-4%
Water Depreciation & Amortization	784	903	(119)	-13%		5,374	6,319	(945)	-15%
Water Support Services Allocated Operating Expenses	572	715	(143)	-20%		4,493	5,266	(773)	-15%
TOTAL WATER OPERATING EXPENSE	\$ 2,586	\$ 3,163	\$ (577)	-18%		\$ 19,252	\$ 22,651	\$ (3,399)	-15%
WASTEWATER									
Wastewater O&M Expenses	\$ 574	\$ 599	\$ (25)	-4%		\$ 4,196	\$ 4,374	\$ (178)	-4%
Wastewater Depreciation & Amortization	1,031	1,268	(237)	-19%		7,075	8,878	(1,803)	-20%
Wastewater Support Services Allocated Operating Expenses	425	542	(117)	-22%		3,443	3,969	(526)	-13%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 2,030	\$ 2,409	\$ (379)	-16%		\$ 14,714	\$ 17,221	\$ (2,507)	-15%
TOTAL OPERATING EXPENSES	\$ 15,488	\$ 18,007	\$ (2,519)	-14%		\$ 137,096	\$ 126,912	\$ 10,184	8%
NET OPERATING INCOME									
ELECTRIC	\$ 5,894	\$ 2,205	\$ 3,689	*		\$ 16,660	\$ 18,163	\$ (1,503)	-8%
WATER	(363)	(524)	161	-31%		1,570	1,664	(94)	-6%
WASTEWATER	573	255	318	*		3,976	1,333	2,643	*
TOTAL NET OPERATING INCOME	\$ 6,104	\$ 1,936	\$ 4,168	*		\$ 22,206	\$ 21,160	\$ 1,046	5%
NONOPERATING REVENUES (EXPENSES)									
Interest Income	\$ 366	\$ 120	\$ 246	*		\$ 2,286	\$ 840	\$ 1,446	*
Intergovernmental Expense	(892)	(898)	6	-1%		(6,228)	(6,284)	56	-1%
Interest and Amortization Expense	(1,300)	(1,201)	(99)	8%		(9,877)	(8,409)	(1,468)	17%
Other	122	127	(5)	-4%		5,670	890	4,780	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (1,704)	\$ (1,852)	\$ 148	-8%		\$ (8,149)	\$ (12,963)	\$ 4,814	37%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 4,400	\$ 84	\$ 4,316	*		\$ 14,057	\$ 8,197	\$ 5,860	71%
CAPITAL CONTRIBUTIONS									
Impact Fees	\$ 2,295	\$ 1,504	\$ 791	53%		\$ 10,190	\$ 10,530	\$ (340)	-3%
Services	109	414	(305)	-74%		2,880	2,899	(19)	-1%
GBRA Capital Participation Fee	-	46	(46)	-100%		-	322	(322)	-100%
Developer Contributions	(2)	-	(2)	0%		51	-	51	0%
TOTAL CAPITAL CONTRIBUTIONS	\$ 2,402	\$ 1,964	\$ 438	22%		\$ 13,121	\$ 13,751	\$ (630)	-5%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 6,802	\$ 2,048	\$ 4,754	*		\$ 27,178	\$ 21,948	\$ 5,230	24%

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
ELECTRIC LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending February 28, 2023
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
ELECTRIC OPERATING REVENUES								
ELECTRIC SERVICE REVENUE								
Electric Service	\$ 16,267	\$ 14,285	\$ 1,982	14%	\$ 117,687	\$ 102,720	\$ 14,967	15%
TOTAL ELECTRIC SERVICE REVENUE	\$ 16,267	\$ 14,285	\$ 1,982	14%	\$ 117,687	\$ 102,720	\$ 14,967	15%
OTHER ELECTRIC OPERATING REVENUE								
Electric Other	\$ 145	\$ 102	\$ 43	42%	\$ 235	\$ 712	\$ (477)	-67%
Transmission System Revenue	220	217	3	1%	1,542	1,518	24	2%
Electric Pole Attachments	134	36	98	*	326	253	73	29%
TOTAL OTHER ELECTRIC OPERATING REVENUE	\$ 499	\$ 355	\$ 144	41%	\$ 2,103	\$ 2,483	\$ (380)	-15%
TOTAL ELECTRIC OPERATING REVENUE	\$ 16,766	\$ 14,640	\$ 2,126	15%	\$ 119,790	\$ 105,203	\$ 14,587	14%
ELECTRIC OPERATING EXPENSES								
Purchased Power & Other Power Supply	\$ 8,590	\$ 9,663	\$ (1,073)	-11%	\$ 86,682	\$ 67,675	\$ 19,007	28%
Transmission & Distribution	523	727	(204)	-28%	3,291	4,675	(1,384)	-30%
Customer Service	6	15	(9)	-60%	67	104	(37)	-36%
Administrative & General	5	12	(7)	-58%	128	113	15	13%
Depreciation & Amortization	1,019	1,094	(75)	-7%	7,063	7,659	(596)	-8%
Support Services Allocated Operating Expenses	729	924	(195)	-21%	5,899	6,814	(915)	-13%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 10,872	\$ 12,435	\$ (1,563)	-13%	\$ 103,130	\$ 87,040	\$ 16,090	18%
ELECTRIC NET OPERATING INCOME	\$ 5,894	\$ 2,205	\$ 3,689	*	\$ 16,660	\$ 18,163	\$ (1,503)	-8%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 161	\$ 53	\$ 108	*	\$ 1,006	\$ 370	\$ 636	*
Intergovernmental Expense	(725)	(733)	8	-1%	(5,063)	(5,130)	67	-1%
Interest and Amortization Expense	(327)	(674)	347	-51%	(2,362)	(4,719)	2,357	-50%
Other	56	85	(29)	-34%	539	594	(55)	-9%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (835)	\$ (1,269)	\$ 434	34%	\$ (5,880)	\$ (8,885)	\$ 3,005	34%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 5,059	\$ 936	\$ 4,123	*	\$ 10,780	\$ 9,278	\$ 1,502	16%
ELECTRIC CAPITAL CONTRIBUTIONS								
Services	\$ 42	\$ 315	\$ (273)	-87%	\$ 2,497	\$ 2,208	\$ 289	13%
TOTAL ELECTRIC CAPITAL CONTRIBUTIONS	\$ 42	\$ 315	\$ (273)	-87%	\$ 2,497	\$ 2,208	\$ 289	13%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 5,101	\$ 1,251	\$ 3,850	*	\$ 13,277	\$ 11,486	\$ 1,791	16%

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending February 28, 2023
Amounts Shown in Thousands

	MTD				YTD			
	MTD Actual	Budget	Variance	% Variance	Actual	Budget	Variance	% Variance
WATER OPERATING REVENUES								
WATER SERVICE REVENUE								
Water Service	\$ 2,167	\$ 2,577	\$ (410)	-16%	\$ 20,557	\$ 23,881	\$ (3,324)	-14%
TOTAL WATER SERVICE REVENUE	\$ 2,167	\$ 2,577	\$ (410)	-16%	\$ 20,557	\$ 23,881	\$ (3,324)	-14%
OTHER WATER OPERATING REVENUE								
Water Other	\$ 38	\$ 49	\$ (11)	-22%	\$ 139	\$ 341	\$ (202)	-59%
Water Tower Antenna Lease	18	13	5	38%	126	93	33	35%
TOTAL OTHER WATER OPERATING REVENUE	\$ 56	\$ 62	\$ (6)	-10%	\$ 265	\$ 434	\$ (169)	-39%
TOTAL WATER OPERATING REVENUE	\$ 2,223	\$ 2,639	\$ (416)	-16%	\$ 20,822	\$ 24,315	\$ (3,493)	-14%
WATER OPERATING EXPENSES								
Purchased Water	\$ 688	\$ 890	\$ (202)	-23%	\$ 4,736	\$ 6,230	\$ (1,494)	-24%
Supply Source	10	9	1	11%	53	63	(10)	-16%
Transmission & Distribution	167	219	(52)	-24%	1,880	1,676	204	12%
Pumping	169	188	(19)	-10%	1,322	1,342	(20)	-1%
Water Treatment	161	197	(36)	-18%	1,158	1,388	(230)	-17%
Customer Service	(3)	4	(7)	*	10	28	(18)	-64%
Administrative & General	38	38	-	0%	226	339	(113)	-33%
Depreciation & Amortization	784	903	(119)	-13%	5,374	6,319	(945)	-15%
Support Services Allocated Operating Expenses	572	715	(143)	-20%	4,493	5,266	(773)	-15%
TOTAL WATER OPERATING EXPENSE	\$ 2,586	\$ 3,163	\$ (577)	-18%	\$ 19,252	\$ 22,651	\$ (3,399)	-15%
WATER NET OPERATING INCOME	\$ (363)	\$ (524)	\$ 161	-31%	\$ 1,570	\$ 1,664	\$ (94)	-6%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 95	\$ 31	\$ 64	*	\$ 594	\$ 218	\$ 376	*
Intergovernmental Expense	(84)	(83)	(1)	1%	(586)	(582)	(4)	1%
Interest and Amortization Expense	(550)	(258)	(292)	*	(4,577)	(1,803)	(2,774)	*
Other	38	28	10	36%	5,054	197	4,857	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (501)	\$ (282)	\$ (219)	78%	\$ 485	\$ (1,970)	\$ 2,455	*
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (864)	\$ (806)	\$ (58)	7%	\$ 2,055	\$ (306)	\$ 2,361	*
WATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 1,623	\$ 929	\$ 694	75%	\$ 7,039	\$ 6,500	\$ 539	8%
Services	67	98	(31)	-32%	383	688	(305)	-44%
TOTAL WATER CAPITAL CONTRIBUTIONS	\$ 1,690	\$ 1,027	\$ 663	65%	\$ 7,422	\$ 7,188	\$ 234	3%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 826	\$ 221	\$ 605	*	\$ 9,477	\$ 6,882	\$ 2,595	38%

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WASTEWATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending February 28, 2023
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
WASTEWATER OPERATING REVENUES								
WASTEWATER SERVICE REVENUE								
Wastewater Service	\$ 2,571	\$ 2,642	\$ (71)	-3%	\$ 18,627	\$ 18,399	\$ 228	1%
TOTAL WASTEWATER SERVICE REVENUE	\$ 2,571	\$ 2,642	\$ (71)	-3%	\$ 18,627	\$ 18,399	\$ 228	1%
OTHER WASTEWATER OPERATING REVENUE								
Wastewater Other	\$ 32	\$ 22	\$ 10	45%	\$ 63	\$ 155	\$ (92)	-59%
TOTAL OTHER WASTEWATER OPERATING REVENUE	\$ 32	\$ 22	\$ 10	45%	\$ 63	\$ 155	\$ (92)	-59%
TOTAL WASTEWATER OPERATING REVENUE	\$ 2,603	\$ 2,664	\$ (61)	-2%	\$ 18,690	\$ 18,554	\$ 136	1%
WASTEWATER OPERATING EXPENSES								
Transmission & Distribution	\$ 2	\$ -	\$ 2	100%	\$ 8	\$ -	\$ 8	100%
Wastewater Operations & Maintenance	553	578	(25)	-4%	4,007	4,076	(69)	-2%
Wastewater Treatment	-	-	-	0%	-	-	-	0%
Customer Service	(2)	3	(5)	*	15	23	(8)	-35%
Administrative & General	21	18	3	17%	166	275	(109)	-40%
Depreciation & Amortization	1,031	1,268	(237)	-19%	7,075	8,878	(1,803)	-20%
Support Services Allocated Operating Expenses	425	542	(117)	-22%	3,443	3,969	(526)	-13%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 2,030	\$ 2,409	\$ (379)	-16%	\$ 14,714	\$ 17,221	\$ (2,507)	-15%
WASTEWATER NET OPERATING INCOME	\$ 573	\$ 255	\$ 318	*	\$ 3,976	\$ 1,333	\$ 2,643	*
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 110	\$ 36	\$ 74	*	\$ 686	\$ 252	\$ 434	*
Intergovernmental Expense	(83)	(82)	(1)	1%	(579)	(572)	(7)	1%
Interest and Amortization Expense	(423)	(269)	(154)	57%	(2,938)	(1,887)	(1,051)	56%
Other	28	14	14	100%	77	99	(22)	-22%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (368)	\$ (301)	\$ (67)	22%	\$ (2,754)	\$ (2,108)	\$ (646)	31%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 205	\$ (46)	\$ 251	*	\$ 1,222	\$ (775)	\$ 1,997	*
WASTEWATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 672	\$ 575	\$ 97	17%	\$ 3,151	\$ 4,030	\$ (879)	-22%
Services	-	1	(1)	-100%	-	3	(3)	-100%
GBRA Capital Participation Fee	-	46	(46)	-100%	-	322	(322)	-100%
Developer Contributions	(2)	-	(2)	0%	51	-	51	0%
TOTAL WASTEWATER CAPITAL CONTRIBUTIONS	\$ 670	\$ 622	\$ 48	8%	\$ 3,202	\$ 4,355	\$ (1,153)	-26%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 875	\$ 576	\$ 299	52%	\$ 4,424	\$ 3,580	\$ 844	24%

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
Statement of Cash Flows
For the Period Ending February 28, 2023
Amounts Shown in Thousands

	<u>MTD</u>	<u>YTD</u>
NET POSITION BEFORE CONTRIBUTIONS	\$ 4,400	\$ 14,057
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 2,834	\$ 19,512
Decrease (increase) in accounts receivable	643	12,703
Decrease (increase) in inventories	(939)	(2,602)
Decrease (increase) in other assets	3,262	26,067
Increase (decrease) in current liabilities	(1,677)	26,739
Increase (decrease) in other liabilities	(564)	9,920
Net Cash Flow from Operating Activities	<u>\$ 7,960</u>	<u>\$ 106,397</u>
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (7,652)	\$ (60,641)
Investments	(5,033)	(59,471)
Rents/Interest Receivable	(199)	(638)
Net Cash Flow from Investing Activities	<u>\$ (12,884)</u>	<u>\$ (120,750)</u>
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (1,704)	\$ (8,149)
Increase (decrease) in long-term debt	(214)	38,239
Net Cash Flow from Financing Activities	<u>\$ (1,918)</u>	<u>\$ 30,090</u>
Net Increase (Decrease) in Cash and Cash Equivalents	<u>\$ (6,842)</u>	<u>\$ 15,736</u>

CAPITAL EQUIPMENT SUMMARY - FY 2023
YTD for the Period Ending February 28, 2023



Department	Capital Equipment Description	YTD Actual	FY 2023 Budget	Budget Remaining
ELECTRIC				
117	Flat Bed Trailer	-	25,000	25,000
119	Substations Service Truck	-	188,500	188,500
119	Manager Vehicle	-	46,430	46,430
TOTAL ELECTRIC		\$ -	\$ 259,930	\$ 259,930
SHARED WATER/WASTEWATER				
217/317	Trackstar Pan and Tilt Camera	-	50,000	50,000
217/317	Leica GPS Units	-	40,000	40,000
217/317	Replacement Ground Mics	21,000	21,000	-
217/317	Lateral Line Sewer Camera (2)	17,600	18,000	400
TOTAL SHARED WATER/WASTEWATER		\$ 38,600	\$ 129,000	\$ 90,400
CONSERVATION AND CUSTOMER SOLUTIONS				
529	Solar Array + Battery Storage Kit	-	50,000	50,000
529	Level 2 EV Chargers (8)	-	50,000	50,000
TOTAL CONSERVATION AND CUSTOMER SOLUTIONS		\$ -	\$ 100,000	\$ 100,000
TECHNOLOGY				
531	PC Replacements	48,810	200,000	151,190
531	Dell Nodes	-	200,000	200,000
531	Network Equipment Replacements	-	100,000	100,000
531	Copier and HighEnd Printer and Plotter Replacements	5,875	15,000	9,125
531	UPS Replacements	-	5,000	5,000
TOTAL TECHNOLOGY		\$ 54,685	\$ 520,000	\$ 465,315

TOTAL CAPITAL EQUIPMENT	\$ 93,285	\$ 1,008,930	\$ 915,645
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UNBUDGETED ITEMS:

ELECTRIC				
117	#1121_Freightliner M2106 Altec Bucket	266,210	-	(266,210)
117	#1111_Freightliner M2106 Altec Bucket	267,868	-	(267,868)
117	#1101 2022 Ford F150 4X4 Super Cab	38,978	-	(38,978)
TOTAL ELECTRIC		\$ 573,056	\$ -	\$ (573,056)

WATER				
220	#303 2022 Ford F150 4X4 Super Cab	38,978	-	(38,978)
TOTAL ELECTRIC		\$ 38,978	\$ -	\$ (38,978)

WASTEWATER				
320	#305 2022 Ford F150 4X4 Super Cab	38,978	-	(38,978)
320	#301 2023 Ford F150 4X4 Super Cab	49,659	-	(49,659)
TOTAL SHARED WATER/WASTEWATER		\$ 88,637	\$ -	\$ (88,637)

SHARED WATER/WASTEWATER				
217/317	#216 2023 International Vactor Truck	462,141	-	(462,141)
217/317	#217 2023 International Combo Unit	475,117	-	(475,117)
217/317	#202 2023 Ford F150 4X4 Super Cab	49,659	-	(49,659)
TOTAL FLEET/FACILITIES		\$ 986,917	\$ -	\$ (986,917)

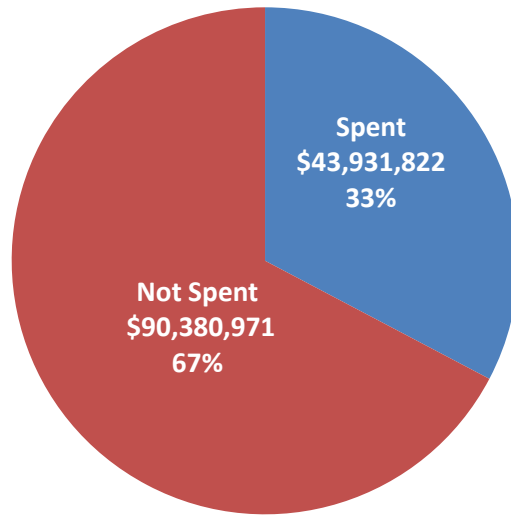
FLEET/FACILITIES				
528	#301 2022 Ford F150 4X4 Supercrew	38,978	-	(38,978)
528	#601 2023 Ford F150 4X4 Supercrew	49,659	-	(49,659)
TOTAL TECHNOLOGY		\$ 88,637	\$ -	\$ (38,978)

TOTAL UNBUDGETED CAPITAL EQUIPMENT	\$ 1,776,225	\$ -	\$ (1,726,566)
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FY 2023 Capital Expenditure Summary As of February 28, 2023

58% of Year
Completed

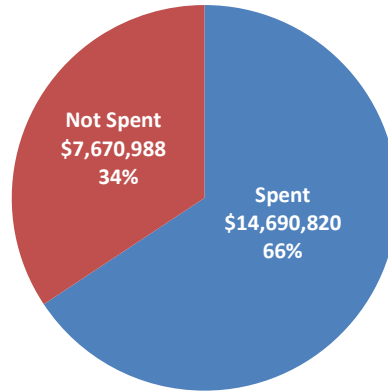
	<u>Spent</u>	<u>Not Spent</u>	<u>Total Budget</u>	<u>% of Total Budget Spent</u>
Electric	\$ 14,690,820	\$ 7,670,988	\$ 22,361,808	66%
Water	19,335,821	34,793,260	54,129,081	36%
Wastewater	7,331,979	8,768,261	16,100,240	46%
Support Services	2,573,201	39,148,463	41,721,664	6%
TOTAL	\$ 43,931,822	\$ 90,380,971	\$ 134,312,793	
	33%	67%	100%	



**Electric Line of Business
FY 2023 Capital Expenditure Summary
As of February 28, 2023**

58% of Year Completed

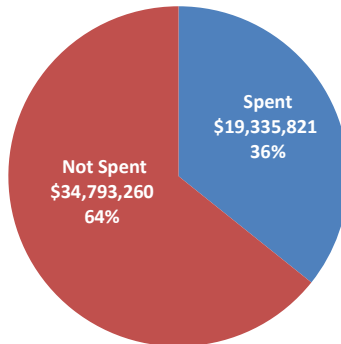
Project	¹ Total Spent YTD	² FY23 Project Budget	FY23 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 3,705,572	\$ 6,893,269	\$ 3,187,697	\$ 6,893,269	54%	58%
Distribution Transformers	2,225,177	3,639,355	1,414,178	3,639,355	61%	58%
Electric Meters	1,658,569	1,777,631	119,062	1,777,631	93%	58%
Electric Aging Infrastructure	1,360,613	2,134,838	774,225	2,134,838	64%	40%
Electric Technology Upgrades	1,059	150,606	149,547	150,606	1%	0%
System Equipment Additions	-	105,937	105,937	440,171	0%	0%
Fiber Optic Extensions	74,760	245,887	171,127	784,832	30%	0%
Hueco Springs Substation	806,638	1,745,413	938,775	8,641,203	46%	20%
E.C. Mornhinweg T2 & Feeders	1,681,684	1,727,359	45,675	4,089,532	97%	85%
CO14 Kentucky Rd Feeder	160,533	1,440,726	1,280,193	1,870,249	11%	40%
HE23 IH-35 Stolte Feeder	239,912	1,392,489	1,152,577	1,493,663	17%	10%
Electric Aging Infrastructure, Substation	-	116,836	116,836	3,812,404	0%	0%
Freiheit Breaker Additions & Control House	35,837	105,937	70,100	1,556,247	34%	20%
EC23 FM 482 Feeder	17,121	294,269	277,148	1,074,809	6%	5%
HE11 Conrads Rd Feeder	86,158	414,377	328,219	2,552,385	21%	0%
Transmission Access & Wildlife Protection	-	176,879	176,879	969,890	0%	0%
Total Budgeted Projects	\$ 12,053,632	\$ 22,361,808	\$ 10,308,176	\$ 41,881,083	54%	
Unbudgeted Projects:						
Sheriff's Posse T3 Addition	\$ 192,502	\$ -	\$ (192,502)	\$ 7,207,386	0%	99%
Freiheit Feeder 11, Alves Ln	289,440	-	(289,440)	1,006,909	0%	80%
Industrial Substation PWT Replacement (TXI T1)	252,484	-	(252,484)	862,075	0%	90%
Rivertree UD Conversion	1,278,145	-	(1,278,145)	1,672,764	0%	70%
Weltner Rd Feeder 13, Clear Springs	620,562	-	(620,562)	320,971	0%	100%
L023 Loop 337 FM 1863 Extension Phase 2	4,054	-	(4,054)	1,220,627	0%	100%
Total Unbudgeted Projects	\$ 2,637,187	\$ -	\$ (2,637,187)	\$ 12,290,731		
TOTAL	\$ 14,690,820	\$ 22,361,808	\$ 7,670,988	\$ 54,171,814	66%	



**Water Line of Business
FY 2023 Capital Expenditure Summary
As of February 28, 2023**

58% of Year Completed

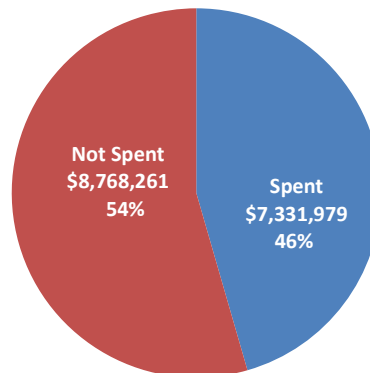
Project	¹ Total Spent YTD	² FY23 Project Budget	FY23 Budget Remaining	Project Life Total Budget	⁽¹⁾⁽²⁾ % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ (662,993)	\$ 250,149	\$ 913,142	\$ 250,149	-265%	58%
Water Meters	1,588,646	4,208,172	2,619,526	4,208,172	38%	58%
Water Technology Upgrades	-	119,516	119,516	119,516	0%	2%
Aging System Replacements	404,729	1,167,362	762,633	1,167,362	35%	9%
ASR Feasibility Dev (IF)	212,918	864,647	651,729	23,854,997	25%	39%
Castell Ave Rehabilitation (CNB)	1,441,305	2,468,137	1,026,832	14,614,035	58%	94%
Wood Meadows Water Line River Crossing	18,650	161,736	143,086	2,758,272	12%	8%
I-35 Water Line (Downtown)	6,752	466,574	459,822	10,015,058	1%	10%
1.00MG Solms Ground Storage Tank and Flow Control Valve	13,365	64,747	51,382	3,952,435	21%	6%
30/24-inch SWTP Discharge Line (Downtown)	6,134,071	9,454,256	3,320,185	16,880,223	65%	89%
Western Downtown to Morningside PZ Conversion	174,808	663,493	488,685	8,801,095	26%	19%
FM 306 Pump Station & Discharge Pipeline	2,354,319	5,789,342	3,435,023	8,472,384	41%	53%
Conrads EST	11,392	2,408,843	2,397,451	9,013,093	0%	10%
Goodwin Lane Water Main	80,719	2,837,431	2,756,712	12,474,168	3%	10%
Well 4 to Grandview Pump Station & Discharge Line Upgrades	3,015,711	2,728,284	(287,427)	5,447,479	111%	86%
Klein Rd Reconstruction Phase 2	11,176	683,185	672,009	1,047,346	2%	12%
Landa Pump Station Phase 2/Well 5	1,886,152	9,665,353	7,779,201	11,545,288	20%	27%
Trinity Expansion- Treatment Plant	276,067	3,024,113	2,748,046	21,524,170	9%	9%
Trinity Expansion- Well Field	203,078	3,865,507	3,662,429	13,152,678	5%	9%
FM 1044 EST	44,283	325,194	280,911	13,120,927	14%	2%
City Widening Street Projects-W	258,387	489,736	231,349	1,095,458	53%	92%
GBRA Interconnect Metering Station	15,706	864,917	849,211	1,054,856	2%	16%
Garden Street Bridge Water Line	3,286	119,938	116,652	458,463	3%	26%
Goodwin/Conrads Water Adjustments	8,056	71,339	63,283	1,140,533	11%	15%
Misison/Westpointe Connection Waterlines	157,234	769,903	612,669	6,391,232	20%	6%
Senate Bill 3 EPP Generators	-	466,574	466,574	19,837,355	0%	0%
Tank Decommission	5,724	130,633	124,909	923,985	4%	1%
Total Budgeted Projects	\$ 17,663,543	\$ 54,129,081	\$ 36,465,538	\$ 213,320,732	33%	
Unbudgeted Projects:						
Veramendi EST Oversize/Flow Control Valve	\$ -	\$ -	\$ -	\$ 380,674		99%
Weltner Rd Ground Strg Tank & Pump Station-Ph 1	90,662	-	(90,662)	12,019,828		95%
2.5 MG Bretzke EST and 24-inch Bretzke Waterline	133,221	-	(133,221)	9,465,942		99%
Grandview Pump Station Exp	217,535	-	(217,535)	6,830,157		97%
24-inch McQueeney Road Parallel Water Line (Downtown)	1,219,099	-	(1,219,099)	4,109,669		90%
Oakbrook EST, FCV, 24" Ext	11,761	-	(11,761)	7,013,902		99%
Total Unbudgeted Projects	\$ 1,672,278	\$ -	\$ (1,672,278)	\$ 39,820,172		
TOTAL	\$ 19,335,821	\$ 54,129,081	\$ 34,793,260	\$ 253,140,904	36%	



Wastewater Line of Business
FY 2023 Capital Expenditure Summary
As of February 28, 2023

58% of Year
Completed

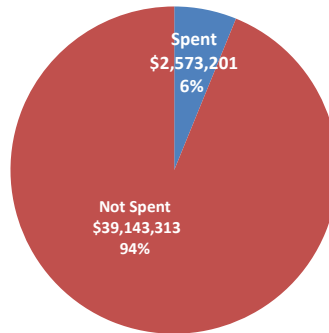
Project	¹	²	FY23 Budget Remaining	Project Life Total Budget	^{(1)/(2)}	% Physical Completion
	Total Spent YTD	FY23 Project Budget			% Spent YTD	
Budgeted Projects:						
System Extensions	\$ 455,179	\$ 204,726	\$ (250,453)	\$ 204,726	222%	58%
Aging System Replacements	491,070	1,433,081	942,011	1,433,081	34%	58%
Castell Ave Rehabilitation (CNB)	949,762	2,162,420	1,212,658	6,106,738	44%	100%
Wastewater Technology Upgrades	-	589,443	589,443	589,443	0%	1%
Manhole Rehabilitation	-	990,873	990,873	990,873	0%	32%
South Kuehler Interceptor Phase 1	98,591	439,431	340,840	6,763,783	22%	13%
Gruene Rd Sewer Main Rehabilitation/Relocation	68,505	316,572	248,067	2,755,594	22%	5%
Gruene WRF Collector Apartment Complex Relocate	466,169	596,267	130,098	600,904	78%	80%
Gruene Rd Sewer Main Odor Control	51,222	693,618	642,396	714,781	7%	43%
McKenzie WRF Expansion	399,377	1,447,502	1,048,125	77,033,287	28%	7%
Saengerhalle Lift Station Expansion & Force Main	2,070,943	186,877	(1,884,066)	2,767,352	1108%	100%
I-35 Interceptor Upgrade	156,716	1,829,781	1,673,065	12,364,915	9%	8%
Kuehler WRF Access Road-Courtyard Dr	3,497	253,540	250,043	3,011,693	1%	10%
McKenzie Interceptor Upgrade	264,798	1,899,689	1,634,891	48,818,589	14%	10%
Kuehler WRF Rehabilitation	38,256	296,002	257,746	41,713,715	13%	10%
Sewer Infrastructure Replacement Package 2	172,662	371,821	199,159	4,080,600	46%	3%
Saengerhalle North Interceptor	174,298	264,065	89,767	5,502,653	66%	13%
Goodwin/Conrads Adjustments (CNB)-WW	9,740	120,848	111,108	519,436	8%	2%
Gruene WRF Spoils & Materials Yard	6,371	171,377	165,006	605,677	4%	7%
North Kuehler Manhole Rehabilitation-Segment 3	122,367	268,705	146,338	936,490	46%	14%
Kuehler WRF Rehabilitation-Clarifier Replacement	717	910,180	909,463	4,054,298	0%	34%
Dove Crossing Lift Station	-	227,760	227,760	338,912	0%	1%
Schmidt I-35 N Sewer Main Replacement	6,141	425,662	419,521	425,662	1%	1%
Total Budgeted Projects	\$ 6,006,381	\$ 16,100,240	\$ 10,093,859	\$ 222,333,201	37%	
Unbudgeted Projects:						
North Kuehler 42" Interceptor Upgrade	\$ 47,184	\$ -	\$ (47,184)	\$ 15,475,241		100%
North Kuehler 30 and 33-inch Interceptor Upgrade	108,457	-	(108,457)	26,566,504		100%
McKenzie WRF Improvements (3-C20MKEXP)	658,829	-	(658,829)	1,875,345		75%
Nautilus Off-site Sewer Ext	1,844	-	(1,844)	1,526,994		100%
Rio Lift Station Expansion	421,023	-	(421,023)	3,143,767		95%
Veramendi S1-S6	88,260	-	(88,260)	302,671		100%
Total Unbudgeted Projects	\$ 1,325,598	\$ -	\$ (1,325,598)	\$ 48,890,521		
TOTAL	\$ 7,331,979	\$ 16,100,240	\$ 8,768,261	\$ 271,223,722	46%	



**Support Services Line of Business
FY 2023 Capital Expenditure Summary
As of February 28, 2023**

Project	¹ Total Spent YTD	² FY23 Project Budget	FY23 Budget Remaining	Project Life Total Budget	⁽¹⁾⁽²⁾ % Spent YTD	% Physical Completion
Budgeted Projects:						
Headwaters at the Comal	\$ -	\$ 7,500,000	\$ 7,500,000	\$ 24,170,681	0%	60%
Cyber Security System	-	150,000	150,000	150,000	0%	15%
Physical Security Systems	8,219	145,000	136,781	145,000	6%	90%
Software Replacement and Enhancements	-	65,000	65,000	65,000	0%	10%
NBU Headquarters, Maint & Support Facility	189,041	24,000,000	23,810,959	147,426,285	1%	10%
Laserfiche Development	323	330,164	329,841	587,401	0%	20%
Backup Operations Center	83,643	3,500,000	3,416,357	7,360,828	2%	20%
Upgrade or Replace all NBU Radios	1,022,853	600,000	(422,853)	600,000	170%	10%
Kerlick Tower Deconstruction	-	800,000	800,000	807,597	0%	20%
Data Strategy Upgrades - BDAP	508,651	720,000	211,349	720,000	71%	33%
System Technology Upgrades - Monitoring 802.1x	23,638	300,000	276,362	300,000	8%	0%
Pioneer Upgrade	128,700	650,000	521,300	1,300,000	20%	0%
SCADA Nodes	-	87,500	87,500	87,500	0%	5%
Tele-Communications Enhancements	-	500,000	500,000	500,000	0%	10%
Tele-Communications Enhancements	5,150	52,000	46,850	52,000	10%	10%
Water/Wastewater SCADA Aging Infrastructure	-	500,000	500,000	500,000	0%	0%
Water SCADA Replacement & Integration	373,113	1,400,000	1,026,887	2,800,000	27%	49%
Hueco Rd House	-	21,000	21,000	21,000	0%	0%
Secureworks Incident Response Team	-	30,000	30,000	30,000	0%	0%
536 Lake Front	(261)	27,000	27,261	27,000	-1%	0%
Multi-Factor Authentication	215,775	200,000	(15,775)	200,000	108%	0%
OT Security	-	50,000	50,000	50,000	0%	0%
Customer Bill Pay Portal	-	80,000	80,000	80,000	0%	0%
Weltner Road House	-	14,000	14,000	14,000	0%	0%
Total Budgeted Projects	\$ 2,558,845	\$ 41,721,664	\$ 39,162,819	\$ 187,994,291	6%	

Unbudgeted Projects:						
Personnel Workstations	\$ 14,356	\$ -	\$ (14,356)	\$ -		100%
Total	\$ 14,356	\$ -	\$ (14,356)	\$ -		
Total	\$ 2,573,201	\$ 41,721,664	\$ 39,148,463	\$ 187,994,291	6%	



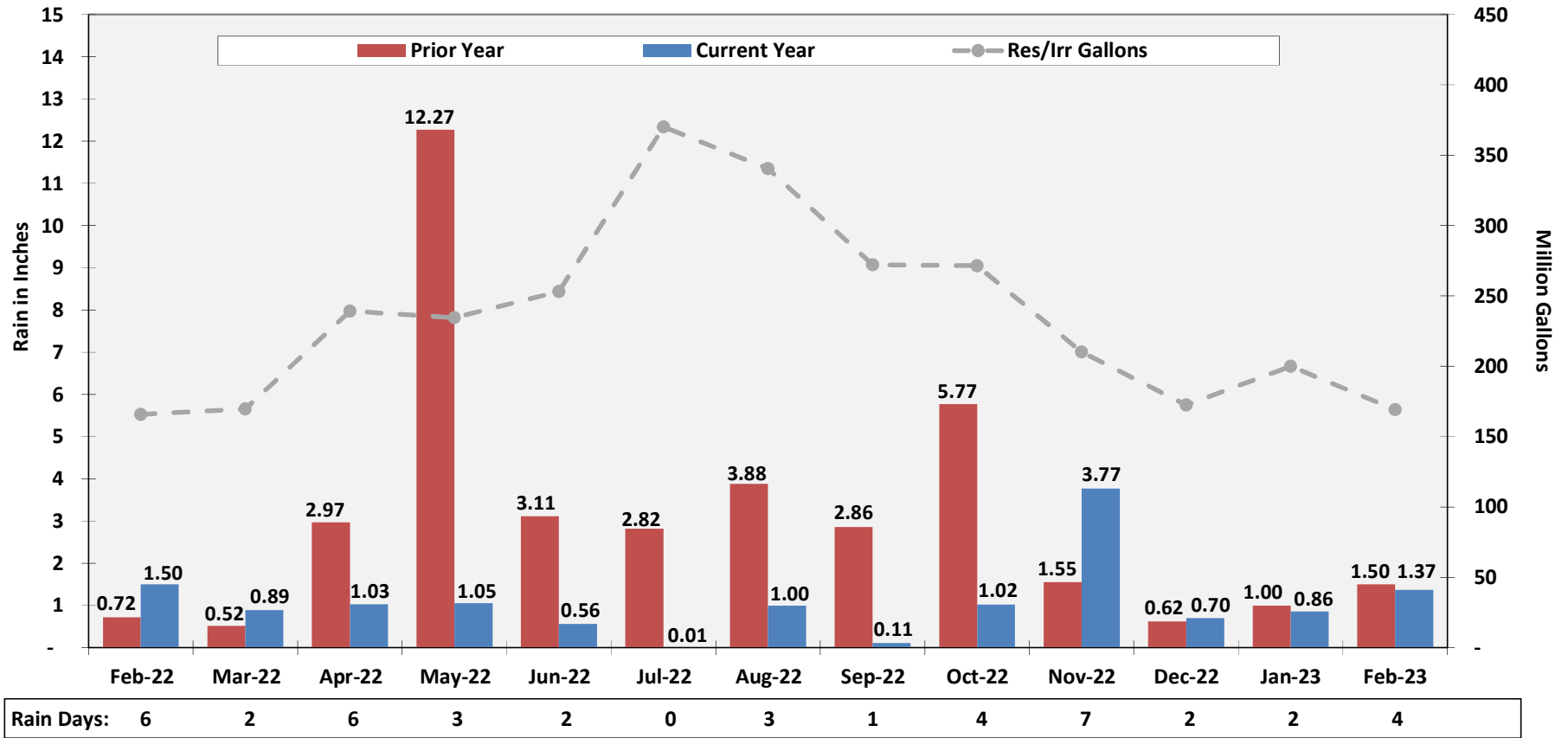
Electric Statistics are provided separately due to competitive matters.

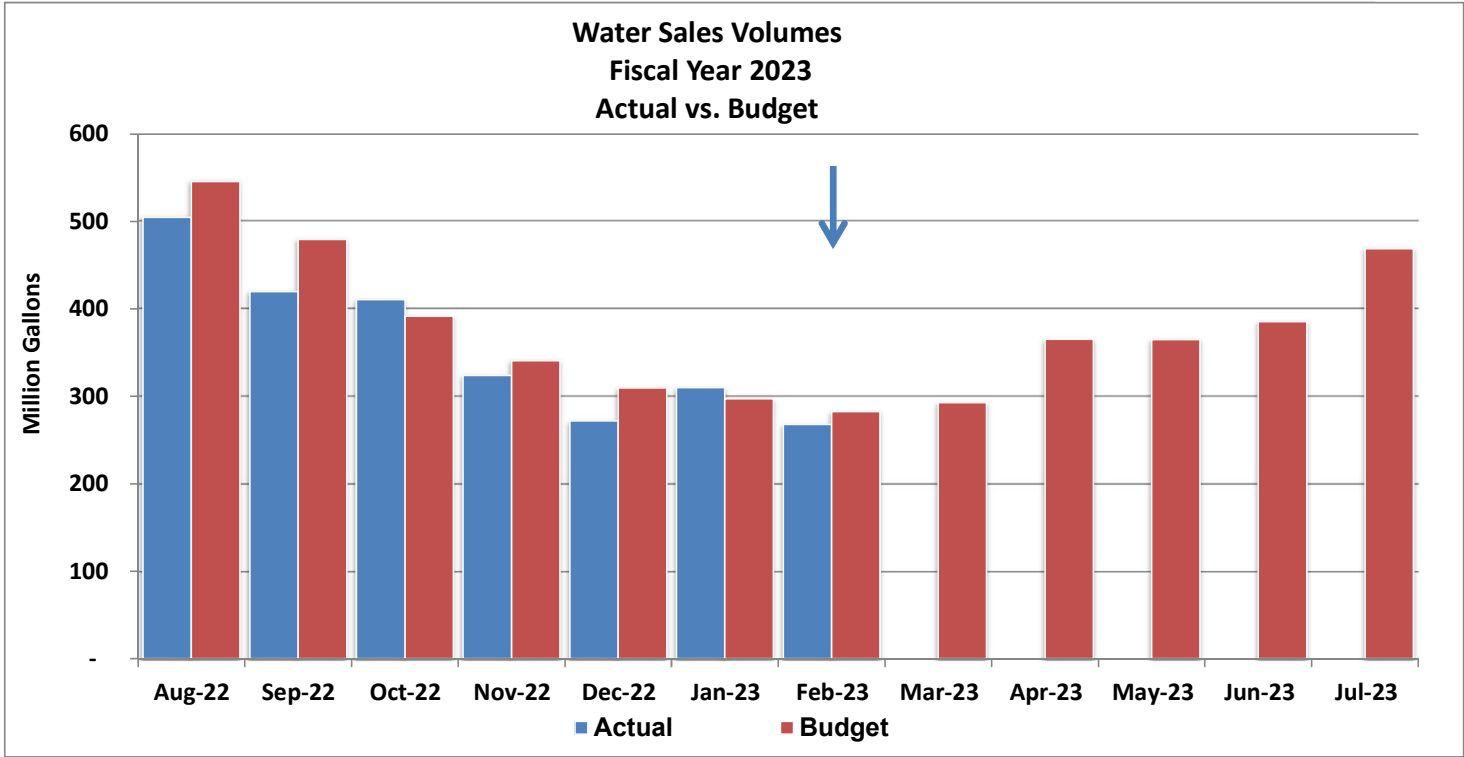
WATER STATISTICS

NEW BRAUNFELS UTILITIES WATER STATISTICS HIGHLIGHTS OVERVIEW

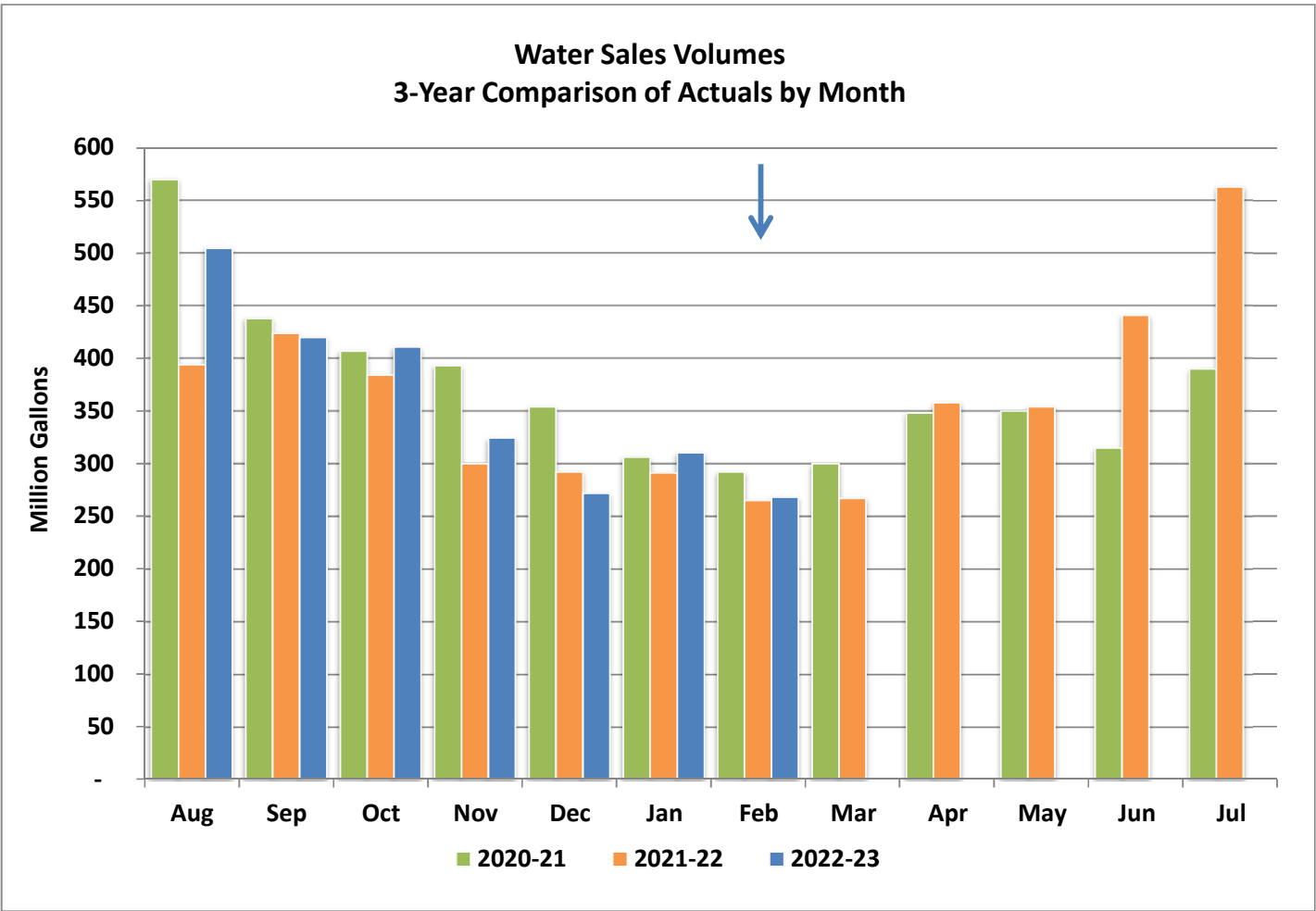
- February MTD rainfall was lower than the prior year rainfall, totaling 1.37 inches for the month. The February rainfall total of 1.37 inches was 0.63 inches lower than the historical average rainfall of two inches. For February 2023, there was four rain days during the month compared to six rain days in February 2022.
- February YTD rainfall totaled 8.83 inches compared to the prior year total of 17.18 inches, which is a decrease of 8.35 inches compared to prior year YTD. For YTD, there have been 23 rain days compared to 26 rain days for prior year YTD. Average MTD consumption by residential water customer in February 2023 was **4,278 gallons** compared to **4,398 gallons** in February 2022, reflecting a 2.7% decrease.
- Average YTD consumption by residential water customer through February 2023 was **38,032 gallons** compared to **36,655** for YTD through February 2022, reflecting an increase of 3.8%.
- 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 161.4 million gallons, or 6.9% (2,509.9 million gallons for FY 2023 YTD vs. 2,348.5 million gallons for FY 2022 YTD).
- Actual total water sales volume for year-to-date FY 2023 is 2,509.9 million gallons, which is 137.7 million less than the budgeted amount of 2,647.6 million gallons for the same time period.
 - The following are major contributors, by rate classification, towards the 137.7 million gallons change from budget:
 - Residential Domestic – decrease of 75.9 million gallons (down 5.4% from budget)
 - Residential Irrigation – decrease of 121.2 million gallons (down 28.6% from budget)
 - Small General Service – increase of 1.4 million gallons (up 0.3% from budget)
 - Other Sales – increase of 43.4 million gallons (up 303.7% from budget)
 - ReUse Water – increase of 14.4 million gallons (up 967.7% from budget)

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



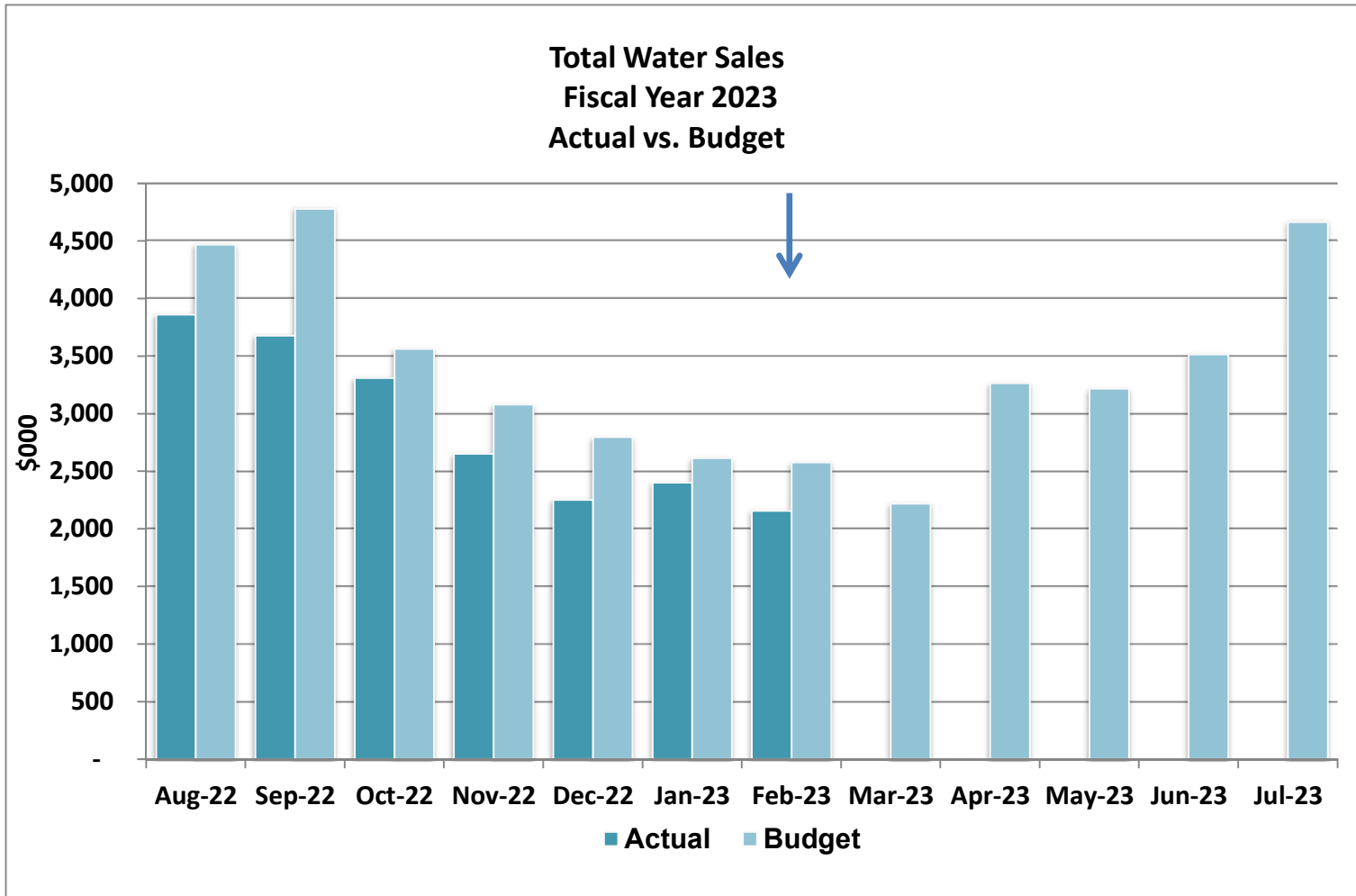


Month	Water Volumes (000 Gallons)	
	Actual	Budget
Aug-22	505	546
Sep-22	420	479
Oct-22	411	392
Nov-22	324	341
Dec-22	272	310
Jan-23	310	297
Feb-23	268	283
Mar-23	-	293
Apr-23	-	365
May-23	-	365
Jun-23	-	385
Jul-23	-	469
TOTAL	2,510	4,526



Month	Water Sales Volumes (Million Gallons)		
	2020-21	2021-22	2022-23
Aug	570	394	505
Sep	438	424	420
Oct	407	384	411
Nov	393	300	324
Dec	354	292	272
Jan	306	291	310
Feb	292	265	268
Mar	300	267	-
Apr	348	358	-
May	350	354	-
Jun	315	441	-
Jul	390	563	-
TOTAL	4,463	4,333	2,510

Meter Count	FY 2021	% Change 2021-2022	FY 2022	% Change 2022-2023	FY 2023
Residential	31,822	5.93%	33,710	4.52%	35,235
Irrigation	10,828	15.57%	12,514	9.92%	13,756
Other	2,939	0.03%	2,940	0.88%	2,966
TOTAL	45,589	7.84%	49,164	5.68%	51,957



Month	Total Water Sales (\$000)	
	Actual	Budget
Aug-22	\$ 3,861	\$ 4,468
Sep-22	\$ 3,678	\$ 4,780
Oct-22	\$ 3,310	\$ 3,562
Nov-22	\$ 2,650	\$ 3,081
Dec-22	\$ 2,251	\$ 2,798
Jan-23	\$ 2,402	\$ 2,615
Feb-23	\$ 2,155	\$ 2,577
Mar-23	\$ -	\$ 2,218
Apr-23	\$ -	\$ 3,264
May-23	\$ -	\$ 3,216
Jun-23	\$ -	\$ 3,514
Jul-23	\$ -	\$ 4,665
TOTAL	\$ 20,308	\$ 40,758

WATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Water Volume (Gallons)
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	264,945,370	214,133,721	210,921,150	168,052,918	147,195,572	177,670,848	150,738,797	1,333,658,376	333,414,594
Budget	285,165,847	242,765,355	204,344,641	179,626,481	168,898,564	169,829,479	158,976,981	1,409,607,347	352,401,837
Prior Year	190,753,986	213,590,772	196,375,895	153,841,772	152,498,965	160,017,038	148,250,642	1,215,329,067	303,832,267
Multi-Unit 2-4									
Actuals	2,255,895	1,811,283	1,706,631	1,468,178	1,558,732	1,991,094	1,731,278	12,523,091	3,130,773
Budget	2,190,329	2,175,137	1,798,298	1,630,045	1,536,125	1,634,110	1,443,550	12,407,593	3,101,898
Prior Year	1,767,014	2,175,572	1,935,167	1,683,958	1,503,100	1,553,351	1,426,974	12,045,136	3,011,284
Multi-Unit 5+									
Actuals	25,435,941	26,247,479	23,126,169	22,573,660	22,243,553	27,640,694	24,981,709	172,249,205	43,062,301
Budget	25,570,942	25,863,372	25,030,970	23,431,471	23,227,635	23,815,494	23,773,142	170,713,027	42,678,257
Prior Year	25,475,484	26,302,699	24,765,012	22,048,151	22,802,249	23,769,556	24,084,231	169,247,382	42,311,846
Residential Irrigation									
Actuals	75,502,265	57,908,800	60,546,492	42,139,788	25,242,936	22,372,220	18,434,179	302,146,680	75,536,670
Budget	111,639,571	97,411,656	70,540,520	52,081,711	39,001,362	27,954,389	24,756,082	423,385,292	105,846,323
Prior Year	59,715,853	72,549,374	58,163,200	37,801,391	31,437,514	25,547,333	17,523,159	302,737,824	75,684,456
Commercial Irrigation									
Actuals	33,744,774	30,535,334	28,118,852	21,721,253	14,886,687	8,439,663	8,440,206	145,886,770	36,471,692
Budget	31,514,584	32,935,165	23,538,503	19,604,957	15,926,303	13,082,813	10,710,513	147,312,840	36,828,210
Prior Year	22,715,362	25,664,989	25,510,877	18,910,089	15,162,299	13,252,362	10,565,306	131,781,284	32,945,321
SGS									
Actuals	78,178,199	78,468,416	69,448,844	58,815,374	57,772,260	67,638,990	59,416,751	469,738,835	117,434,709
Budget	84,276,707	74,067,749	64,827,188	63,534,901	60,809,191	59,772,702	61,081,177	468,369,615	117,092,404
Prior Year	82,377,924	75,409,371	70,435,971	62,993,439	61,734,048	61,273,929	58,637,779	472,862,463	118,215,616
Other Sales									
Actuals	19,291,639	10,429,974	11,829,866	6,504,861	2,722,722	4,009,008	2,940,187	57,728,257	14,432,064
Budget	4,888,926	4,408,055	1,362,090	825,546	193,254	901,033	1,720,052	14,298,955	3,574,739
Prior Year	10,850,958	8,631,831	1,078,118	2,230,425	4,479,862	3,812,000	2,776,625	33,859,819	8,464,955
ReUse Water									
Actuals	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	15,937,900	3,984,475
Budget	613,050	(177,867)	117,738	177,998	442,163	235,575	84,025	1,492,682	373,170
Prior Year	-	-	5,766,100	-	2,076,600	1,414,500	1,385,900	10,643,100	2,660,775
Total Sales									
Actuals	504,840,083	419,802,207	410,811,004	324,222,832	271,907,662	310,232,817	268,052,507	2,509,869,113	627,467,278
Budget	545,859,957	479,448,622	391,559,948	340,913,110	310,034,596	297,225,595	282,545,523	2,647,587,350	661,896,837
Prior Year	393,656,580	424,324,608	384,030,340	299,509,225	291,694,637	290,640,069	264,650,616	2,348,506,075	587,126,519

NEW BRAUNFELS UTILITIES
Water Volume (Gallons) Variance
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	264,945,370	214,133,721	210,921,150	168,052,918	147,195,572	177,670,848	150,738,797	1,333,658,376	333,414,594
Actual vs Budget	(20,220,477)	(28,631,634)	6,576,509	(11,573,563)	(21,702,992)	7,841,369	(8,238,184)	(75,948,972)	(18,987,243)
Actual vs Prior Year	74,191,384	542,949	14,545,255	14,211,146	(5,303,393)	17,653,810	2,488,155	118,329,309	29,582,327
Multi-Unit 2-4									
Actuals	2,255,895	1,811,283	1,706,631	1,468,178	1,558,732	1,991,094	1,731,278	12,523,091	3,130,773
Actual vs Budget	65,566	(363,854)	(91,667)	(161,867)	22,607	356,984	287,728	115,498	28,875
Actual vs Prior Year	488,881	(364,289)	(228,536)	(215,780)	55,632	437,743	304,304	477,955	119,489
Multi-Unit 5+									
Actuals	25,435,941	26,247,479	23,126,169	22,573,660	22,243,553	27,640,694	24,981,709	172,249,205	43,062,301
Actual vs Budget	(135,001)	384,107	(1,904,801)	(857,811)	(984,082)	3,825,200	1,208,567	1,536,178	384,045
Actual vs Prior Year	(39,543)	(55,220)	(1,638,843)	525,509	(558,696)	3,871,138	897,478	3,001,823	750,456
Residential Irrigation									
Actuals	75,502,265	57,908,800	60,546,492	42,139,788	25,242,936	22,372,220	18,434,179	302,146,680	75,536,670
Actual vs Budget	(36,137,306)	(39,502,856)	(9,994,028)	(9,941,923)	(13,758,426)	(5,582,169)	(6,321,903)	(121,238,612)	(30,309,653)
Actual vs Prior Year	15,786,412	(14,640,574)	2,383,292	4,338,397	(6,194,578)	(3,175,113)	911,020	(591,144)	(147,786)
Commercial Irrigation									
Actuals	33,744,774	30,535,334	28,118,852	21,721,253	14,886,687	8,439,663	8,440,206	145,886,770	36,471,692
Actual vs Budget	2,230,190	(2,399,831)	4,580,349	2,116,296	(1,039,617)	(4,643,150)	(2,270,308)	(1,426,070)	(356,517)
Actual vs Prior Year	11,029,412	4,870,345	2,607,975	2,811,164	(275,612)	(4,812,699)	(2,125,100)	14,105,486	3,526,371
SGS									
Actuals	78,178,199	78,468,416	69,448,844	58,815,374	57,772,260	67,638,990	59,416,751	469,738,835	117,434,709
Actual vs Budget	(6,098,508)	4,400,667	4,621,656	(4,719,527)	(3,036,931)	7,866,288	(1,664,426)	1,369,220	342,305
Actual vs Prior Year	(4,199,725)	3,059,045	(987,127)	(4,178,065)	(3,961,788)	6,365,061	778,972	(3,123,629)	(780,907)
Other Sales									
Actuals	19,291,639	10,429,974	11,829,866	6,504,861	2,722,722	4,009,008	2,940,187	57,728,257	14,432,064
Actual vs Budget	14,402,713	6,021,919	10,467,776	5,679,315	2,529,468	3,107,975	1,220,135	43,429,302	10,857,326
Actual vs Prior Year	8,440,681	1,798,143	10,751,748	4,274,436	(1,757,140)	197,008	163,562	23,868,438	5,967,110
ReUse Water									
Actuals	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	15,937,900	3,984,475
Actual vs Budget	4,872,950	445,067	4,995,262	2,768,802	(156,963)	234,725	1,285,375	14,445,218	3,611,305
Actual vs Prior Year	5,486,000	267,200	(653,100)	2,946,800	(1,791,400)	(944,200)	(16,500)	5,294,800	1,323,700
Total Sales									
Actuals	504,840,083	419,802,207	410,811,004	324,222,832	271,907,662	310,232,817	268,052,507	2,509,869,113	627,467,278
Actual vs Budget	(41,019,875)	(59,646,415)	19,251,057	(16,690,278)	(38,126,934)	13,007,222	(14,493,016)	(137,718,237)	(34,429,559)
Actual vs Prior Year	111,183,502	(4,522,401)	26,780,664	24,713,607	(19,786,975)	19,592,748	3,401,891	161,363,038	40,340,759

NEW BRAUNFELS UTILITIES
Water Revenue
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	\$ 1,435,468	1,424,172	1,284,509	1,094,836	976,144	1,109,772	972,939	\$ 8,297,839	\$ 2,074,460
Budget	\$ 1,731,095	1,897,596	1,402,521	1,299,912	1,237,012	1,204,967	1,149,928	\$ 9,923,031	\$ 2,480,758
Prior Year	\$ 949,155	1,368,484	1,104,777	912,553	921,659	930,612	878,968	\$ 7,066,208	\$ 1,766,552
Multi-Unit 2-4									
Actuals	\$ 19,176	17,926	16,683	15,050	16,630	17,942	16,479	\$ 119,885	\$ 29,971
Budget	\$ 20,171	21,675	18,522	17,083	16,907	17,764	16,616	\$ 128,740	\$ 32,185
Prior Year	\$ 13,339	17,770	16,338	14,466	13,561	13,841	13,564	\$ 102,877	\$ 25,719
Multi-Unit 5+									
Actuals	\$ 241,401	258,388	239,757	226,649	220,174	253,389	237,675	\$ 1,677,434	\$ 419,359
Budget	\$ 242,717	282,851	276,441	266,179	260,213	261,853	259,867	\$ 1,850,121	\$ 462,530
Prior Year	\$ 198,206	235,783	224,183	205,299	209,383	214,220	215,793	\$ 1,502,867	\$ 375,717
Residential Irrigation									
Actuals	\$ 876,750	751,431	715,064	518,829	371,346	345,040	310,796	\$ 3,889,255	\$ 972,314
Budget	\$ 1,324,727	1,306,273	905,436	699,264	556,422	433,634	450,971	\$ 5,676,727	\$ 1,419,182
Prior Year	\$ 580,815	797,438	611,938	416,010	367,631	324,832	261,737	\$ 3,360,403	\$ 840,101
Commercial Irrigation									
Actuals	\$ 405,253	401,101	328,274	240,204	164,788	94,550	97,630	\$ 1,731,801	\$ 432,950
Budget	\$ 398,515	484,298	314,816	243,815	196,989	163,504	135,965	\$ 1,937,902	\$ 484,475
Prior Year	\$ 235,447	309,339	279,668	192,765	153,721	135,756	109,936	\$ 1,416,632	\$ 354,158
SGS									
Actuals	\$ 616,047	678,287	558,030	450,987	450,757	516,134	461,766	\$ 3,732,009	\$ 933,002
Budget	\$ 678,971	715,929	582,156	544,591	526,820	516,141	529,757	\$ 4,094,366	\$ 1,023,592
Prior Year	\$ 543,995	597,457	518,462	442,582	438,388	433,692	416,857	\$ 3,391,432	\$ 847,858
Other Sales									
Actuals	\$ 241,628	145,742	143,275	89,711	50,358	62,775	51,200	\$ 784,688	\$ 196,172
Budget	\$ 72,136	70,957	62,099	10,072	3,154	15,480	33,185	\$ 267,082	\$ 66,770
Prior Year	\$ 131,234	113,892	40,289	36,632	59,936	53,680	43,909	\$ 479,571	\$ 119,893
ReUse Water									
Actuals	\$ 25,191	1,078	24,810	14,201	1,166	2,072	6,476	\$ 74,993	\$ 18,748
Budget	\$ -	-	115	174	432	1,261	450	\$ 2,431	\$ 608
Prior Year	\$ 48	52	25,964	52	9,213	6,207	6,078	\$ 47,615	\$ 11,904
Total Sales									
Actuals	\$ 3,860,913	3,678,125	3,310,402	2,650,466	2,251,363	2,401,673	2,154,961	\$ 20,307,904	\$ 5,076,976
Budget	\$ 4,468,332	4,779,579	3,562,106	3,081,090	2,797,950	2,614,604	2,576,739	\$ 23,880,400	\$ 5,970,100
Prior Year	\$ 2,652,238	3,440,214	2,821,619	2,220,359	2,173,492	2,112,841	1,946,842	\$ 17,367,605	\$ 4,341,901

NEW BRAUNFELS UTILITIES**Water Revenue Variance****For Month Ending February 28, 2023**

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	\$ 1,435,468	\$ 1,424,172	\$ 1,284,509	\$ 1,094,836	\$ 976,144	\$ 1,109,772	\$ 972,939	\$ 8,297,839	\$ 2,074,460
Actual vs Budget	\$ (295,627)	\$ (473,424)	\$ (118,012)	\$ (205,077)	\$ (260,869)	\$ (95,195)	\$ (176,989)	\$ (1,625,192)	\$ (406,298)
Actual vs Prior Year	\$ 486,313	\$ 55,688	\$ 179,732	\$ 182,282	\$ 54,484	\$ 179,160	\$ 93,971	\$ 1,231,632	\$ 307,908
Multi-Unit 2-4									
Actuals	\$ 19,176	\$ 17,926	\$ 16,683	\$ 15,050	\$ 16,630	\$ 17,942	\$ 16,479	\$ 119,885	\$ 29,971
Actual vs Budget	\$ (996)	\$ (3,749)	\$ (1,839)	\$ (2,033)	\$ (278)	\$ 177	\$ (137)	\$ (8,855)	\$ (2,214)
Actual vs Prior Year	\$ 5,837	\$ 156	\$ 346	\$ 584	\$ 3,069	\$ 4,100	\$ 2,916	\$ 17,008	\$ 4,252
Multi-Unit 5+									
Actuals	\$ 241,401	\$ 258,388	\$ 239,757	\$ 226,649	\$ 220,174	\$ 253,389	\$ 237,675	\$ 1,677,434	\$ 419,359
Actual vs Budget	\$ (1,316)	\$ (24,462)	\$ (36,683)	\$ (39,529)	\$ (40,039)	\$ (8,465)	\$ (22,192)	\$ (172,687)	\$ (43,172)
Actual vs Prior Year	\$ 43,195	\$ 22,605	\$ 15,574	\$ 21,351	\$ 10,791	\$ 39,169	\$ 21,882	\$ 174,567	\$ 43,642
Residential Irrigation									
Actuals	\$ 876,750	\$ 751,431	\$ 715,064	\$ 518,829	\$ 371,346	\$ 345,040	\$ 310,796	\$ 3,889,255	\$ 972,314
Actual vs Budget	\$ (447,977)	\$ (554,842)	\$ (190,372)	\$ (180,435)	\$ (185,075)	\$ (88,594)	\$ (140,175)	\$ (1,787,471)	\$ (446,868)
Actual vs Prior Year	\$ 295,934	\$ (46,007)	\$ 103,126	\$ 102,819	\$ 3,715	\$ 20,208	\$ 49,058	\$ 528,853	\$ 132,213
Commercial Irrigation									
Actuals	\$ 405,253	\$ 401,101	\$ 328,274	\$ 240,204	\$ 164,788	\$ 94,550	\$ 97,630	\$ 1,731,801	\$ 432,950
Actual vs Budget	\$ 6,739	\$ (83,197)	\$ 13,458	\$ (3,611)	\$ (32,201)	\$ (68,954)	\$ (38,335)	\$ (206,101)	\$ (51,525)
Actual vs Prior Year	\$ 169,807	\$ 91,762	\$ 48,606	\$ 47,439	\$ 11,068	\$ (41,206)	\$ (12,306)	\$ 315,169	\$ 78,792
SGS									
Actuals	\$ 616,047	\$ 678,287	\$ 558,030	\$ 450,987	\$ 450,757	\$ 516,134	\$ 461,766	\$ 3,732,009	\$ 933,002
Actual vs Budget	\$ (62,924)	\$ (37,642)	\$ (24,126)	\$ (93,604)	\$ (76,063)	\$ (7)	\$ (67,991)	\$ (362,358)	\$ (90,589)
Actual vs Prior Year	\$ 72,052	\$ 80,831	\$ 39,568	\$ 8,405	\$ 12,370	\$ 82,442	\$ 44,909	\$ 340,576	\$ 85,144
Other Sales									
Actuals	\$ 241,628	\$ 145,742	\$ 143,275	\$ 89,711	\$ 50,358	\$ 62,775	\$ 51,200	\$ 784,688	\$ 196,172
Actual vs Budget	\$ 169,492	\$ 74,785	\$ 81,176	\$ 79,639	\$ 47,204	\$ 47,296	\$ 18,015	\$ 517,606	\$ 129,402
Actual vs Prior Year	\$ 110,393	\$ 31,850	\$ 102,986	\$ 53,079	\$ (9,578)	\$ 9,095	\$ 7,291	\$ 305,117	\$ 76,279
ReUse Water									
Actuals	\$ 25,191	\$ 1,078	\$ 24,810	\$ 14,201	\$ 1,166	\$ 2,072	\$ 6,476	\$ 74,993	\$ 18,748
Actual vs Budget	\$ 25,191	\$ 1,078	\$ 24,695	\$ 14,027	\$ 734	\$ 811	\$ 6,026	\$ 72,562	\$ 18,140
Actual vs Prior Year	\$ 25,142	\$ 1,025	\$ (1,154)	\$ 14,149	\$ (8,048)	\$ (4,135)	\$ 398	\$ 27,377	\$ 6,844
Total Sales									
Actuals	\$ 3,860,913	\$ 3,678,125	\$ 3,310,402	\$ 2,650,466	\$ 2,251,363	\$ 2,401,673	\$ 2,154,961	\$ 20,307,904	\$ 5,076,976
Actual vs Budget	\$ (607,419)	\$ (1,101,455)	\$ (251,703)	\$ (430,624)	\$ (546,586)	\$ (212,931)	\$ (421,778)	\$ (3,572,495)	\$ (893,124)
Actual vs Prior Year	\$ 1,208,675	\$ 237,910	\$ 488,784	\$ 430,108	\$ 77,871	\$ 288,833	\$ 208,119	\$ 2,940,300	\$ 735,075

NEW BRAUNFELS UTILITIES**Water Meters****For Month Ending February 28, 2023**

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	AVG
Residential								
Actuals	34,863	35,017	35,058	35,080	35,155	35,219	35,235	35,090
Budget	34,694	34,834	34,974	35,114	35,255	35,395	35,535	35,114
Prior Year	32,673	32,838	33,073	33,181	33,360	33,555	33,710	33,199
Multi-Unit 2-4								
Actuals	208	209	207	208	209	209	208	208
Budget	213	213	213	213	213	213	213	213
Prior Year	203	203	203	201	201	202	209	203
Multi-Unit 5+								
Actuals	257	257	259	258	258	259	259	258
Budget	262	264	265	267	269	270	272	267
Prior Year	256	257	258	257	258	258	258	257
Residential Irrigation								
Actuals	12,525	12,620	12,669	12,722	12,769	12,831	12,901	12,720
Budget	12,647	12,794	12,940	13,087	13,233	13,380	13,526	13,087
Prior Year	10,768	10,938	11,171	11,293	11,422	11,566	11,686	11,263
Commercial Irrigation								
Actuals	845	835	849	849	850	851	855	848
Budget	844	847	850	853	857	860	863	853
Prior Year	809	815	817	820	820	820	828	818
SGS								
Actuals	2,380	2,383	2,383	2,386	2,389	2,384	2,383	2,384
Budget	2,388	2,392	2,397	2,402	2,406	2,411	2,415	2,402
Prior Year	2,356	2,366	2,370	2,371	2,367	2,368	2,368	2,367
Other Sales								
Actuals	124	124	130	132	124	120	115	124
Budget	93	93	94	95	95	96	97	95
Prior Year	116	119	113	109	108	104	104	110
ReUse Water								
Actuals	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1
Total Meters								
Actuals	51,203	51,446	51,556	51,636	51,755	51,874	51,957	51,632
Budget	51,141	51,438	51,735	52,032	52,328	52,625	52,922	52,032
Prior Year	47,182	47,537	48,006	48,233	48,537	48,874	49,164	48,219
New Meters	152	243	110	80	119	119	83	129
New Meter Growth	0.3%	0.5%	0.2%	0.2%	0.2%	0.2%	0.2%	0.3%

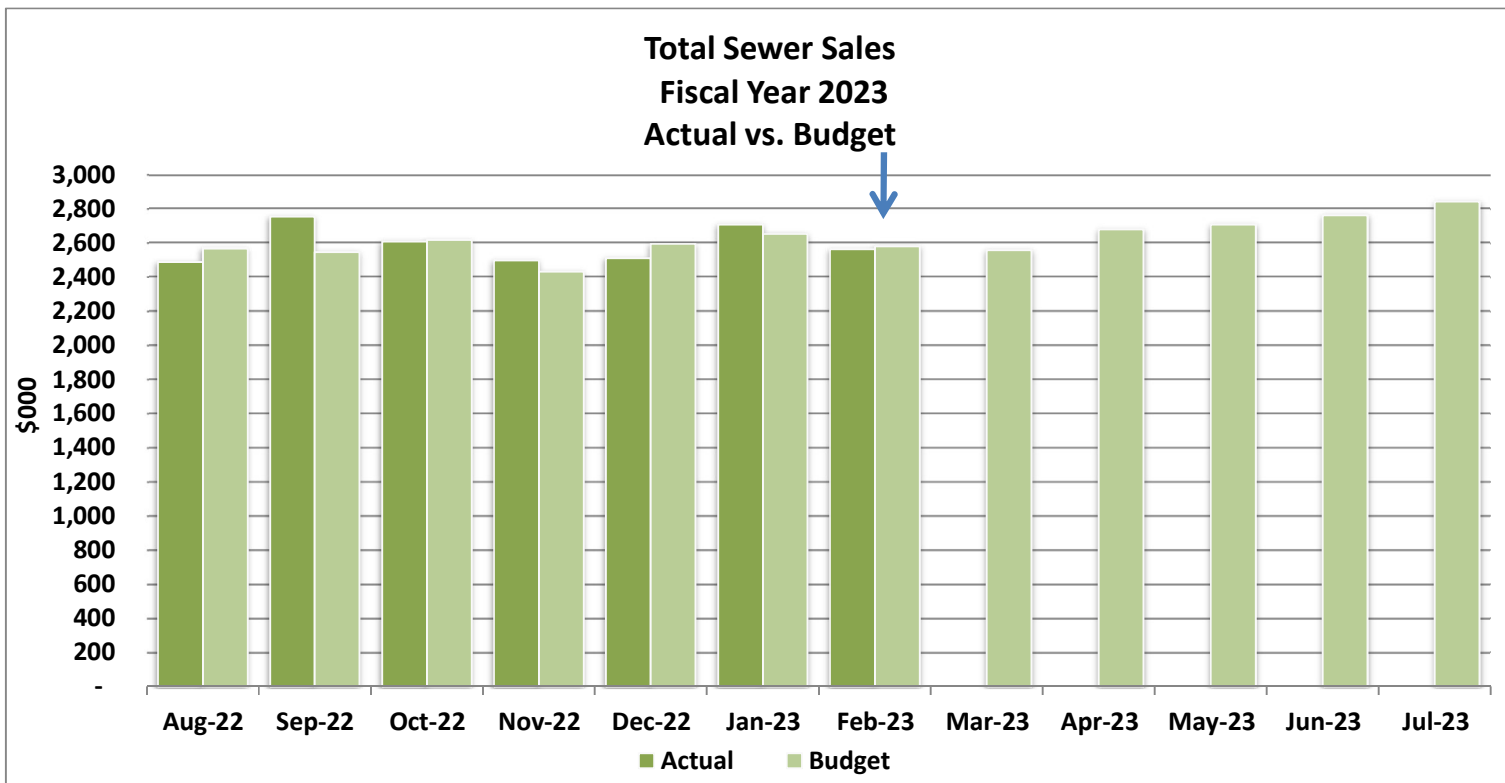
NEW BRAUNFELS UTILITIES
Water Volume per Meter (Gallons)
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	7,600	6,115	6,016	4,791	4,187	5,045	4,278	38,032	9,508
Budget	8,219	6,969	5,843	5,115	4,791	4,798	4,474	40,210	10,052
Prior Year	5,838	6,504	5,938	4,636	4,571	4,769	4,398	36,655	9,164
Multi-Unit 2-4									
Actuals	10,846	8,666	8,245	7,059	7,458	9,527	8,323	60,123	15,031
Budget	10,298	10,227	8,455	7,664	7,223	7,683	6,787	58,338	14,584
Prior Year	8,705	10,717	9,533	8,378	7,478	7,690	6,828	59,328	14,832
Multi-Unit 5+									
Actuals	98,973	102,130	89,290	87,495	86,215	106,721	96,454	667,278	166,820
Budget	97,639	98,113	94,341	87,744	86,426	88,050	87,340	639,653	159,913
Prior Year	99,514	102,345	95,988	85,790	88,381	92,130	93,350	657,498	164,375
Residential Irrigation									
Actuals	6,028	4,589	4,779	3,312	1,977	1,744	1,429	23,858	5,964
Budget	8,827	7,614	5,451	3,980	2,947	2,089	1,830	32,739	8,185
Prior Year	5,546	6,633	5,207	3,347	2,752	2,209	1,500	27,193	6,798
Commercial Irrigation									
Actuals	39,935	36,569	33,120	25,585	17,514	9,917	9,872	172,511	43,128
Budget	37,353	38,889	27,689	22,975	18,594	15,217	12,411	173,128	43,282
Prior Year	28,078	31,491	31,225	23,061	18,491	16,161	12,760	161,267	40,317
SGS									
Actuals	32,848	32,928	29,143	24,650	24,183	28,372	24,934	197,058	49,265
Budget	35,295	30,960	27,046	26,456	25,273	24,795	25,290	195,115	48,779
Prior Year	34,965	31,872	29,720	26,568	26,081	25,876	24,763	199,845	49,961
Other Sales									
Actuals	155,578	84,113	90,999	49,279	21,957	33,408	25,567	460,901	115,225
Budget	52,714	47,203	14,487	8,721	2,028	9,391	17,809	152,352	38,088
Prior Year	93,543	72,536	9,541	20,463	41,480	36,654	26,698	300,915	75,229
ReUse Water									
Actuals	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	15,937,900	3,984,475
Budget	613,050	(177,867)	117,738	177,998	442,163	235,575	84,025	1,492,682	373,170
Prior Year	-	-	5,766,100	-	2,076,600	1,414,500	1,385,900	10,643,100	2,660,775

NEW BRAUNFELS UTILITIES
Water Rates (per Gallon)
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD AVG
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	
Residential								
Actuals	\$ 0.0054	\$ 0.0067	\$ 0.0061	\$ 0.0065	\$ 0.0066	\$ 0.0062	\$ 0.0065	\$ 0.0063
Budget	\$ 0.0061	\$ 0.0078	\$ 0.0069	\$ 0.0072	\$ 0.0073	\$ 0.0071	\$ 0.0072	\$ 0.0071
Prior Year	\$ 0.0050	\$ 0.0064	\$ 0.0056	\$ 0.0059	\$ 0.0060	\$ 0.0058	\$ 0.0059	\$ 0.0058
Multi-Unit 2-4								
Actuals	\$ 0.0085	\$ 0.0099	\$ 0.0098	\$ 0.0103	\$ 0.0107	\$ 0.0090	\$ 0.0095	\$ 0.0097
Budget	\$ 0.0092	\$ 0.0100	\$ 0.0103	\$ 0.0105	\$ 0.0110	\$ 0.0109	\$ 0.0115	\$ 0.0105
Prior Year	\$ 0.0075	\$ 0.0082	\$ 0.0084	\$ 0.0086	\$ 0.0090	\$ 0.0089	\$ 0.0095	\$ 0.0086
Multi-Unit 5+								
Actuals	\$ 0.0095	\$ 0.0098	\$ 0.0104	\$ 0.0100	\$ 0.0099	\$ 0.0092	\$ 0.0095	\$ 0.0098
Budget	\$ 0.0095	\$ 0.0109	\$ 0.0110	\$ 0.0114	\$ 0.0112	\$ 0.0110	\$ 0.0109	\$ 0.0109
Prior Year	\$ 0.0078	\$ 0.0090	\$ 0.0091	\$ 0.0093	\$ 0.0092	\$ 0.0090	\$ 0.0090	\$ 0.0089
Residential Irrigation								
Actuals	\$ 0.0116	\$ 0.0130	\$ 0.0118	\$ 0.0123	\$ 0.0147	\$ 0.0154	\$ 0.0169	\$ 0.0137
Budget	\$ 0.0119	\$ 0.0134	\$ 0.0128	\$ 0.0134	\$ 0.0143	\$ 0.0155	\$ 0.0182	\$ 0.0142
Prior Year	\$ 0.0097	\$ 0.0110	\$ 0.0105	\$ 0.0110	\$ 0.0117	\$ 0.0127	\$ 0.0149	\$ 0.0117
Commercial Irrigation								
Actuals	\$ 0.0120	\$ 0.0131	\$ 0.0117	\$ 0.0111	\$ 0.0111	\$ 0.0112	\$ 0.0116	\$ 0.0117
Budget	\$ 0.0126	\$ 0.0147	\$ 0.0134	\$ 0.0124	\$ 0.0124	\$ 0.0125	\$ 0.0127	\$ 0.0130
Prior Year	\$ 0.0104	\$ 0.0121	\$ 0.0110	\$ 0.0102	\$ 0.0101	\$ 0.0102	\$ 0.0104	\$ 0.0106
SGS								
Actuals	\$ 0.0079	\$ 0.0086	\$ 0.0080	\$ 0.0077	\$ 0.0078	\$ 0.0076	\$ 0.0078	\$ 0.0079
Budget	\$ 0.0081	\$ 0.0097	\$ 0.0090	\$ 0.0086	\$ 0.0087	\$ 0.0086	\$ 0.0087	\$ 0.0087
Prior Year	\$ 0.0066	\$ 0.0079	\$ 0.0074	\$ 0.0070	\$ 0.0071	\$ 0.0071	\$ 0.0071	\$ 0.0072
Other Sales								
Actuals	\$ 0.0125	\$ 0.0140	\$ 0.0121	\$ 0.0138	\$ 0.0185	\$ 0.0157	\$ 0.0174	\$ 0.0149
Budget	\$ 0.0148	\$ 0.0161	\$ 0.0456	\$ 0.0122	\$ 0.0163	\$ 0.0172	\$ 0.0193	\$ 0.0202
Prior Year	\$ 0.0121	\$ 0.0132	\$ 0.0374	\$ 0.0164	\$ 0.0134	\$ 0.0141	\$ 0.0158	\$ 0.0175
ReUse Water								
Actuals	\$ 0.0046	\$ 0.0040	\$ 0.0049	\$ 0.0048	\$ 0.0041	\$ 0.0044	\$ 0.0047	\$ 0.0045
Budget	\$ -	\$ -	\$ 0.0010	\$ 0.0010	\$ 0.0010	\$ 0.0054	\$ 0.0054	\$ 0.0019
Prior Year	\$ -	\$ -	\$ 0.0045	\$ -	\$ 0.0044	\$ 0.0044	\$ 0.0044	\$ 0.0025

WASTEWATER STATISTICS



Month	Total Sewer Sales (\$000)	
	Actual	Budget
Aug-22	\$ 2,491	\$ 2,570
Sep-22	\$ 2,758	\$ 2,549
Oct-22	\$ 2,611	\$ 2,619
Nov-22	\$ 2,500	\$ 2,434
Dec-22	\$ 2,513	\$ 2,597
Jan-23	\$ 2,711	\$ 2,655
Feb-23	\$ 2,565	\$ 2,582
Mar-23	\$ -	\$ 2,560
Apr-23	\$ -	\$ 2,683
May-23	\$ -	\$ 2,710
Jun-23	\$ -	\$ 2,765
Jul-23	\$ -	\$ 2,846
TOTAL	\$ 18,149	\$ 31,571

Customer Count	FY 2021	% Change 2021-2022	FY 2022	% Change 2022-2023	FY 2023
Residential	28,513	6.26%	30,297	4.87%	31,772
Other	2,520	1.27%	2,552	0.43%	2,563
TOTAL	31,033	5.85%	32,849	4.52%	34,335

WASTEWATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Sewer Revenue
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	\$ 1,431,988	\$ 1,602,167	\$ 1,517,326	\$ 1,513,842	\$ 1,516,902	\$ 1,594,334	\$ 1,541,595	\$ 10,718,153	\$ 2,679,538
Budget	\$ 1,483,919	\$ 1,492,276	\$ 1,546,743	\$ 1,466,151	\$ 1,574,687	\$ 1,609,022	\$ 1,578,948	\$ 10,751,745	\$ 2,687,936
Prior Year	\$ 1,206,094	\$ 1,306,104	\$ 1,316,469	\$ 1,289,827	\$ 1,285,465	\$ 1,338,135	\$ 1,307,658	\$ 9,049,752	\$ 2,262,438
Multi-Unit 2-4									
Actuals	\$ 12,873	\$ 14,215	\$ 13,595	\$ 13,583	\$ 13,704	\$ 14,466	\$ 13,990	\$ 96,425	\$ 24,106
Budget	\$ 13,141	\$ 13,311	\$ 13,616	\$ 12,912	\$ 13,772	\$ 14,067	\$ 13,809	\$ 94,628	\$ 23,657
Prior Year	\$ 11,209	\$ 12,263	\$ 12,484	\$ 11,820	\$ 11,661	\$ 12,090	\$ 12,160	\$ 83,687	\$ 20,922
Multi-Unit 5+									
Actuals	\$ 324,197	\$ 352,643	\$ 334,562	\$ 322,131	\$ 318,915	\$ 360,340	\$ 334,996	\$ 2,347,784	\$ 586,946
Budget	\$ 332,968	\$ 336,228	\$ 345,066	\$ 319,177	\$ 351,799	\$ 359,453	\$ 346,106	\$ 2,390,797	\$ 597,699
Prior Year	\$ 283,005	\$ 314,182	\$ 301,898	\$ 287,535	\$ 291,333	\$ 298,424	\$ 300,412	\$ 2,076,789	\$ 519,197
SGS									
Actuals	\$ 720,511	\$ 787,794	\$ 743,962	\$ 649,301	\$ 662,503	\$ 740,317	\$ 672,769	\$ 4,977,157	\$ 1,244,289
Budget	\$ 738,408	\$ 705,265	\$ 712,058	\$ 633,862	\$ 655,597	\$ 671,062	\$ 641,416	\$ 4,757,669	\$ 1,189,417
Prior Year	\$ 660,686	\$ 677,382	\$ 636,730	\$ 603,540	\$ 594,587	\$ 608,976	\$ 576,380	\$ 4,358,281	\$ 1,089,570
Schertz Sewer									
Actuals	\$ 1,476	\$ 1,282	\$ 1,310	\$ 1,306	\$ 1,194	\$ 1,269	\$ 1,425	\$ 9,262	\$ 2,315
Budget	\$ 1,876	\$ 1,885	\$ 1,873	\$ 1,811	\$ 1,616	\$ 1,788	\$ 1,965	\$ 12,815	\$ 3,204
Prior Year	\$ 1,515	\$ 1,617	\$ 1,442	\$ 1,555	\$ 1,403	\$ 1,491	\$ 1,672	\$ 10,696	\$ 2,674
Total Sales									
Actuals	\$ 2,491,044	\$ 2,758,100	\$ 2,610,754	\$ 2,500,162	\$ 2,513,218	\$ 2,710,727	\$ 2,564,775	\$ 18,148,780	\$ 4,537,195
Budget	\$ 2,570,313	\$ 2,548,965	\$ 2,619,356	\$ 2,433,914	\$ 2,597,471	\$ 2,655,391	\$ 2,582,244	\$ 18,007,655	\$ 4,501,914
Prior Year	\$ 2,162,509	\$ 2,311,548	\$ 2,269,022	\$ 2,194,277	\$ 2,184,450	\$ 2,259,117	\$ 2,198,283	\$ 15,579,205	\$ 3,894,801

NEW BRAUNFELS UTILITIES
Sewer Revenue Variance
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	\$ 1,431,988	\$ 1,602,167	\$ 1,517,326	\$ 1,513,842	\$ 1,516,902	\$ 1,594,334	\$ 1,541,595	\$ 10,718,153	\$ 2,679,538
Actual vs Budget	\$ (51,932)	\$ 109,891	\$ (29,417)	\$ 47,691	\$ (57,784)	\$ (14,688)	\$ (37,353)	\$ (33,592)	\$ (8,398)
Actual vs Prior Year	\$ 225,893	\$ 296,062	\$ 200,856	\$ 224,015	\$ 231,437	\$ 256,199	\$ 233,937	\$ 1,668,401	\$ 417,100
Multi-Unit 2-4									
Actuals	\$ 12,873	\$ 14,215	\$ 13,595	\$ 13,583	\$ 13,704	\$ 14,466	\$ 13,990	\$ 96,425	\$ 24,106
Actual vs Budget	\$ (268)	\$ 904	\$ (22)	\$ 670	\$ (68)	\$ 399	\$ 181	\$ 1,797	\$ 449
Actual vs Prior Year	\$ 1,664	\$ 1,952	\$ 1,111	\$ 1,762	\$ 2,043	\$ 2,376	\$ 1,831	\$ 12,739	\$ 3,185
Multi-Unit 5+									
Actuals	\$ 324,197	\$ 352,643	\$ 334,562	\$ 322,131	\$ 318,915	\$ 360,340	\$ 334,996	\$ 2,347,784	\$ 586,946
Actual vs Budget	\$ (8,771)	\$ 16,414	\$ (10,504)	\$ 2,953	\$ (32,884)	\$ 887	\$ (11,110)	\$ (43,014)	\$ (10,753)
Actual vs Prior Year	\$ 41,193	\$ 38,461	\$ 32,664	\$ 34,596	\$ 27,582	\$ 61,916	\$ 34,583	\$ 270,994	\$ 67,749
SGS									
Actuals	\$ 720,511	\$ 787,794	\$ 743,962	\$ 649,301	\$ 662,503	\$ 740,317	\$ 672,769	\$ 4,977,157	\$ 1,244,289
Actual vs Budget	\$ (17,898)	\$ 82,529	\$ 31,904	\$ 15,439	\$ 6,906	\$ 69,255	\$ 31,352	\$ 219,488	\$ 54,872
Actual vs Prior Year	\$ 59,825	\$ 110,413	\$ 107,232	\$ 45,761	\$ 67,915	\$ 131,341	\$ 96,388	\$ 618,876	\$ 154,719
Schertz Sewer									
Actuals	\$ 1,476	\$ 1,282	\$ 1,310	\$ 1,306	\$ 1,194	\$ 1,269	\$ 1,425	\$ 9,262	\$ 2,315
Actual vs Budget	\$ (400)	\$ (603)	\$ (563)	\$ (505)	\$ (422)	\$ (519)	\$ (540)	\$ (3,553)	\$ (888)
Actual vs Prior Year	\$ (39)	\$ (335)	\$ (132)	\$ (249)	\$ (209)	\$ (222)	\$ (248)	\$ (1,434)	\$ (358)
Total Sales									
Actuals	\$ 2,491,044	\$ 2,758,100	\$ 2,610,754	\$ 2,500,162	\$ 2,513,218	\$ 2,710,727	\$ 2,564,775	\$ 18,148,780	\$ 4,537,195
Actual vs Budget	\$ (79,268)	\$ 209,135	\$ (8,602)	\$ 66,249	\$ (84,253)	\$ 55,335	\$ (17,470)	\$ 141,125	\$ 35,281
Actual vs Prior Year	\$ 328,535	\$ 446,552	\$ 341,732	\$ 305,886	\$ 328,768	\$ 451,610	\$ 366,492	\$ 2,569,575	\$ 642,394

NEW BRAUNFELS UTILITIES
Sewer Usage (Gallons)
For Month Ending February 28, 2023

DESCRIPTION	2022 AUG	2022 SEP	2022 OCT	2022 NOV	2022 DEC	2023 JAN	2023 FEB	FY 2023 YTD	
								ACT	AVG
Residential									
Actuals	105,945,683	113,046,276	100,144,142	99,574,341	99,394,434	165,422,006	103,083,536	786,610,418	196,652,605
Prior Year	104,471,564	102,881,798	103,585,231	98,785,479	96,990,541	105,351,819	99,694,841	711,761,271	177,940,318
Multi-Unit 2-4									
Actuals	834,405	876,991	783,357	774,377	790,783	904,980	832,938	5,797,831	1,449,458
Prior Year	877,742	881,754	904,169	819,822	794,963	863,055	801,194	5,942,699	1,485,675
Multi-Unit 5+									
Actuals	25,753,140	28,032,246	23,907,336	22,819,107	22,650,042	27,891,169	24,467,609	175,520,649	43,880,162
Prior Year	26,092,125	26,749,080	24,777,610	22,283,407	23,082,869	23,924,869	24,335,131	171,245,091	42,811,273
SGS									
Actuals	130,005,417	129,722,018	125,164,836	97,417,889	104,504,690	119,839,409	108,336,432	814,990,693	203,747,673
Prior Year	127,278,474	120,288,388	116,530,872	109,598,350	105,684,722	108,598,118	101,697,357	789,676,283	197,419,071
Schertz Sewer									
Actuals	436,500	425,000	434,200	433,000	395,800	420,800	472,300	3,017,600	754,400
Prior Year	432,800	437,700	406,900	438,700	395,800	420,800	471,900	3,004,600	751,150
Total Sales									
Actuals	262,975,145	272,102,531	250,433,871	221,018,714	227,735,749	314,478,364	237,192,815	1,785,937,192	446,484,298
Prior Year	259,152,705	251,238,720	246,204,782	231,925,758	226,948,895	239,158,661	227,000,423	1,681,629,944	420,407,486

NEW BRAUNFELS UTILITIES
Sewer Customers
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	AVG
Residential								
Actuals	31,424	31,569	31,602	31,627	31,697	31,757	31,772	31,635
Budget	31,225	31,351	31,477	31,603	31,730	31,858	31,986	31,604
Prior Year	29,306	29,464	29,692	29,788	29,964	30,156	30,297	29,810
Multi-Unit 2-4								
Actuals	174	174	173	174	175	175	174	174
Budget	175	175	175	175	175	175	175	175
Prior Year	169	170	170	168	168	168	175	170
Multi-Unit 5+								
Actuals	256	257	259	258	258	258	258	258
Budget	265	266	268	270	271	273	275	270
Prior Year	255	256	256	257	258	258	258	257
SGS								
Actuals	2,125	2,127	2,131	2,131	2,134	2,127	2,130	2,129
Budget	2,132	2,136	2,141	2,145	2,149	2,153	2,158	2,145
Prior Year	2,107	2,119	2,123	2,120	2,120	2,120	2,118	2,118
Schertz Sewer								
Actuals	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1
Total Accounts								
Actuals	33,980	34,128	34,166	34,191	34,265	34,318	34,335	34,198
Budget	33,798	33,929	34,061	34,194	34,327	34,461	34,595	34,195
Prior Year	31,838	32,010	32,242	32,334	32,511	32,703	32,849	32,355
New Customers	84	148	38	25	74	53	17	63
New Customer Growth %	0.2%	0.4%	0.1%	0.1%	0.2%	0.2%	0.1%	0.2%

NEW BRAUNFELS UTILITIES
Sewer Rates (per Customer)
For Month Ending February 28, 2023

DESCRIPTION	2022	2022	2022	2022	2022	2023	2023	FY 2023 YTD AVG
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	
Residential								
Actuals	\$ 45.57	\$ 50.75	\$ 48.01	\$ 47.87	\$ 47.86	\$ 50.20	\$ 48.52	\$ 48.40
Budget	\$ 47.52	\$ 47.60	\$ 49.14	\$ 46.39	\$ 49.63	\$ 50.51	\$ 49.36	\$ 48.59
Prior Year	\$ 41.16	\$ 44.33	\$ 44.34	\$ 43.30	\$ 42.90	\$ 44.37	\$ 43.16	\$ 43.37
Multi-Unit 2-4								
Actuals	\$ 73.98	\$ 81.69	\$ 78.58	\$ 78.06	\$ 78.31	\$ 82.66	\$ 80.40	\$ 79.10
Budget	\$ 75.08	\$ 76.04	\$ 77.77	\$ 73.74	\$ 78.64	\$ 80.31	\$ 78.83	\$ 77.20
Prior Year	\$ 66.32	\$ 72.13	\$ 73.43	\$ 70.36	\$ 69.41	\$ 71.96	\$ 69.48	\$ 70.44
Multi-Unit 5+								
Actuals	\$ 1,266.40	\$ 1,372.15	\$ 1,291.75	\$ 1,248.57	\$ 1,236.11	\$ 1,396.67	\$ 1,298.43	\$ 1,301.44
Budget	\$ 1,258.02	\$ 1,262.29	\$ 1,287.26	\$ 1,183.14	\$ 1,295.80	\$ 1,315.61	\$ 1,258.73	\$ 1,265.84
Prior Year	\$ 1,109.82	\$ 1,227.27	\$ 1,179.29	\$ 1,118.81	\$ 1,129.20	\$ 1,156.68	\$ 1,164.39	\$ 1,155.07
SGS								
Actuals	\$ 339.06	\$ 370.38	\$ 349.11	\$ 304.69	\$ 310.45	\$ 348.06	\$ 315.85	\$ 333.94
Budget	\$ 346.31	\$ 330.11	\$ 332.63	\$ 295.52	\$ 305.05	\$ 311.63	\$ 297.27	\$ 316.93
Prior Year	\$ 313.57	\$ 319.67	\$ 299.92	\$ 284.69	\$ 280.47	\$ 287.25	\$ 272.13	\$ 293.96
Schertz Sewer								
Actuals	\$ 1,476.00	\$ 1,282.01	\$ 1,309.76	\$ 1,306.14	\$ 1,193.93	\$ 1,269.34	\$ 1,424.69	\$ 1,323.12
Budget	\$ 1,876.13	\$ 1,885.20	\$ 1,873.17	\$ 1,811.42	\$ 1,616.13	\$ 1,788.00	\$ 1,964.93	\$ 1,830.71
Prior Year	\$ 1,515.47	\$ 1,617.15	\$ 1,442.03	\$ 1,554.72	\$ 1,402.69	\$ 1,491.29	\$ 1,672.39	\$ 1,527.96



Financial Update

February 2023 Financials

Kimberly Huffman

Accounting Manager



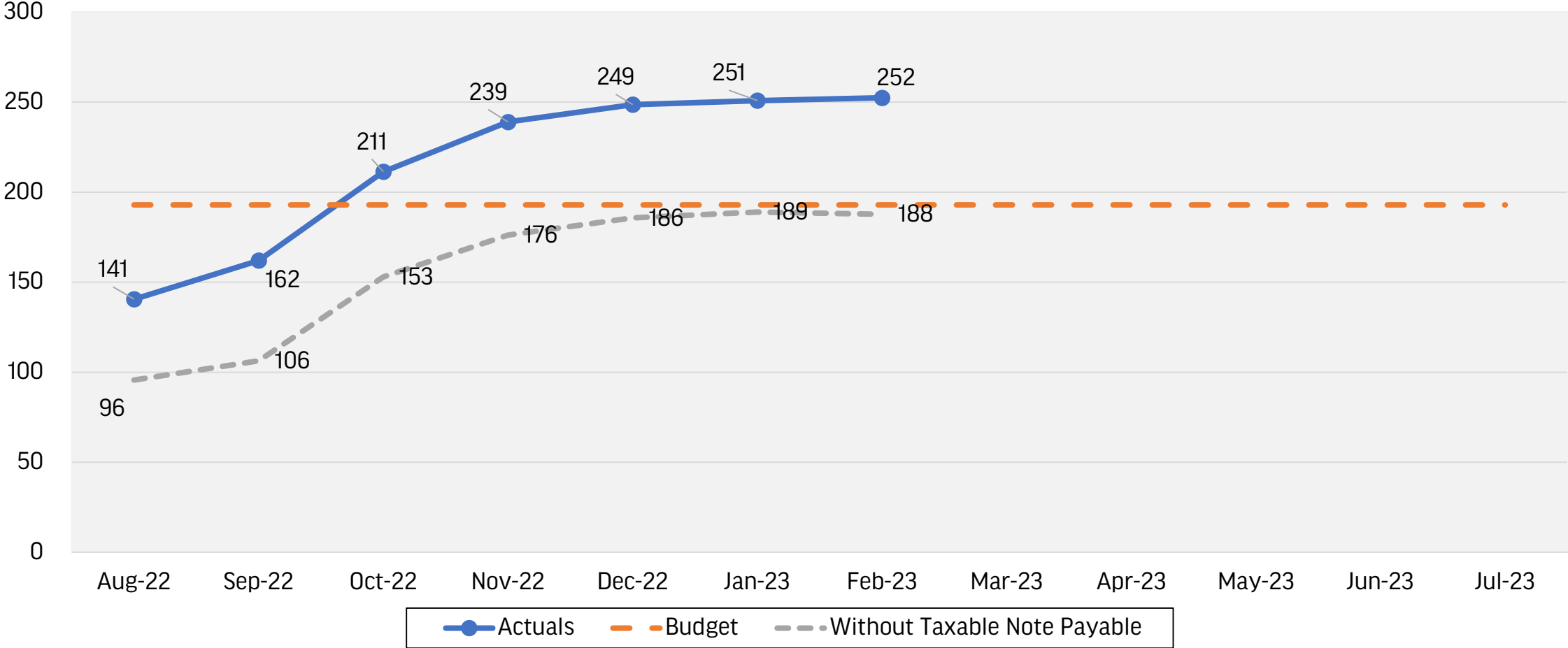
Key Financial Ratios

February 2023 YTD

	FY 2022 Actual	FY 2023 Budget	Financial Policy	FY 2023 Actual*
Debt to Capitalization <i>(lower is better)</i>	42.4%	45.2%	≤55.0%	42.8%
Debt Service Coverage <i>(higher is better)</i>	5.14	5.07	≥2.40	4.89
Debt Service Coverage <i>Including Extraordinary Event</i> <i>(higher is better)</i>	2.75	1.79	≥1.40	1.89
Days Cash on Hand <i>(higher is better)</i>	255	193	≥140	252
Days Liquidity on Hand <i>(higher is better)</i>	564	N/A	N/A	442

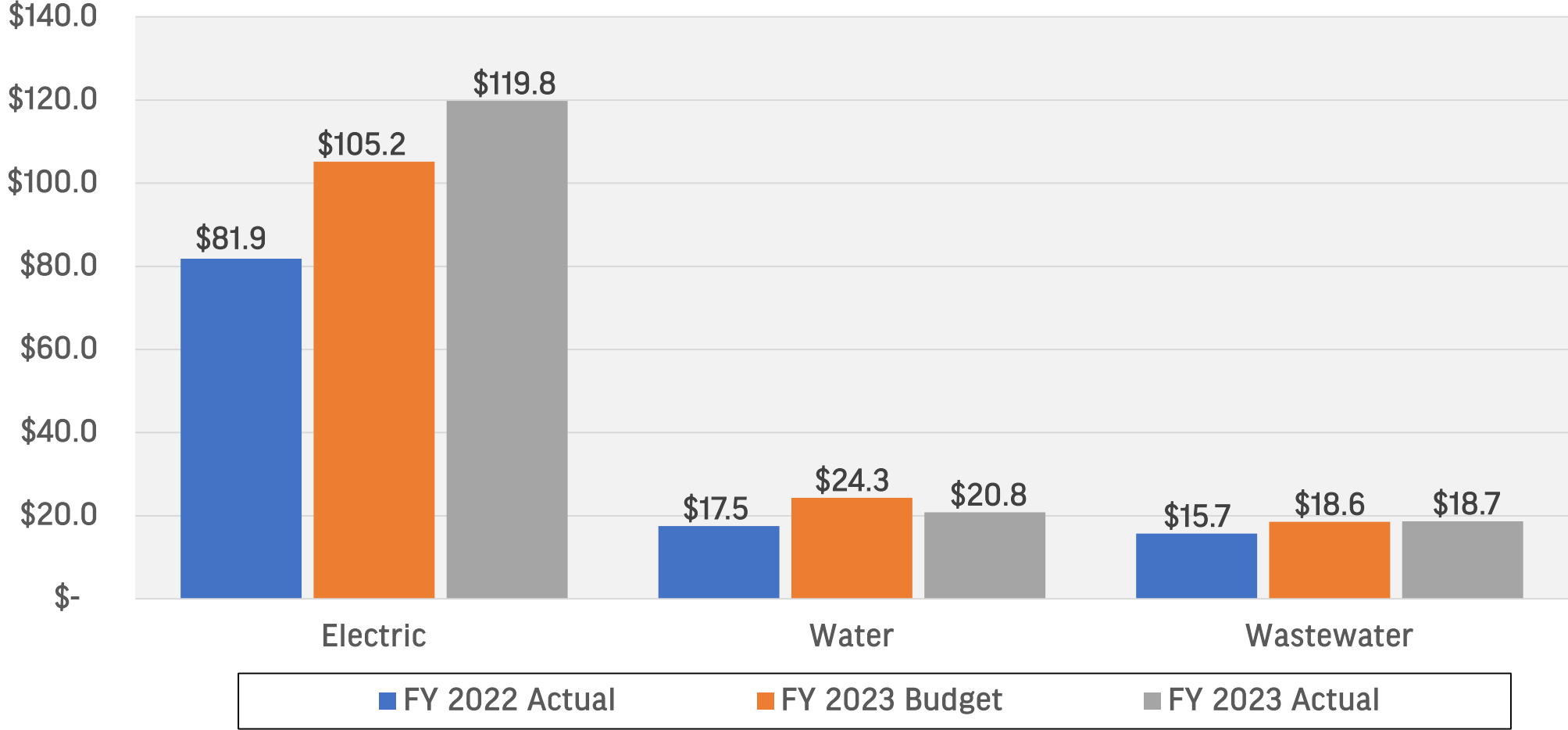
* Amounts are calculated by annualizing the YTD results

Days Cash on Hand February 2023 YTD



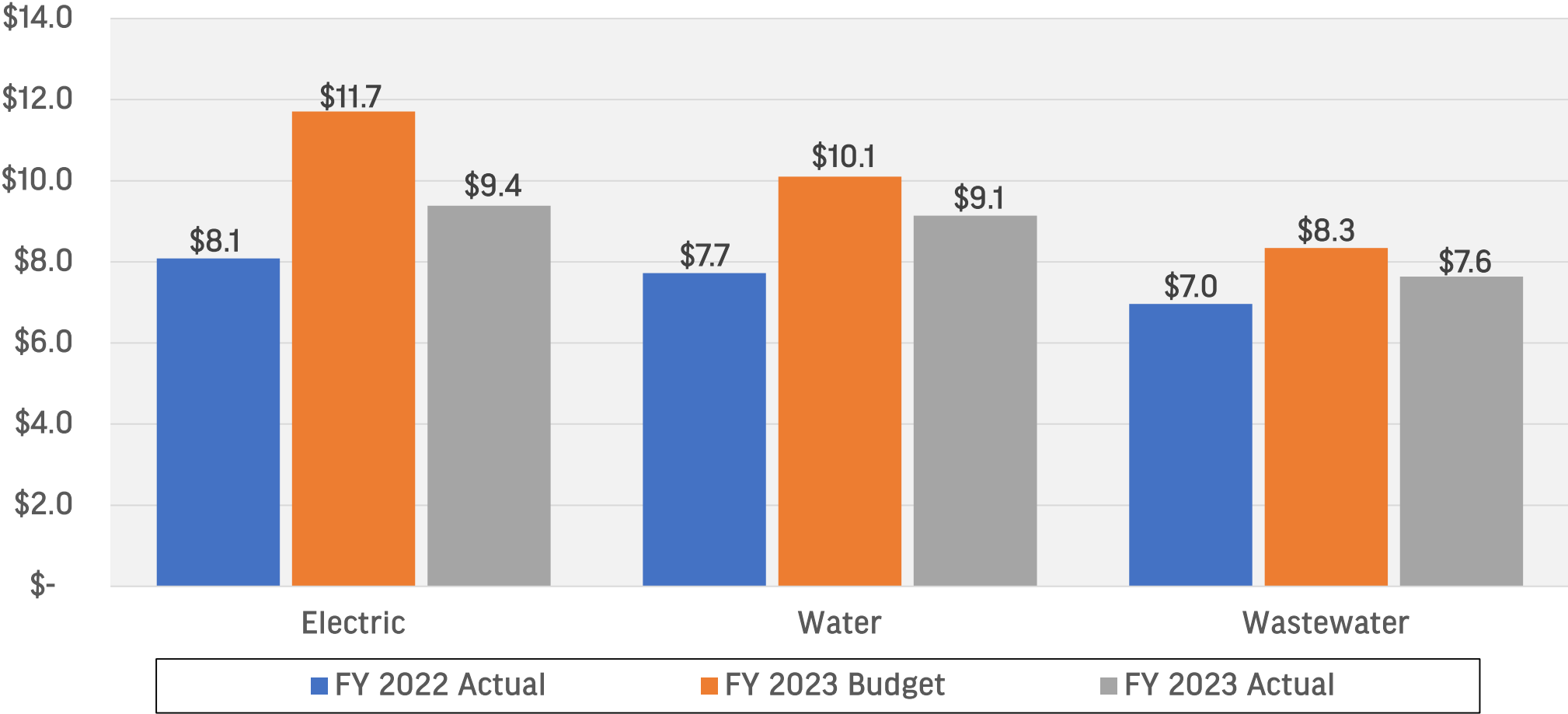
Operating Revenue by LOB

February 2023 YTD – Amounts in Millions



Operating Expenses* by LOB

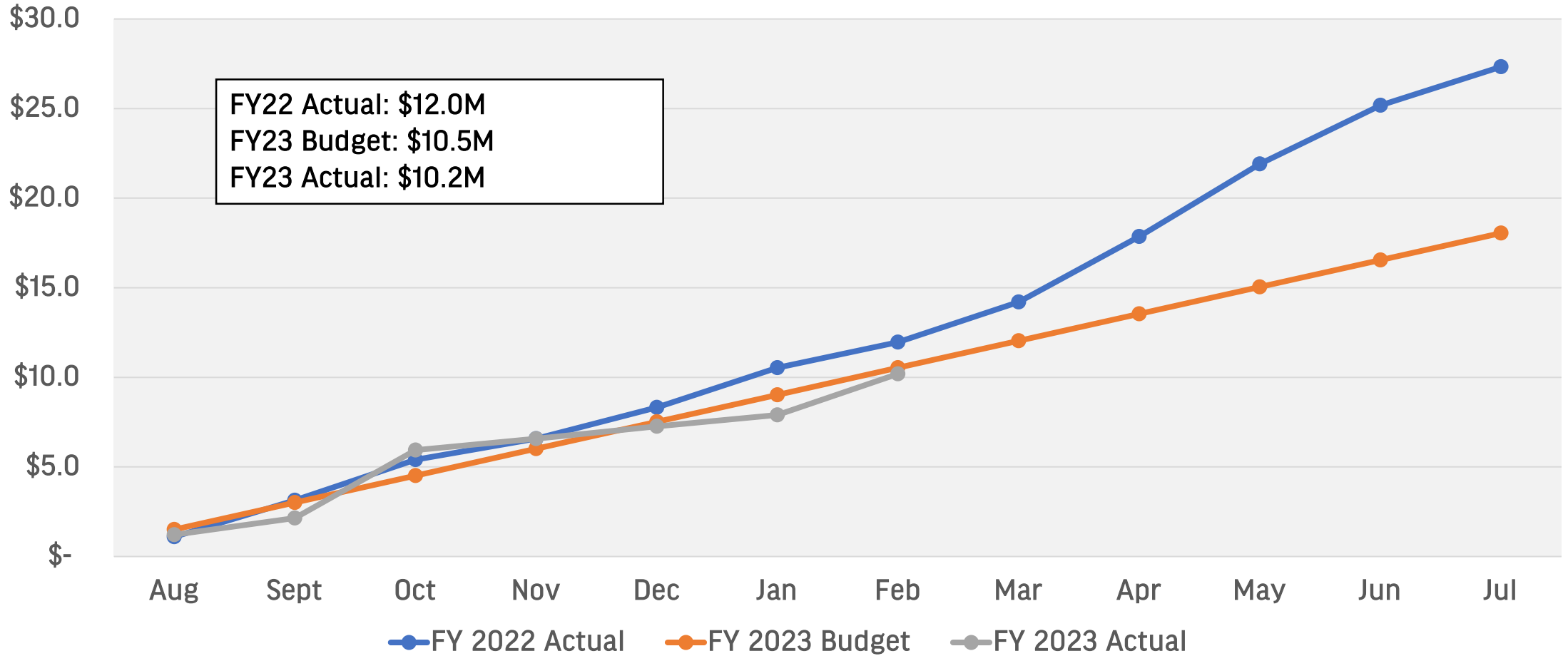
February 2023 YTD – Amounts in Millions



*Excludes purchased power, purchased water, and depreciation expense

Impact Fees

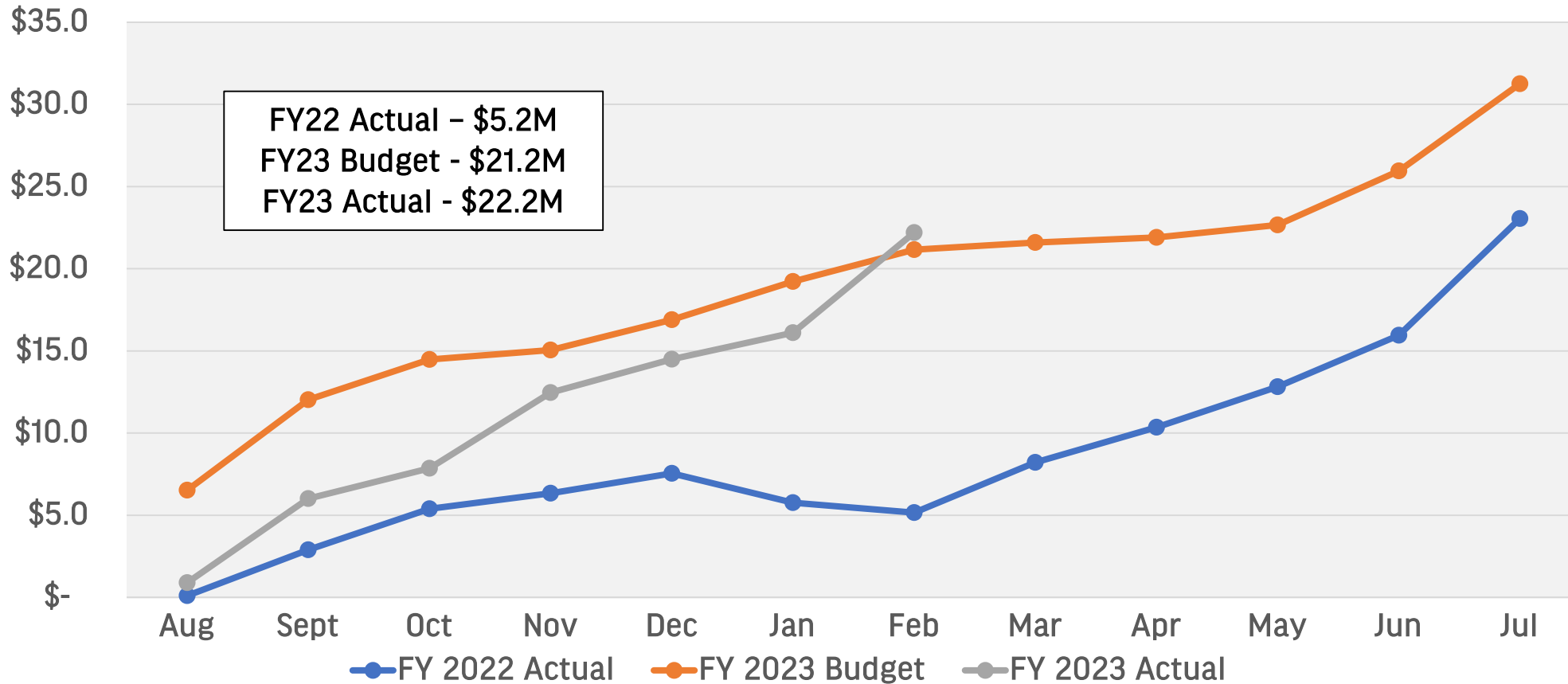
February 2023 YTD - Amounts in Millions*



* Amounts shown are YTD for each month

Net Operating Income

February 2023- Amounts in Millions*

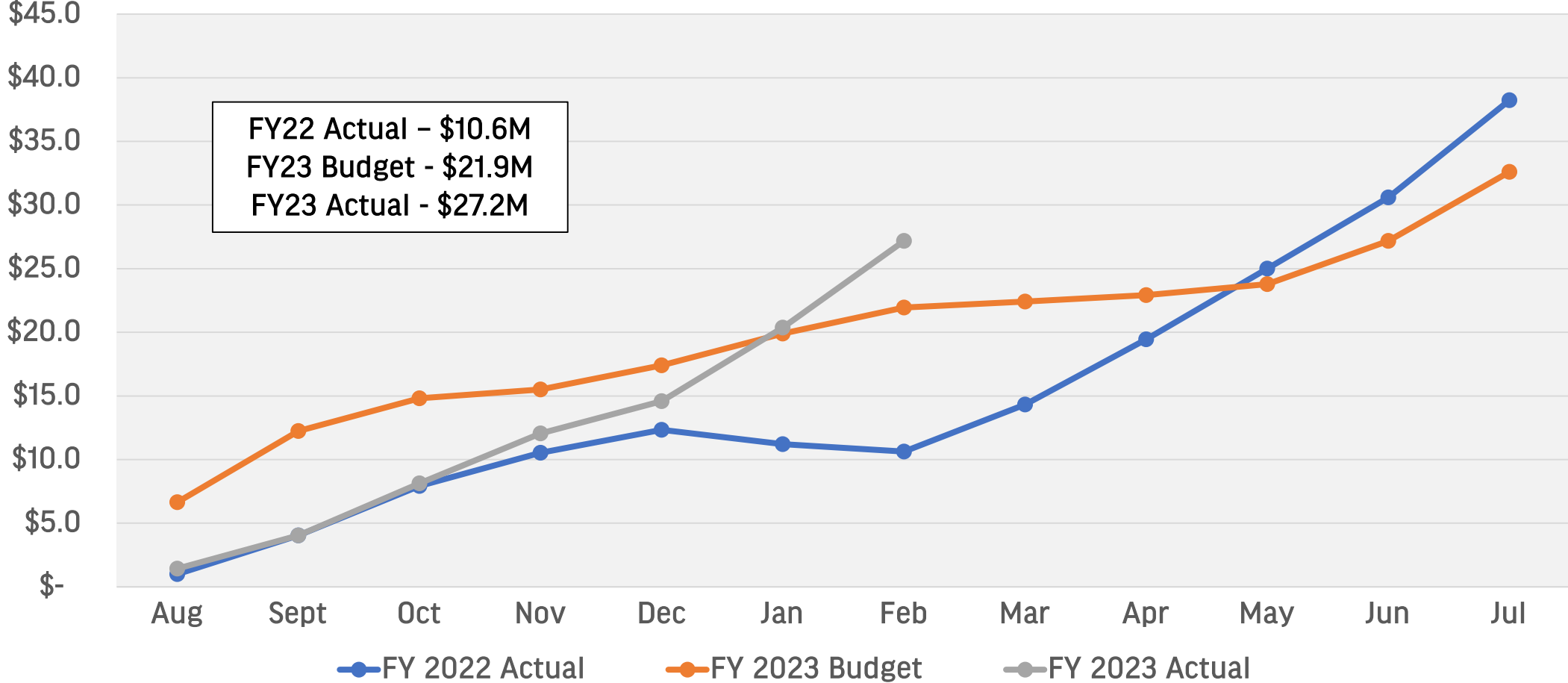


FY22 Actual - \$5.2M
FY23 Budget - \$21.2M
FY23 Actual - \$22.2M

* Amounts shown are YTD for each month

Change in Net Position After Contributions

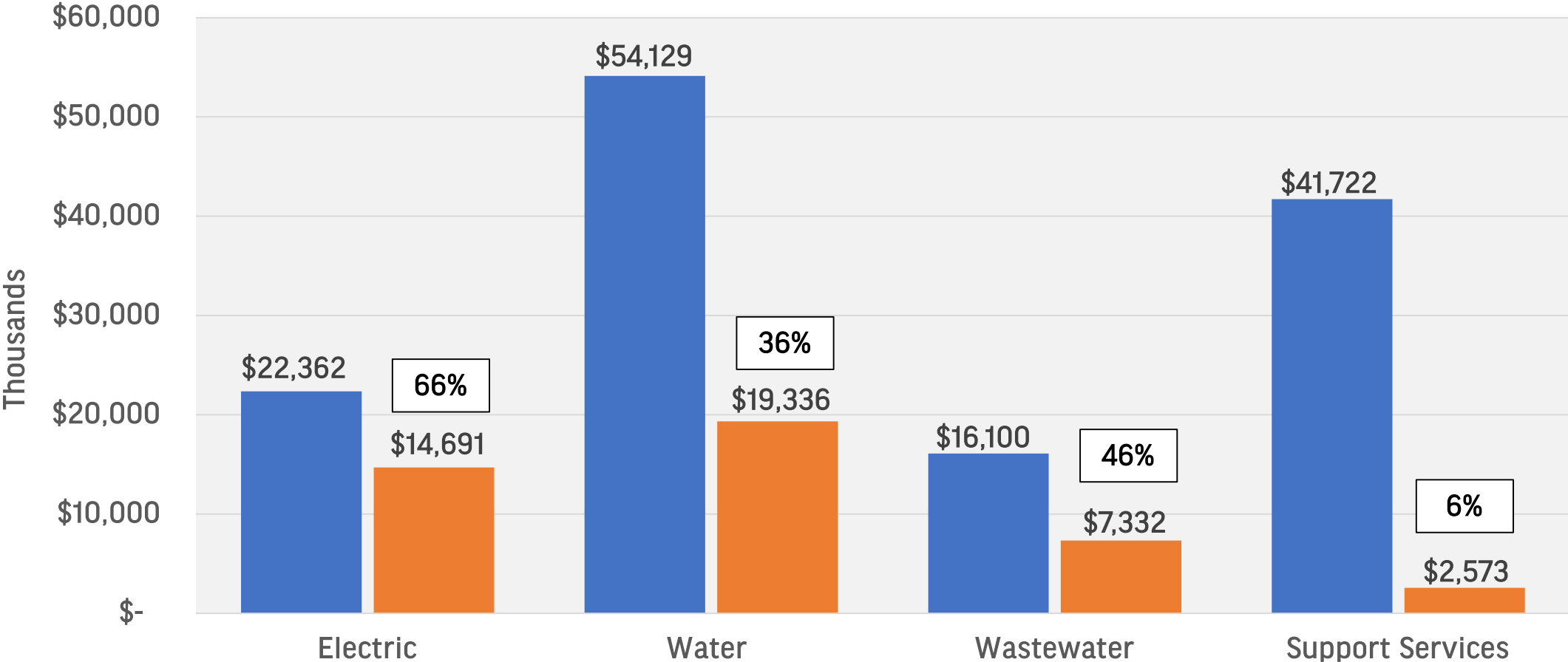
February 2023- Amounts in Millions*



* Amounts shown are YTD for each month

Capital Project Expenditures

February 2023 YTD – Amounts in Thousands



■ Budget ■ Actual



Questions?





Meeting Date: March 30, 2023 **Agenda Type:** Items from Staff

From: John Warren **Reviewed by:** Ashley Van Booven
 Finance Manager Director of Finance

Submitted by: Dawn Schriever **Approved by:** Ian Taylor
 Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Water Supply Fee Report

BACKGROUND

The Fiscal Year (“FY”) 2023 Budget and Five Year Financial Operating Plan, presented to the Board of Trustees at the June 2022 Regular Board Meeting, identified revenue requirements in FY 2023 for the Water Line of Business, driven primarily from the need to acquire water supply and build infrastructure to keep up with growth and meet regulatory requirements.

One of the components included in NBU’s current Three-Year Rate Plan for FY 2021 through FY 2023, which was approved by City Council on October 26, 2020, was a Water Supply Fee (“WSF”). The WSF is a cost assessed to customers that have a volumetric usage. It consists of the cost of certain water supplies expressed as dollars per 1,000 gallons and then is multiplied by the gallons sold during a billing period to each customer. It is calculated and assessed annually based on estimated variables for the period, and is reconciled annually with actual costs and credits. As part of the annual reconciliation process, the NBU Board is apprised of any changes to the WSF.

The WSF is currently excluded from the first usage block for residential customers, in order to protect the essential use-only water customer, which provided an updated FY 2023 WSF estimate of \$2.06 per thousand gallons for the remaining volumes. The Three-Year Rate Plan included an estimated WSF of \$2.79 for FY 2023, based on estimates made in June 2020.

The FY 2023 WSF included estimates for the purchase of (i) Seguin water, (ii) Guadalupe-Blanco River Authority (“GBRA”) Canyon water, (iii) GBRA Gonzales Carrizo Water Supply Project (“GCWSP”) water, (iv) Green Valley water, and (v) Interim Seguin Interconnect water. During the reconciliation process, an over collection of \$3,643,255 was identified as a true-up amount to be included in the WSF for FY 2024. This over collection was mainly due to the delayed receipt of the GBRA GCWSP water. Any over/(under) collection of the WSF will be applied to the calculation of the WSF in the next rate plan.

In addition to the true-up amount, the proposed FY 2024 WSF and proposed FY 2025 WSF includes estimates for the purchase of (i) Seguin water, (ii) GBRA Canyon water, (iii) GBRA GCWSP water, (iv) Green Valley water, and (v) Comal Trinity water. The total amount of revenue that is estimated to be collected for FY 2024 and FY 2025 through the WSF is \$10,618,688 over the two fiscal years. When

dividing the total amount of estimated revenue for FY 2024 and FY 2025 across the estimated water volume, the WSF is calculated at \$1.84 per thousand gallons for each fiscal year.

NBU's twenty-year water infrastructure and water supply strategies are identified in NBU's Master Plan and Water Resources Plan respectively. The WSF will provide a portion of the revenue needed to make these investments, while placing the majority of costs for water on high volume water users.

FINANCIAL IMPACT

The proposed FY 2024 WSF and proposed FY 2025 WSF is estimated to provide \$10,618,688 towards the total water revenue requirement over the two fiscal years.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. Water Supply Fee Presentation



Annual Water Supply Fee Report

WSF as Currently Defined

- Cost assessed to customers who have a volumetric usage.
- Cost of certain water supplies expressed as dollars per 1,000 gallons, multiplied by the gallons sold during a billing period to each customer.
- Calculated and assessed annually based on estimated variables for the period.
- Reconciled annually with actual costs and credits.
- NBU Board apprised of any changes to the WSF.

Current Water Rate Design – WSF

	FY 2021	FY 2022	FY 2023
WSF (Residential, Block 1)	\$0.00	\$0.00	\$0.00
WSF (All Other Blocks / Customer Classes)	\$1.05	\$2.49	\$2.79

FY 2023 WSF Estimate

WSF Estimate	
Seguin	\$2,130,903
GBRA Canyon - Coletto Creek	\$ 872,025
GBRA Canyon - Womack	\$ 451,868
GBRA GCWSP	\$2,266,067
Green Valley	\$ 987,329
Interim Seguin Interconnect	\$ 164,780
Water Volume	2,904,086,975 gallons
Water Supply Fee	\$2.06 per thousand gallons

FY 2023 WSF Actuals

WSF Actuals	
WSF Revenue Collected	\$7,363,884
WSF Revenue Required	\$4,616,573
Fiscal Year Over/(Under) Collection	\$2,747,310
Cumulative Over/(Under) Collection	\$3,643,255 = WSF True-up

FY 2024 and FY 2025 WSF Estimate

WSF Estimate		
Purchased Water	FY 2024 WSF Estimate	FY 2025 WSF Estimate
Seguin	\$ 2,730,219	\$ 2,798,474
GBRA Canyon - Coletto Creek	\$ 952,875	\$ 1,000,519
GBRA Canyon - Womack	\$ 493,763	\$ 518,451
GBRA GCWSP	\$ 1,239,067	\$ 2,140,547
Green Valley	\$ 1,013,348	\$ 1,038,681
Comal Trinity	\$ 168,000	\$ 168,000
Cumulative WSF True-Up	\$ (3,643,255)	\$ --
Water Supply Fee*	\$1.84 per thousand gallons	\$1.84 per thousand gallons

* Proposed FY 2024 WSF and Proposed FY 2025 WSF pending NBU Board approval.

Proposed Water Rate Design - WSF

	FY 2024	FY 2025
WSF (Residential, Blocks 1 & 2)	\$0.00	\$0.00
WSF (All Other Blocks / Customer Classes)	\$1.84	\$1.84



Questions?





Meeting Date: March 30, 2023 **Agenda Type:** Items from Staff

From: Vania Fuentes-Caballero **Reviewed by:** Dawn Schriewer
Customer Service Manager Chief Financial Officer

Submitted by: Dawn Schriewer **Approved by:** Ian Taylor
Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Monthly Update on Customer Accounts

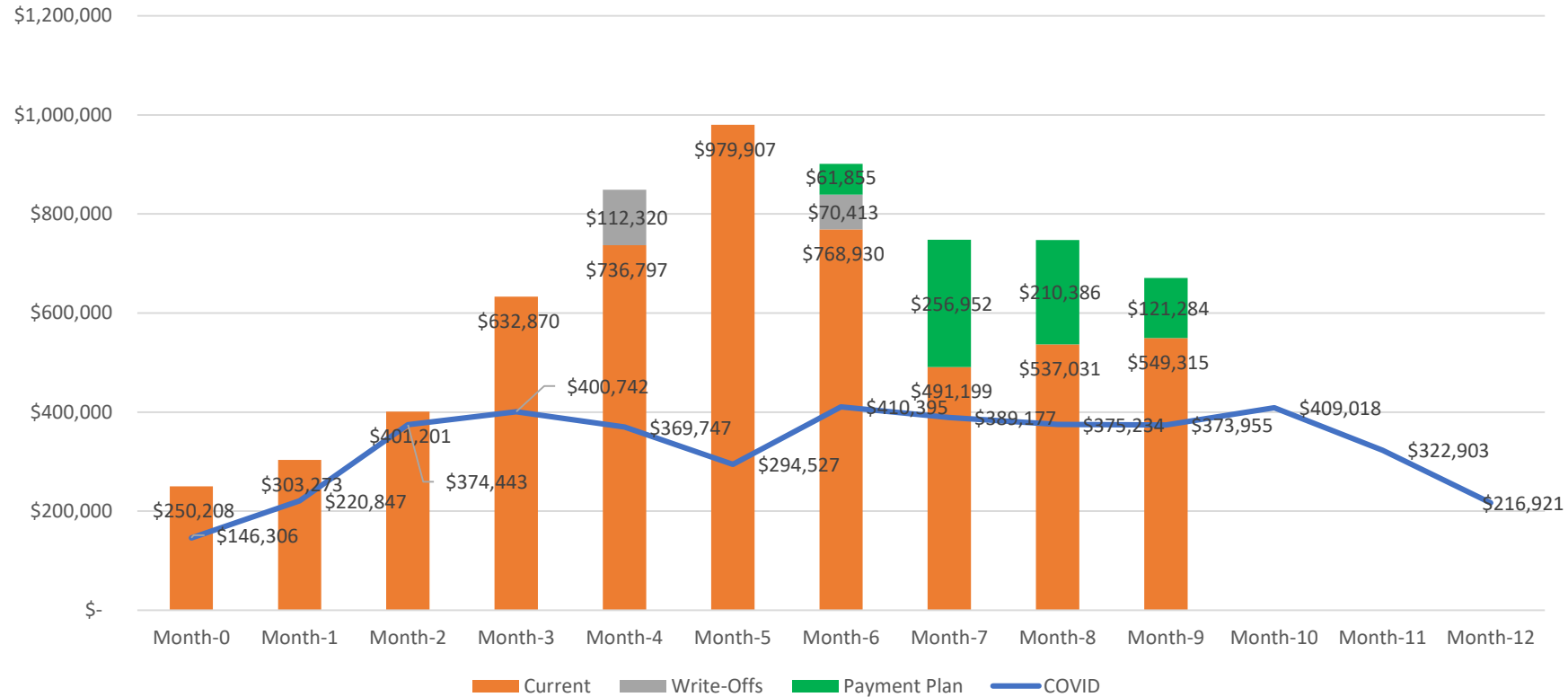


Monthly Update on Customer Accounts



Aging Account-Past Due Amount

COVID vs. Current



COVID:

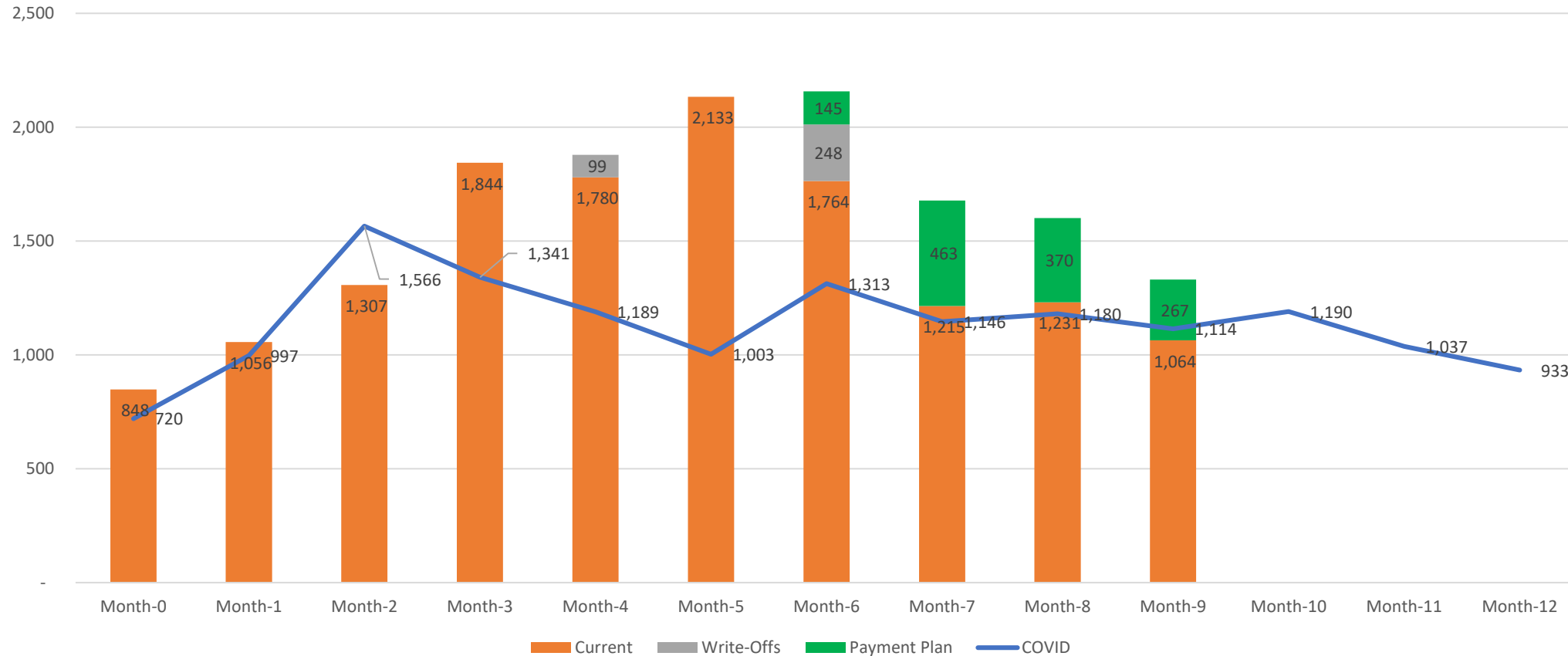
February 2020 (Month 0)
 March 2020 (Month 1) - Suspended Disconnects
 July 2020 (Month 5) - Reinstated Disconnects
 Month 12 = March 2021
 Payment Arrangement Timeline: Up to 6 Months

Current:

June 2022 (Month 0)
 August 2022 (Month 2) - Suspended Disconnects
 January 2023 (Month 7) – Reinstated Disconnection
 Payment Arrangement Timeline: Per Customer Basis

Aging Accounts-Number of Accounts

COVID vs. Current



COVID:

February 2020 (Month 0)
 March 2020 (Month 1) - Suspended Disconnects
 July 2020 (Month 5) - Reinstated Disconnects
 Month 12 = March 2021
 Payment Arrangement Timeline: Up to 6 Months

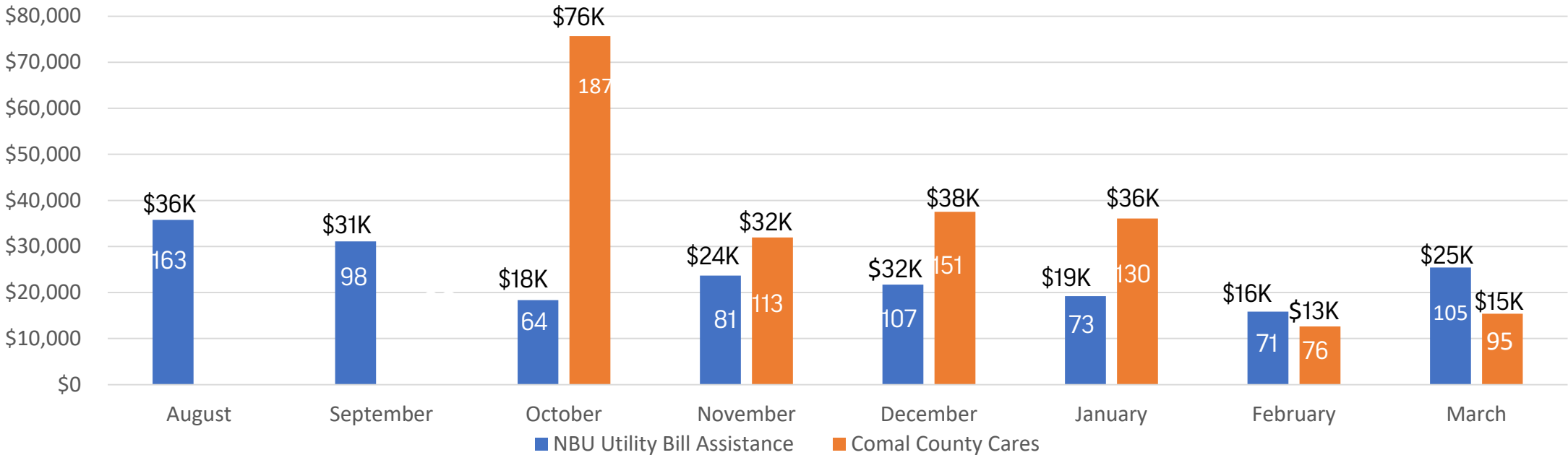
Current:

June 2022 (Month 0)
 August 2022 (Month 2) - Suspended Disconnects
 January 2023 (Month 7) – Reinstated Disconnection
 Payment Arrangement Timeline: Per Customer Basis

Assistance Programs

Number of Vouchers & Amount

NBU-Utility Bill Assistance & Comal County Cares



*Data updated on Wednesday 03/29/23

Disconnection Statistics:

- 4,012 disconnects scheduled since 1-3-23
- 286 disconnects scheduled this week
- 58 accounts remain disconnected (no payment)
- 376 accounts have been finalized due to no payment or new occupant applied for service
- 152 payment arrangements are active

Disconnection Guidelines:

NBU stays within the PUCT guidelines* for processing disconnects. Disconnections due to non-payment are suspended when the National Weather Service has issued one of the following extreme weather conditions:

Excessive Heat Advisory:

- The Heat Index is expected to reach 105 degrees F, or higher, for that day
- The maximum air temperature is expected to reach 100 degrees F, or higher, for that day

Winter Weather Advisory:

- The temperature is expected to remain 32 degrees F, or below, for that day

*Chapter 25.29 Disconnection of Services

Financial Assistance

- **NBU** will continue to fund **The Utility Bill Assistance** program through the New Braunfels Food Bank. NBU employees have been supporting in screening applications.
- **ARPA Funding:** The McKenna Foundation and the City of New Braunfels, together with the New Braunfels Food Bank, the Family Life Center, Community Council and the Salvation Army have partnered to assist income-constrained households within the New Braunfels city limits with their utility bills. These agencies will consider requests for assistance through the application on comalcountycares.com
- **Texas Utility Help:** Texas Utility Help can give financial assistance to qualified Texas homeowners and renters with low income. Eligible expenses include electricity, gas, propane, water, and wastewater.
- **Texas Homeowner Assistance Program:** Texas Homeowner Assistance provides financial assistance to qualified Texas homeowners who have fallen behind on their mortgage, utility payments, and related expenses due to the COVID-19 pandemic.



Questions





Meeting Date: March 30, 2023 **Agenda Type:** Items from Staff

From: Missy Quent **Reviewed by:** Ashley Van Booven
Energy Risk Manager Director of Finance

Submitted by: Dawn Schriewer **Approved by:** Ian Taylor
Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Power Supply Update Including Changes to the Power Stabilization Fund



Power Stabilization Fund Update



NBU Board of Trustees Meeting

March 30, 2023

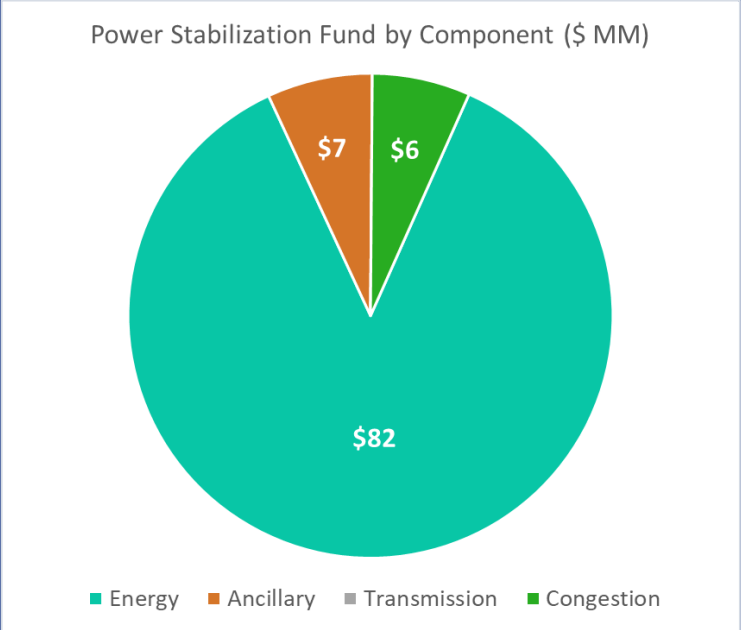
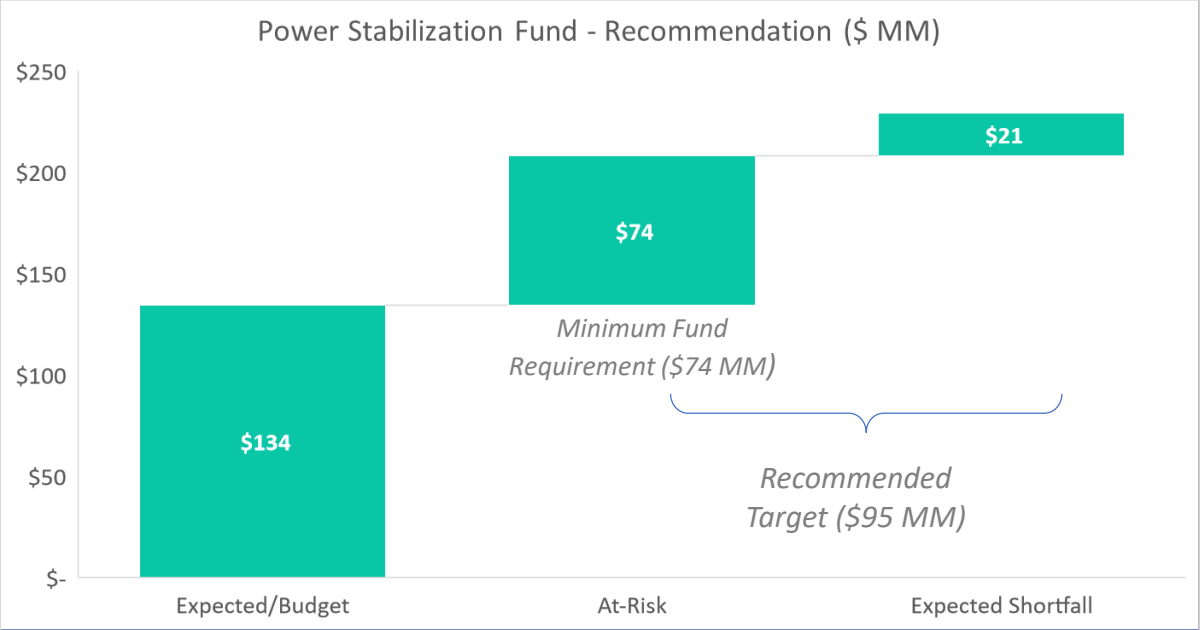


TEA Analysis

- Reviewed NBU's current calculation and data
- Conducted analysis based on stochastic modeling
- Looked at 1000 iterations

Results

For FY23/24, options:



Represents Recommended Target (\$95 MM)

Plan

- Selected the recommended \$95M Target
- Will fill over a six-year period (FY22-FY28)
 - ~\$8M in reserves collected YTD
- Analysis will be updated annually



Meeting Date: March 30, 2023 **Agenda Type:** Items from Staff

From: Ryan Kelso **Reviewed by:** Ryan Kelso
Chief Operations Officer Chief Operations Officer

Submitted by: Ryan Kelso **Approved by:** Ian Taylor
Chief Operations Officer Chief Executive Officer

RECOMMENDED ACTION: Quarterly Capital Update



Quarterly Capital Update

FY 2023, Q2

Overview

- Current Program Status through Q2
- Performance & Accomplishments
- Feature Projects

Overall CIP Budget FY 23 – FY 27

Item 6.



\$808M

Total 5 Year Budget*

*Not Including Overhead or Internal Labor



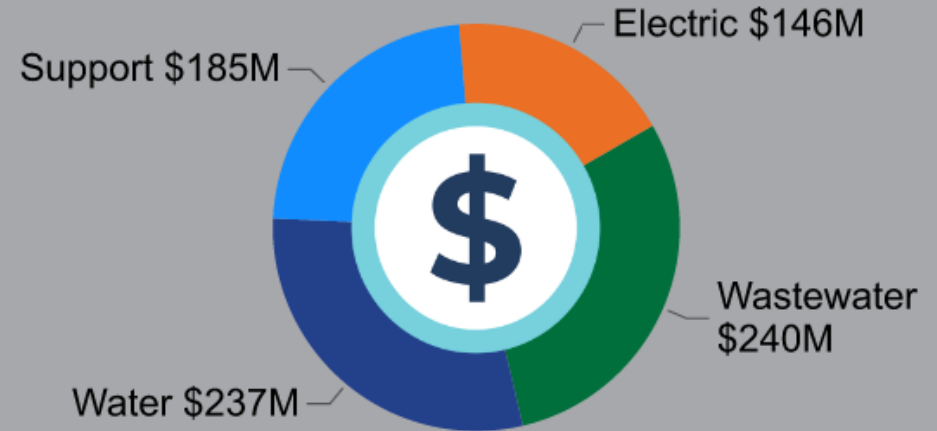
161

Total Projects

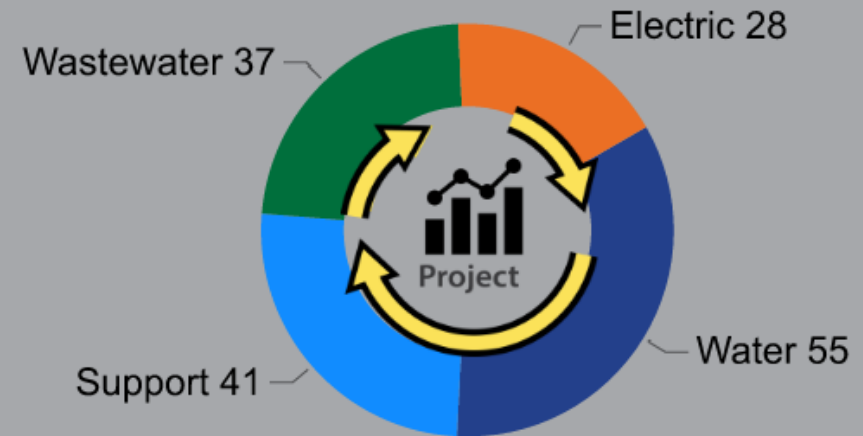


88

Projects in FY23

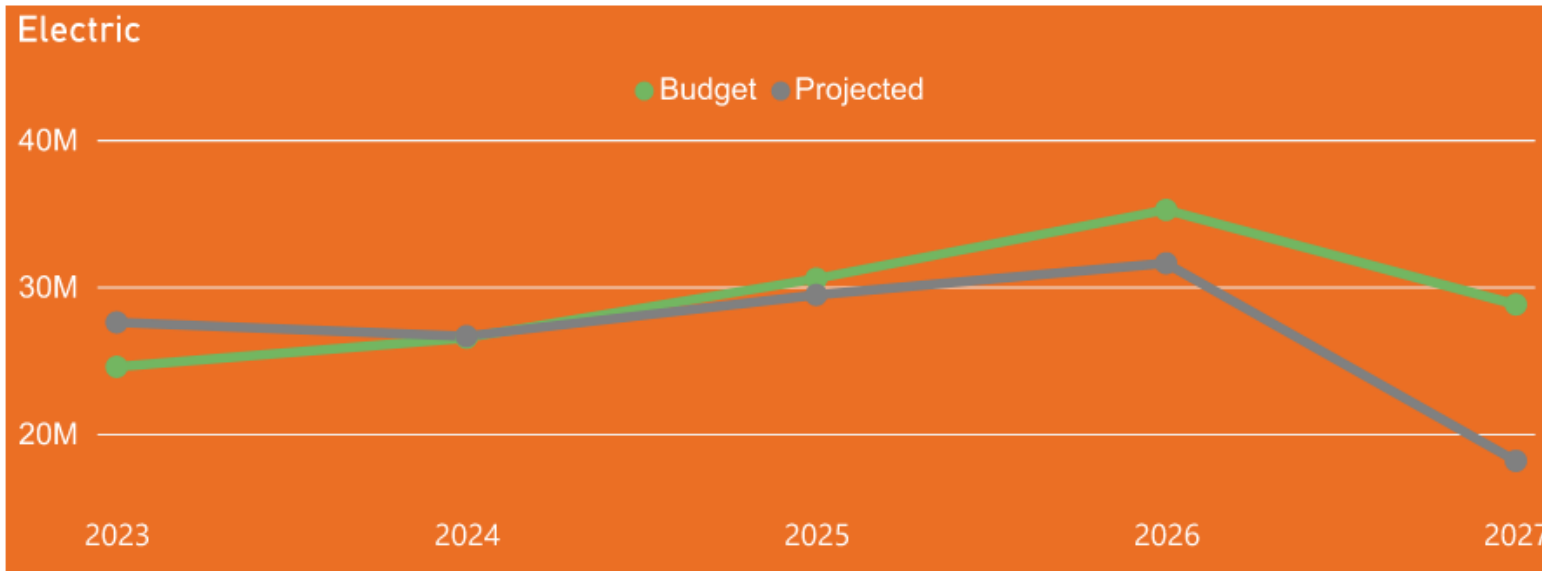
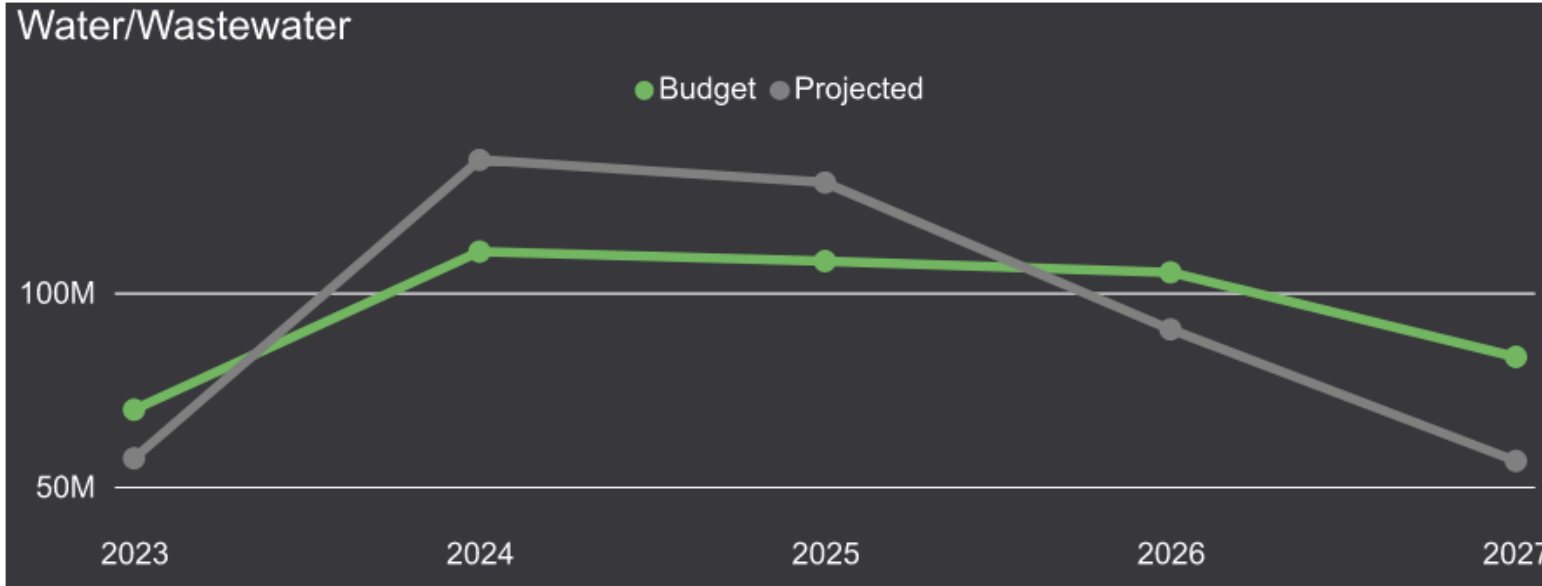


Budget



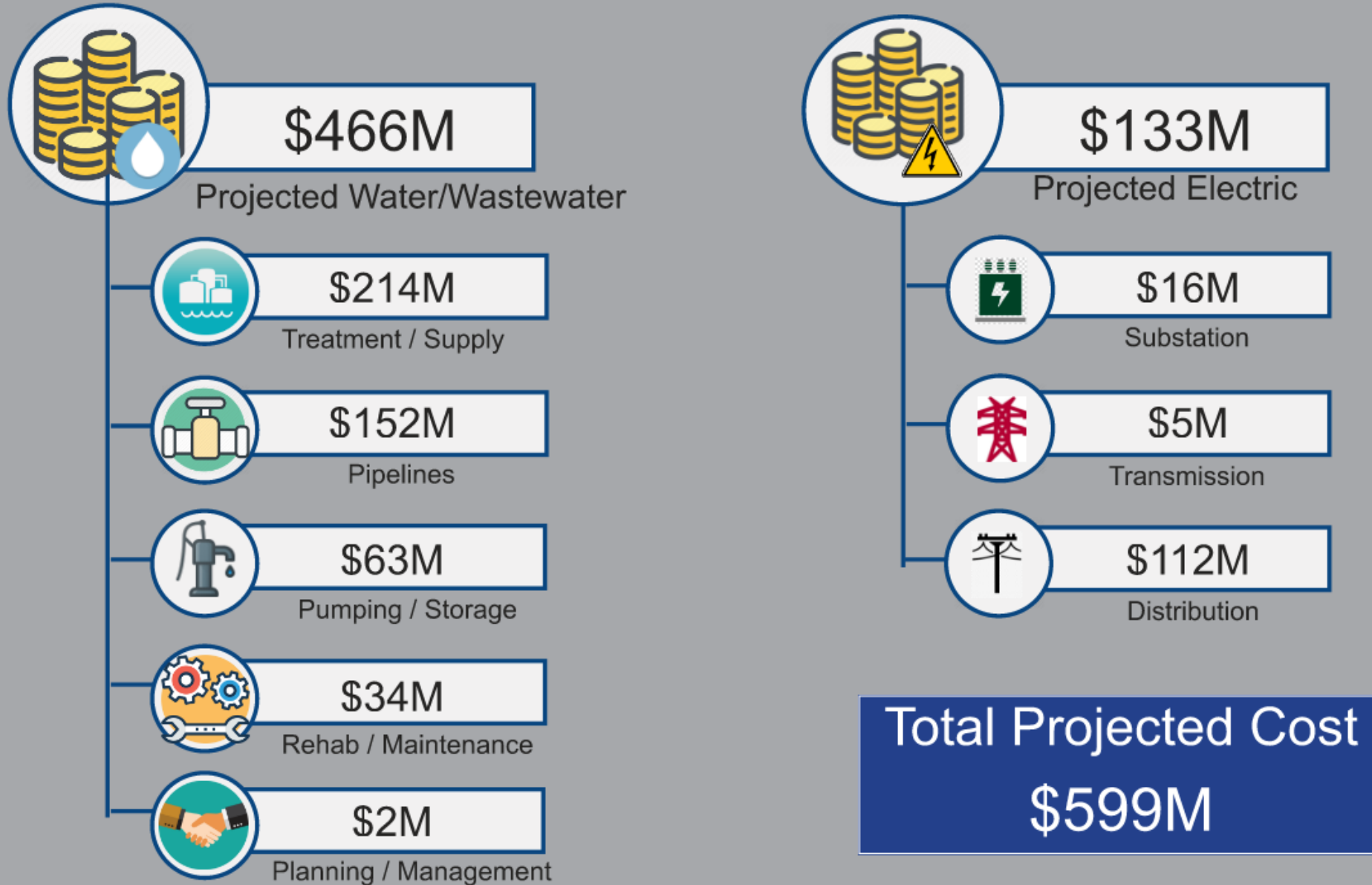
Projected Vs. Budgeted Capital Spending

Item 6.



FY23 to FY27	
Water/Wastewater	
Budgeted	\$477.1M
Projected	\$466.0M
Electric	
Budgeted	\$145.6M
Projected	\$133.4M
Total Variance	
\$23.4M	

Projected Capital Cost Breakdown Item 6.



Project Stage

Planning Design/Land Bidding Construction Complete Future



Water



Wastewater

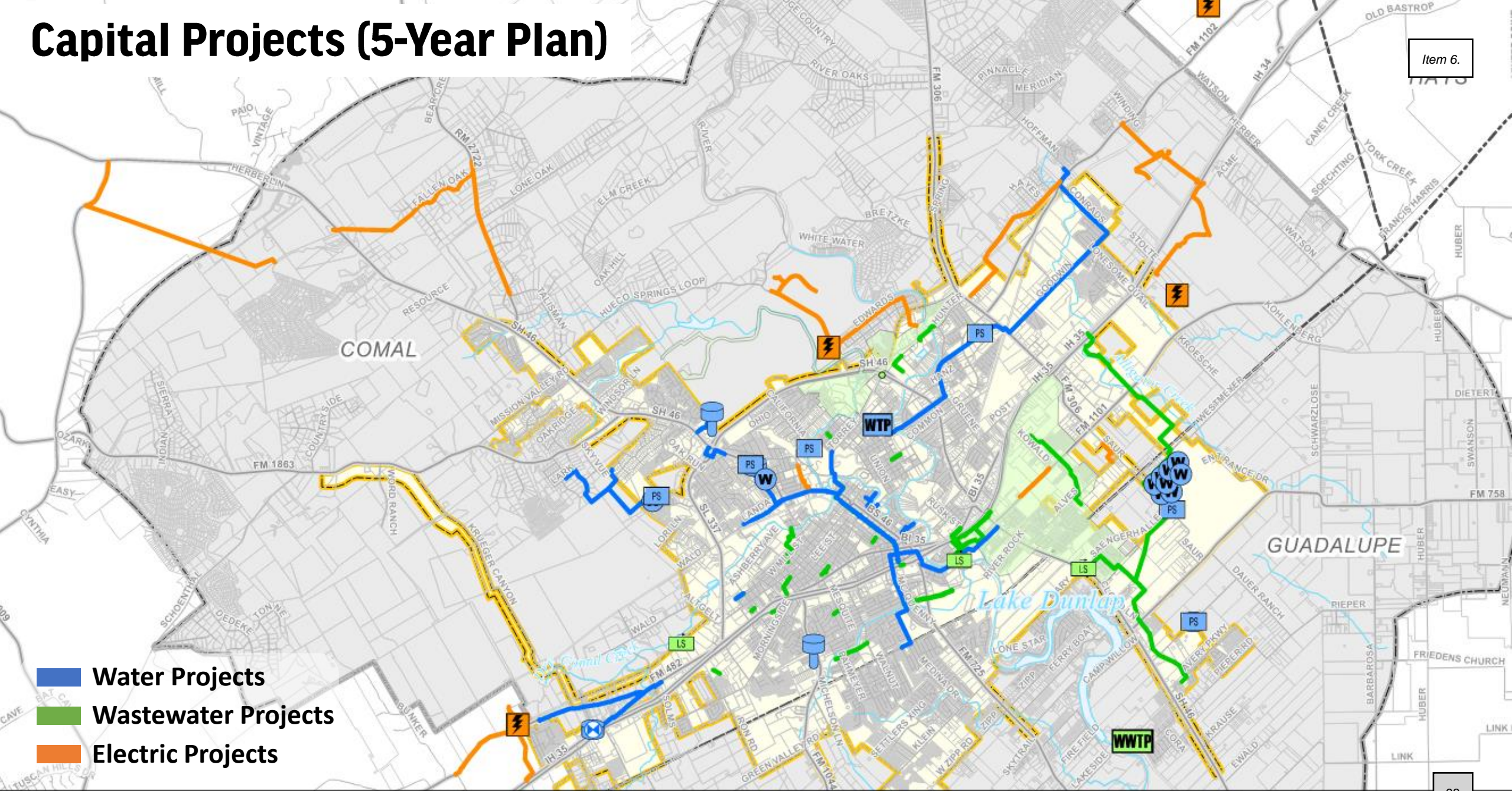


Electric



Capital Projects (5-Year Plan)

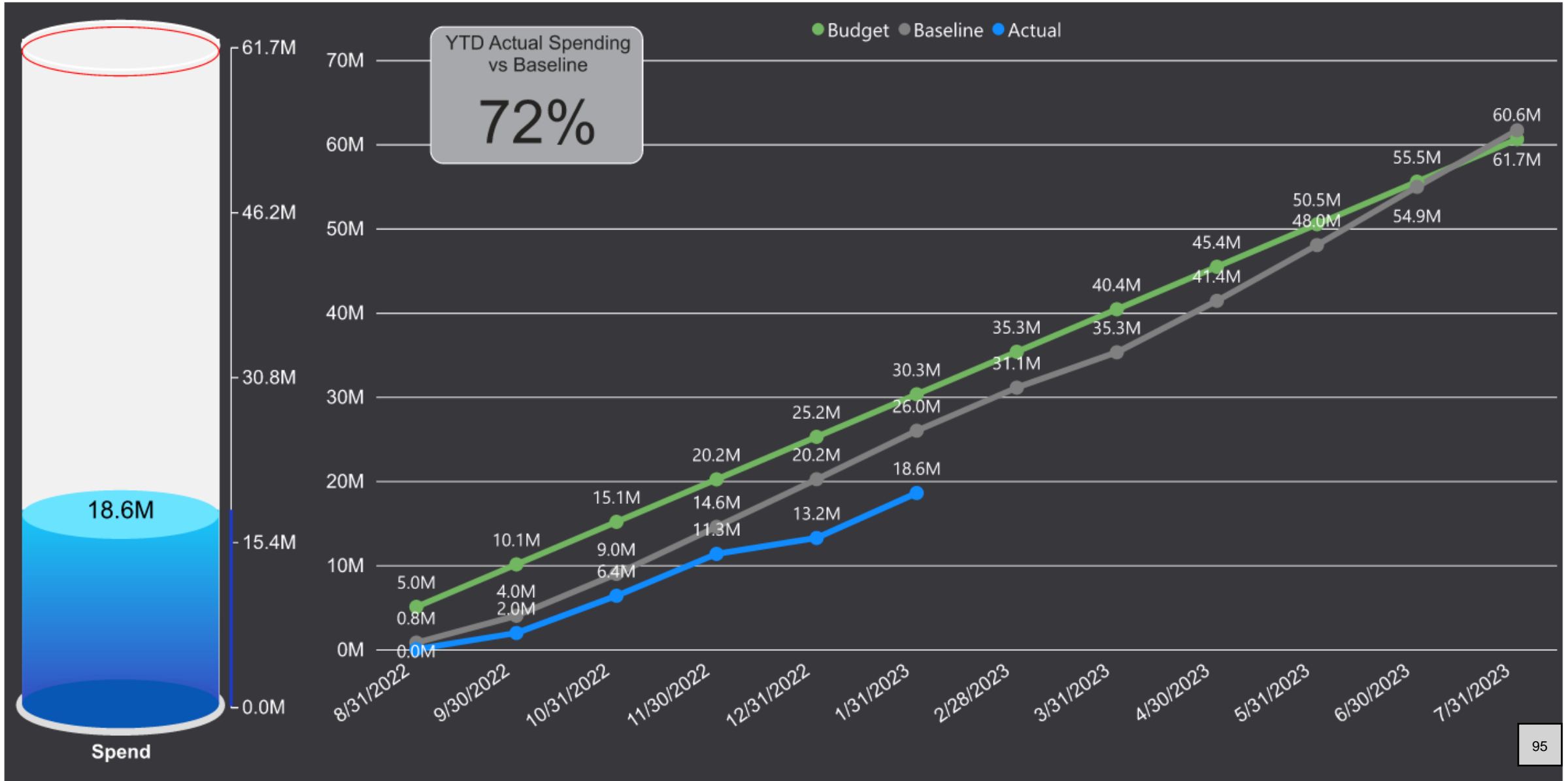
Item 6.



CIP Performance & Accomplishments

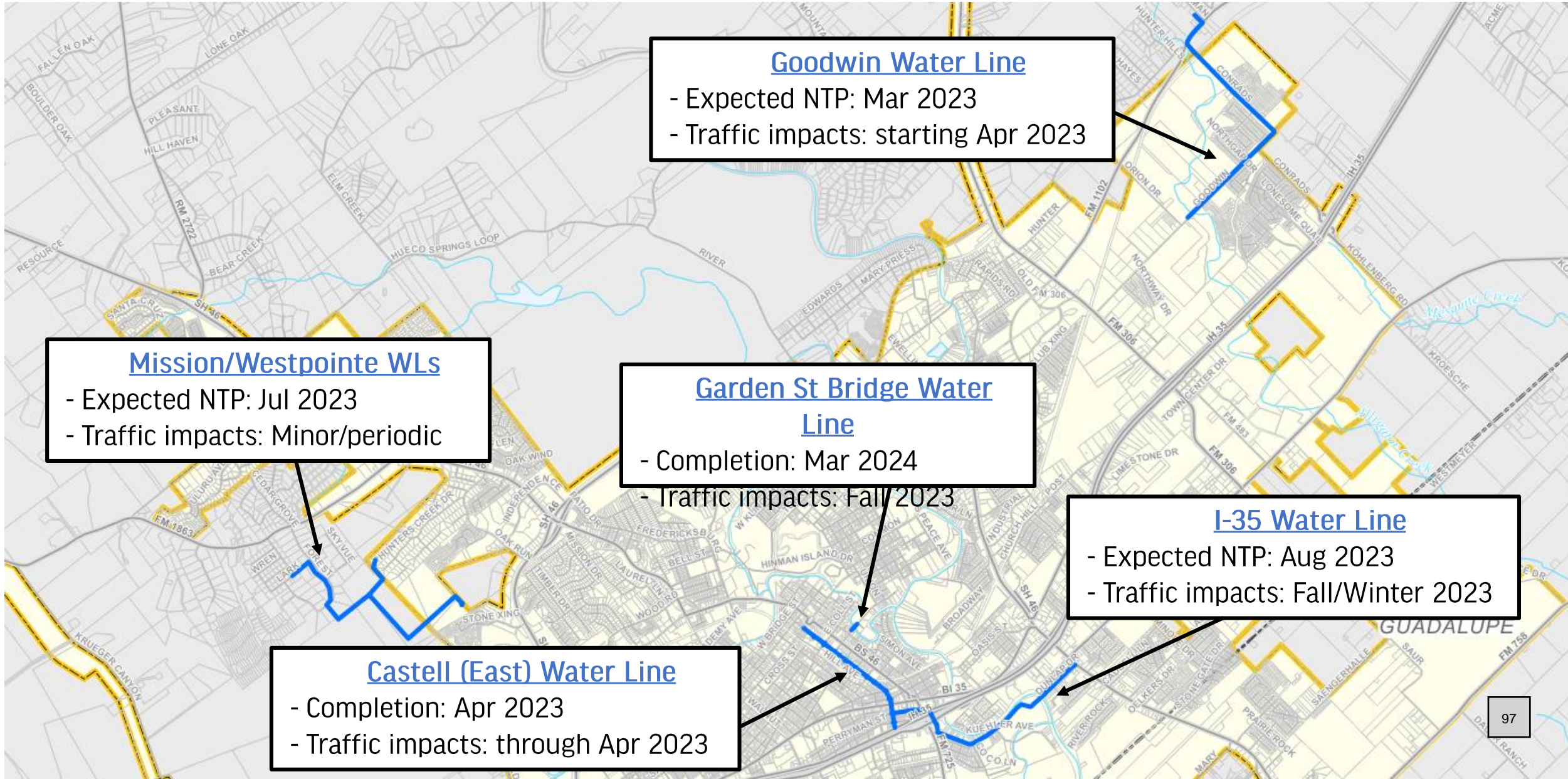
W/WW Baseline Vs. Actual Spending

Item 6.

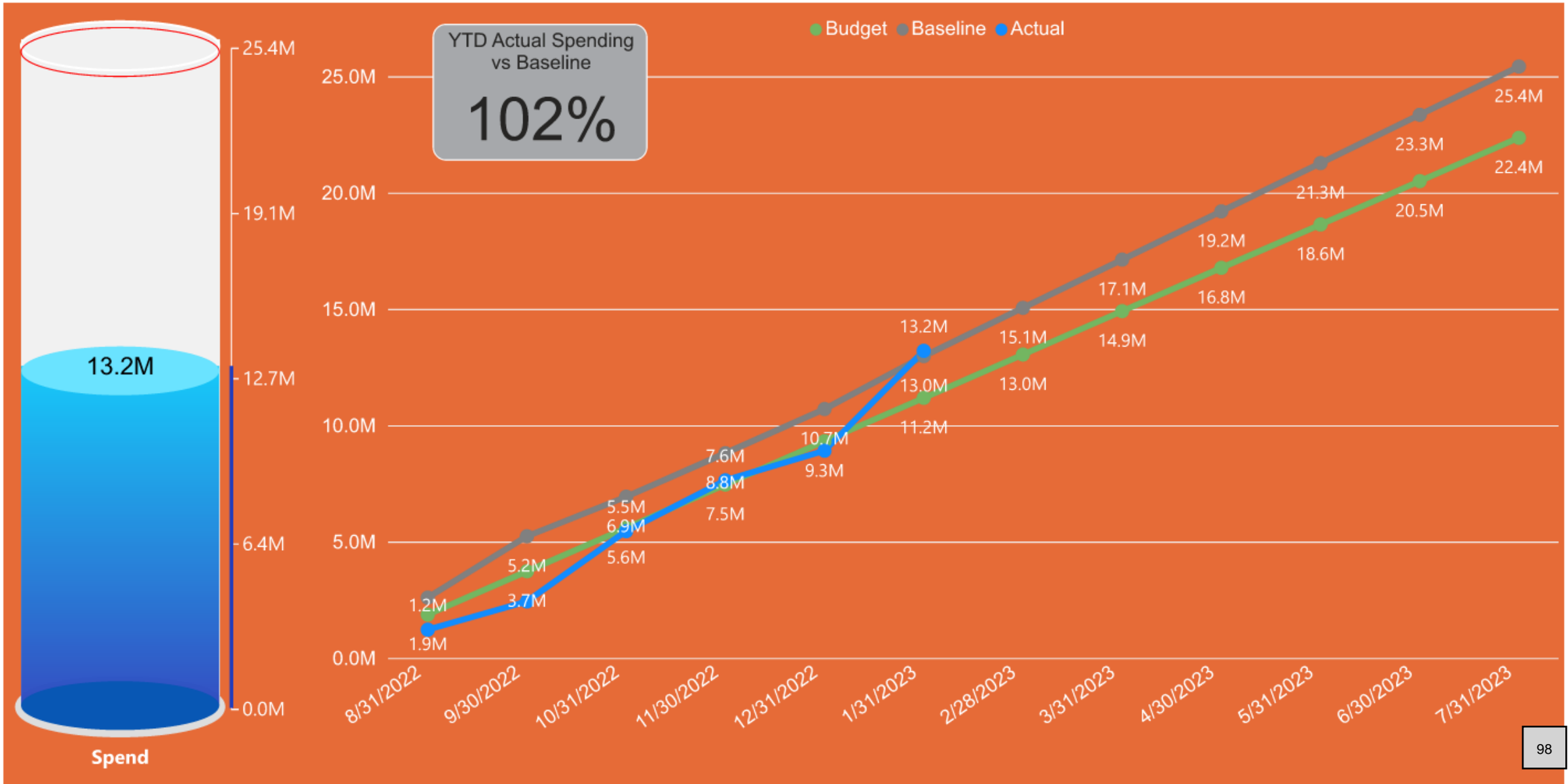


- Trinity Water Treatment Plant and Wellfield have been given Construction Notice to Proceed
- McKenzie WRF Expansion currently being advertised
- Major Water Lines are nearing completion
 - SWTP Discharge Line
 - McQueeney Rd Water Line
 - Castell Avenue Water Line





Electric – Baseline vs Actual Spending Item 6.



- Continue to manage Supply-Chain Challenges with distribution transformers.
 - Worst case backlog, 12 subdivisions Oct 2022.
 - Worst case subdivision timeframe, Veramendi 14-4 @ 9 Months. (Switchgear Delivery)
 - All developers have been kept informed on their project status, monthly most typically.
- Meter Count Growth, +1000 customers exact halfway through FY23. (4.0% Growth Rate)
- New All-Time Distribution Only Peak 12/23/22, 323 MW momentary.



Completed Electric Projects

Industrial Substation PWT
Replacement, TXI T1 (\$1.1M)



Veramendi 16-1 (\$0.25M)
System Extensions Projects



Weltner Rd. 13 Feeder
(\$.9M)



Feature Projects



Grandview Discharge Line

Cost: \$5.8M

Construction NTP: February 2022

Expected Completion: April 2023

Purpose: Provide water conveyance of increased capacity at Well #4 to meet peak demand in the Kerlick and Downtown PZ's



SWTP Discharge Line

Cost: \$13.8M

Construction NTP: January 2022

Expected Completion: April 2023

Purpose: Provide efficient water conveyance from the SWTP to the Old FM 306 GST



N&S Kuehler WWTP Rehabilitation

Cost: \$41M

Advertisement: August 2023

Construction NTP: December 2023

Expected Completion: December 2025

Purpose: Rehabilitation of North and South Kuehler WWTPs including equipment replacement, safety improvements, and rehabilitation of existing structures.

South Kuehler WWTP Clarifiers Replacement

Cost: \$3.5M

Advertisement: March 2023

Construction NTP: September 2023

Expected Completion: September 2024

Purpose: Replacement of existing clarifiers at South Kuehler and replacement of weirs and launders with new Submerged Effluent Launder (SEL) technology

E.C. Mornhinweg T2 & Feeders

Cost: \$4.1M

Advertisement: March 2022

Construction NTP: June 2022

Expected Completion: December
2023

Purpose: Project is critical to supply
increase growth and to provide
service capacity to Cemex Quarry,
and to several open tracts in City of
Schertz.





QUESTIONS



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

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

Submitted by: Laura Rivers **Approved by:** Ian Taylor
Chief of Staff Chief Executive Officer

RECOMMENDED ACTION: Approve Minutes of the NBU Regular Board Meeting of February 23, 2023

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

- 1. February 23, 2023 Regular Board Meeting Minutes

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

**1:00 P.M.
THURSDAY, February 23, 2023
NBU BOARD ROOM
263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130**

Board President Judith Dykes-Hoffmann opened the meeting at 1:00 pm. A quorum of the NBU Board was present.

PRESENT

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

ABSENT

None

NBU PERSONNEL

Ian Taylor, Ryan Kelso, Dawn Schriewer, Connie Lock, Melissa Krause, David Hubbard, Greg Brown, and Laura Rivers

NBU CONSULTANTS

None

PLEDGE AND INVOCATION

Mayor Rusty Brockman led the pledge of allegiance and offered the invocation.

PUBLIC COMMENT

Ron Schmidt raised an issue regarding an emergency access easement near the intersection of Kuehler Road and Cocoa Road.

NBU EMPLOYEE RECOGNITIONS

1. Presentation of Service Pins

CEO Ian Taylor recognized Doug Vader for 20 years of dedicated service to NBU and Hector Montanez for 25 years of dedicated service to NBU.

2. Retirement Recognitions

CEO Ian Taylor stated that retiree Mary Annette Winchester opted not to be recognized during the Board Meeting.

ITEMS FROM THE CHAIR

ITEMS FROM STAFF

1. Legislative Update

The Board received an update from Shelly Botkin of the Texas Public Power Association, an update from Lauren Fairbanks of Moontower Public Affairs, Inc., and an update from NBU Chief of Staff Laura Rivers.

2. CEO'S Update

CEO Ian Taylor shared that NBU is a recipient of the Texas Water Development Board funding for its Trinity Expansion Project. A public meeting was held in January of 2023 discussing the project's scope, timeline, and environmental impacts. Two more public meetings will be held in the coming months to fulfill the Texas Water Development Board's funding requirements. Mr. Taylor shared that for the 32nd consecutive year, NBU was awarded the Certificate of Achievement for Excellence in Financial Reporting for its annual comprehensive financial report. Lastly, Mr. Taylor shared that NBU kicked off the annual NBU University Program on January 23, 2023.

3. Winter Storm Mara Recap

Ryan Kelso provided a recap on Winter Storm Mara.

4. Financial Update and Report

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

5. Monthly Update on Customer Accounts

Customer Service Assistant Manager Jenna Mathis and Customer Service Supervisor Erica Pillado provided an update on the status of NBU customer accounts.

6. Monthly Power Supply Update

Energy Risk Manager Missy Quent provided an update on NBU's power supply program.

7. Quarterly Investment Report

Finance Manager John Warren updated the board on the quarterly Investment Report.

8. Quarterly Strategic Plan Update

Senior Management provided an update on NBU's strategic plan.

9. Quarterly Communications Update

Chief Strategic Communications and Security Officer Melissa Krause provided an update on NBU's communications strategy.

10. Quarterly Headwaters at the Comal Update

Assistant Manager of the Headwaters at the Comal Lauren Strack provided an update on the Headwaters at the Comal

CONSENT ITEMS FOR ACTION

Consent Item #13, "Authorize CEO or His Designee to Negotiate and Execute a Guaranteed Maximum Price Amendment to the Construction Manager at Risk Contract with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase Two Site Work and Building Envelope" was pulled from the consent agenda for further discussion. Board Vice President Wayne Peters made a motion and Board Trustee Yvette Villanueva Barrera seconded the motion to authorize CEO or his designee to negotiate and execute a Guaranteed Maximum Price Amendment to the Construction Manager at Risk Contract with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase Two Site Work and Building Envelope as amended.

Board Trustee John Harrell made a motion and Mayor Rusty Brockman seconded the motion to approve the Consent Items for Action as follows: #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, and #12.

1. Approve Minutes of the NBU Regular Board Meeting of January 26, 2023
2. Approve Minutes of the NBU Special Board Meeting of February 2, 2023
3. Approve a Public Calamity Declaration Relating to Supply Chain Disruptions Resulting from the Covid-19 Pandemic for Purchases over \$250,000
4. Approve the Public Calamity Exemption Log from December 15, 2022, through January 15, 2023
5. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2022, through January 15, 2023
6. Approve the Change Order Log from December 15, 2022, through January 15, 2023
7. Approve the Electric Line of Business Alternative Procurements from December 15, 2022, through January 15, 2023
8. Authorize CEO or His Designee to Negotiate and Execute a Cooperative Agreement with Dell Marketing, LP for the Purchase of New Computers
9. Authorize CEO or His Designee to Negotiate and Execute a License and Maintenance Agreement with Smartworks for MeterSense Meter Data Management Software
10. Authorize CEO or His Designee to Negotiate and Execute a First Amendment with Urban Engineering, LLC (formerly, Urban Civil, LLC), for Water and Wastewater Capital Project Surveying Services
11. Ratify the Price Changes for the Purchase of One (1) 12 Yard Sewer Combo Unit Purchased from Santex Truck Centers, Ltd.
12. Authorize CEO or His Designee to Execute a Reimbursement Agreement between New Braunfels Utilities and Headwaters at the Comal for Phase Two of the Headwaters at the Comal Master Plan
13. Authorize CEO or His Designee to Negotiate and Execute a Guaranteed Maximum Price Amendment to the Construction Manager at Risk Contract with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase Two Site Work and Building Envelope

EXECUTIVE SESSION

Board President Judith Dykes-Hoffmann recessed the Open Session at 2:43 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, or Other Matters Protected by Attorney Client Privilege; Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege – Discussion Regarding First Amended and Restated Bylaws for the Headwaters at the Comal; Personnel Matters – Deliberate the Reassignment and Duties of the Managing Director of the Headwaters at the Comal Under the Proposed First Amended and Restated Bylaws; and Personnel

Matters – Quarterly CEO Evaluation. The Executive Session was opened at 2:50 pm and closed at 4:33 pm.

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

The Regular Session resumed at 5:09 pm. Board Trustee Yvette Villanueva Barrera made a motion and Board Vice President seconded the motion to accept the proposed settlement officer regarding New Braunfels Utilities v. Southerland Communities NB Land Properties, Ltd.; Copper Ridge, LLC d/b/a Southerland Copper Ridge, LLC; International Fidelity Insurance Company; and HARCO National Insurance Company, No. C2021-1500C (274thDist. Ct., Comal County, Tex. Sep. 14 2021). The vote was unanimous.

ACTION ITEMS

1. Discuss and Consider Adopting the First Amended and Restated Bylaws for Headwaters at the Comal and Appointing NBU Employees and the Board President to the Headwaters at the Comal Board of Directors as Recommended by the CEO

Board Vice President Wayne Peters made a motion and Board Trustee John Harrell seconded a motion to adopt the First Amended and Restated Bylaws for Headwaters at the Comal and appointing NBU employees and the Board President to the Headwaters at the Comal Board of Directors as recommended by the CEO.

ADJOURN

There was no further business and Board President Judith Dykes-Hoffmann adjourned the meeting at 4:35 pm.

Attest:

Judith Dykes-Hoffmann, President
Approved

Ian Taylor, Secretary of the Board
Chief Executive Officer

Date Approved: March 30, 2023



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

From: Heather Lockhart **Reviewed by:** Connie Lock
 Staff Attorney General Counsel & Chief Ethics Officer

Submitted by: Connie Lock **Approved by:** Ian Taylor
 General Counsel & Chief Ethics Officer Chief Executive Officer

RECOMMENDED ACTION: Approve a Public Calamity Declaration Relating to Supply Chain Disruptions Resulting from the Covid-19 Pandemic for Purchases over \$250,000

BACKGROUND

On March 13, 2020, the President of the United States declared a national emergency in connection with the Covid-19 pandemic. On the same day, the Governor of the State of Texas declared a state of disaster regarding the pandemic for all Texas counties. Over the last three years, the Covid-19 pandemic has caused supply chain disruptions and labor shortages that have affected industries across the United States, including the utility industry.

In order to ensure NBU's continued ability to provide water, wastewater, and electric services to its customers without disruption, NBU staff recommended approval of a Declaration of Emergency Event Relating to Supply Chain Disruptions Resulting from the Covid-19 Pandemic (the "Declaration") to the Board on February 24, 2022. The Declaration makes the finding pursuant to Section 252.022(a)(1) of the Texas Local Government Code that a public calamity exists relating to supply chain disruptions resulting from the Covid-19 pandemic. This Section exempts municipalities, including municipally owned utilities like NBU, from the competitive procurement process for procurements due to a public calamity requiring the immediate appropriation of money to relieve the necessity of its residents or to preserve its property. For any purchases made under this Declaration, NBU staff will verify that the purchase is a supply chain matter and report it to the Board at its next regularly scheduled meeting.

On February 24, 2022, the Board of Trustees approved the Declaration, and subsequently extended the Declaration on March 31, 2022, April 28, 2022, May 24, 2022, June 30, 2022, August 25, 2022, September 29, 2022, October 25, 2022, December 8, 2022, January 26, 2023, and February 23, 2023.

As supply chain conditions remain unchanged, NBU staff requests that the Board of Trustees continue to extend the Declaration until the Board of Trustees meets again on April 27, 2023.

FINANCIAL IMPACT

The total financial impact of extending the Declaration is \$0.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

EXHIBITS

1. Declaration Relating to Supply Chain Disruptions Resulting from the Covid-19 Pandemic for Purchases over \$250,000

**DECLARATION OF EMERGENCY EVENT
RELATING TO SUPPLY CHAIN DISRUPTIONS RESULTING FROM THE
COVID-19 PANDEMIC
(PURCHASES OVER \$250,000)**

WHEREAS, on March 13, 2020, by Proclamation 9994, the President of the United States declared a national emergency concerning the COVID-19 pandemic;

WHEREAS, on March 13, 2020, by Proclamation, the Governor of the State of Texas declared a state of disaster for all counties in connection with the COVID-19 pandemic;

WHEREAS, this worldwide pandemic has caused labor shortages and supply chain disruptions affecting industries across the United States;

WHEREAS, the federal government has recognized impacts on the economy from these supply chain issues and has created a Supply Chain Disruptions Task Force to address supply chain challenges to the economy; and

WHEREAS, these supply chain disruptions have impacted NBU’s ability to provide water, wastewater, and electric services to its customers.

NOW, THEREFORE,

By virtue of the authority vested in me and in accordance with Section XI.C. of the NBU Purchasing Policy, the **BOARD DECLARES** an emergency event relating to supply chain disruptions resulting from the COVID-19 pandemic under Texas Local Government Code Section 252.022(a)(1), which allows a procurement to be made without using the competitive procurement process due to public calamity requiring the immediate appropriation of money to relieve the necessity of NBU customers. The Board further declares that purchases made pursuant to this declaration shall only be made as a direct result of supply chain issues as determined by the Chief Executive Officer or his designee(s).

This declaration shall continue and remain in effect until the next regular meeting of the Board of Trustees.

DECLARED this the _____ day of _____ 2023.

President, New Braunfels Utilities

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None

FINANCIAL IMPACT

The total financial impact of the Professional Engineering Water and Electric Contracts for the period of January 15, 2023, through February 15, 2023, is \$367,960.00.

LINK TO STRATEGIC PLAN

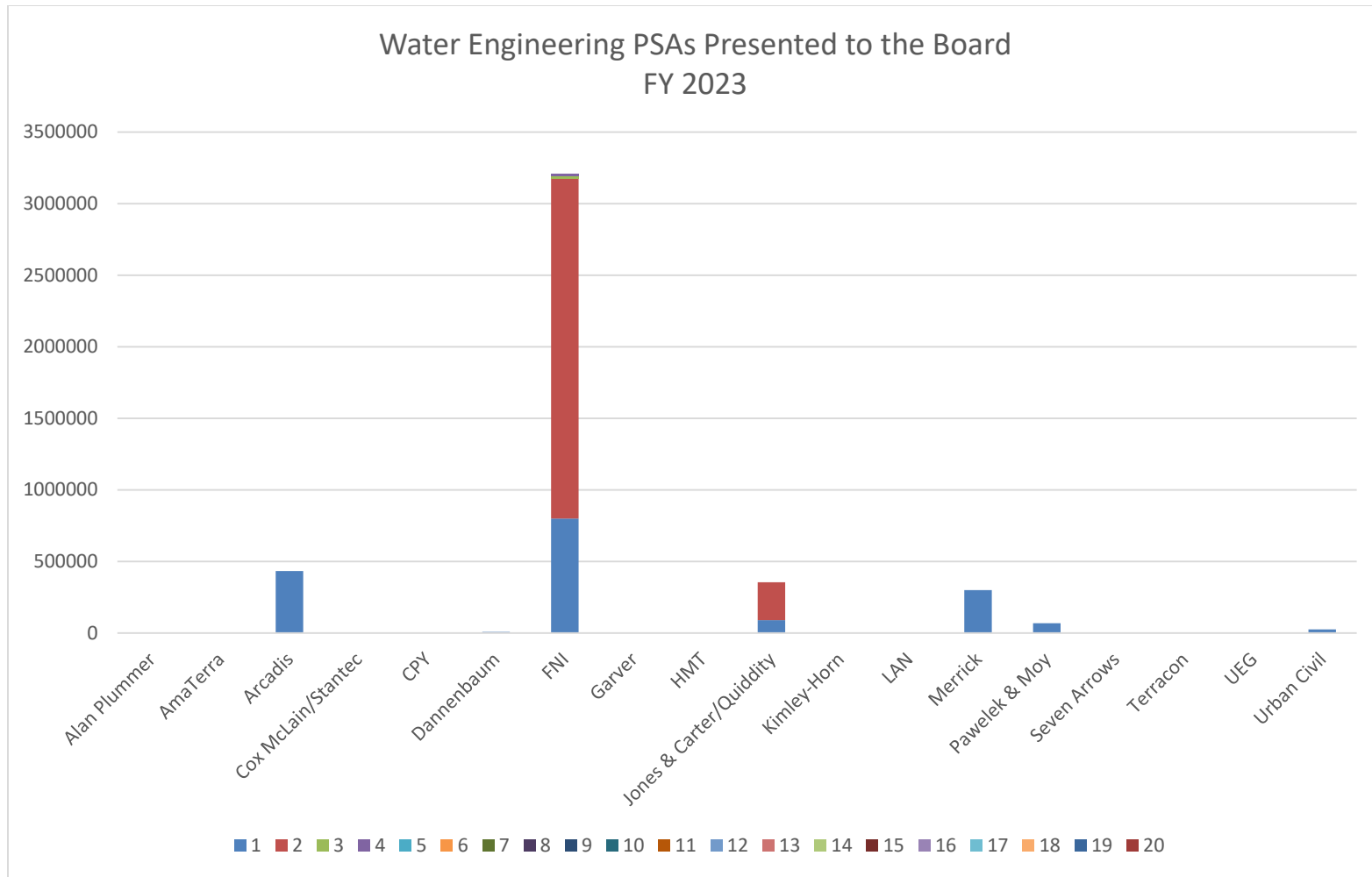
Customers and Community

People and Culture

Stewardship

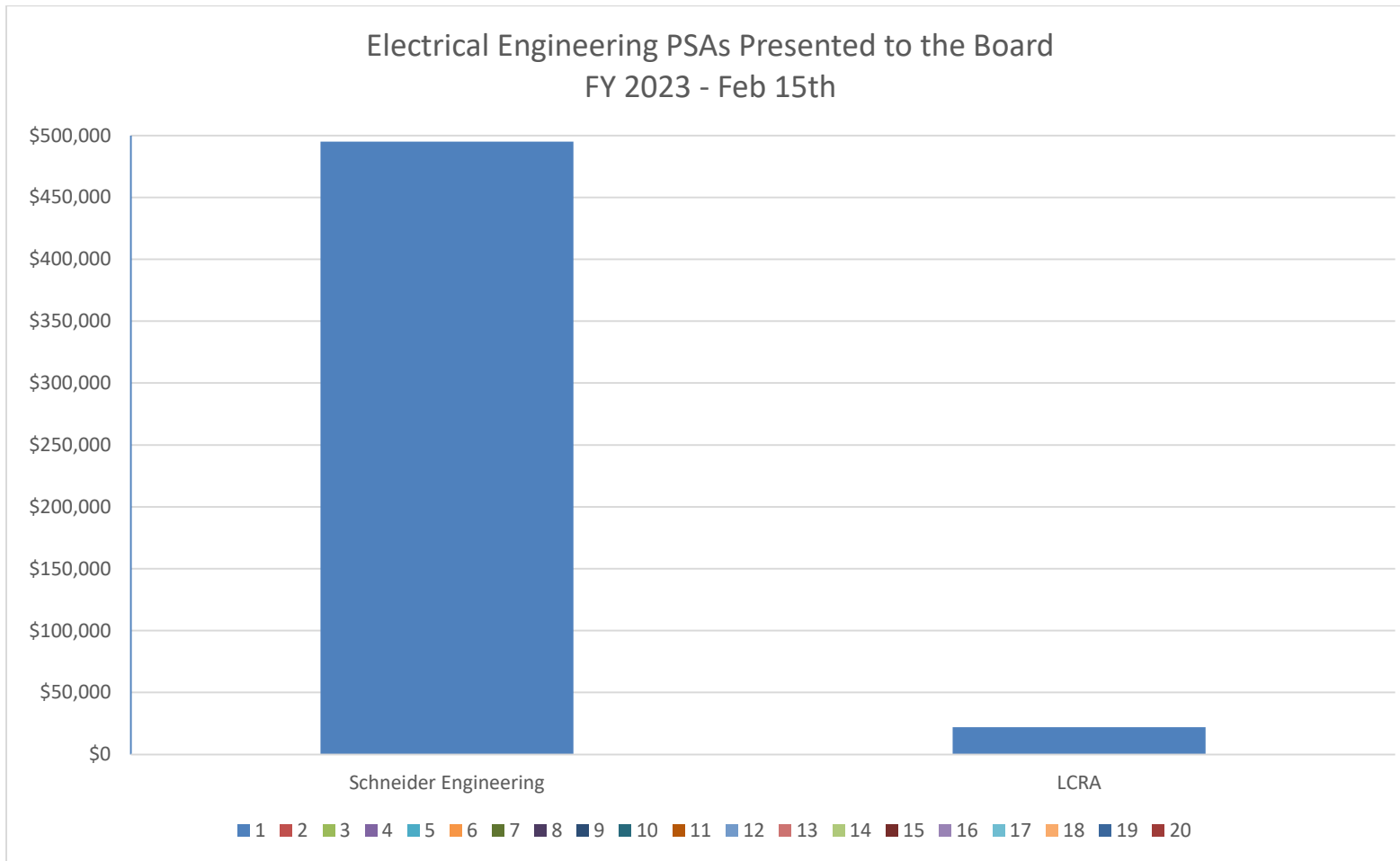
EXHIBITS

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



Vendor	Legend	Project Name	Value	Presented to Board
Alan Plummer	1			
		Total	\$0	
AmaTerra	1			
		Total	\$0	
Arcadis	1	Aquifer Strg & Recovery Project	\$432,919	10/25/2022
		Total	\$432,919	
Cox McLain	1			
		Total	\$0	
CP&Y	1			
		Total	\$0	
Dannenbaum	1	Saengerhalle Lift Station Expansion & Force Main	\$7,909	8/25/2022
		Total	\$7,909	
FNI	1	Construction Management & Inspection Services	\$799,010	8/25/2022
	2	Staff Augmentation	\$2,375,000	8/25/2022
	3	Trinity Expansion Treatment Plant	\$0	
	4	McKenzie WRF Expansion	\$17,144	
	5	Impact Fee Study	\$13,661	
	22			
		Total	\$3,204,815	
Garver, LLC.	1			
		Total	\$0	
HMT	1			
		Total	\$0	
INK Civil	1			
		Total	\$0	
Jones & Carter/Quiddity	1	South Kuehler Interceptor Phase 1	\$88,670	10/25/2022
	2	Kuehler WRF Access Road - Courtyard Drive	\$265,000	11/30/2022
	3	Kuehler WRF Rehabilitation	-\$2,182,000	

			Total	-\$1,828,330	
Kimley-Horn	1				
			Total	\$0	
LAN	1				
			Total	\$0	
Merrick	1	Development Plan Review		\$300,000	1/26/2023
			Total	\$300,000	
Pawelek & Moy	1	North Kuehler Manhole Rehabilitation - Segment 3		\$67,960	
			Total	\$67,960	
Seven Arrows	1				
			Total	\$0	
Terracon	1				
			Total	\$0	
UEG	1				
			Total	\$0	
Urban Civil		Avery Park 30" Water Main		\$25,000	9/29/2022
			Total	\$25,000	



Vendor	Legend	Project Name	Value	Presented to Board
Schneider Engineering	1	Engineering Services	\$495,000	N/A
		Total	\$495,000	
LCRA	1	Planning Assessment	\$22,000	N/A
		Total	\$22,000	



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

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

Submitted by: David Hubbard **Approved by:** Ian Taylor
Chief Administrative Officer Chief Executive Officer

RECOMMENDED ACTION: Approve the Change Order Log from January 15, 2023, through February 15, 2023

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, 2023, through February 15, 2023.

FINANCIAL IMPACT

Change orders less than \$50,000:

- North Kuehler 30- and 33-inch Interceptor Upgrade, Deduct for unused items: 60 LF remove and replace existing fence, Rehab 4' MH, 1 Point repair, BRH Garver Construction, LLC, Change Order No. 15, Cost decrease of \$16,883.00.
- Saengerhalle Lift Station Expansion & Force Main, Site fencing mod, 2”-meter, site fencing mod 2, pipe support and flanged 90s, pump mod, retaining wall and walkway for PLC., Pesado Construction Company, Change Order No. 4, Cost increase of \$29,483.09.

Change orders more than \$50,000:

- None reported during this period.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None

- Amendment to the Power Transformer Testing Contract, adds the following services: directs the vendor to pull oil samples on the transformers and load tap changers once a year, Tidal Power Services, Total amount of original contract, \$606,770, amount of Amendment No 1, \$64,400, New Total Cost of \$671,170.00.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

1. Exhibit A – Quote E1691XLS

Item 6.

Item	class no.	Description	Qty	UOM	PRIESTER	TEC	ANIXTER
					MELL		
					066000	097207	099398
1	285-084-00017	TRANSFORMER PD MT 25KVA 1PH NO TAPS 120/240	1	EA	\$7,350.00		
		(PER NBU SPECS)		TOTAL	\$7,350.00		
				DELIVERY	17-19 WKS		
2	285-084-00018	TRANSFORMER PD MT 50KVA 1PH NO TAPS 120/240	12	EA			\$4,721.43
		(PER NBU SPECS)		TOTAL			\$56,657.16
				DELIVERY			26-32 WKS
3	285-084-00019	TRANSFORMER PD MT 75KVA 1PH NO TAPS 120/240	21	EA			\$5,611.44
		(PER NBU SPECS)		TOTAL			\$117,840.24
				DELIVERY			26-32 WKS
4	285-084-00021	TRANSFORMER PD MT 100KVA 1PH NO TAPS 120/240	4	EA			\$9,968.57
		(PER NBU SPECS)		TOTAL			\$39,874.28
				DELIVERY			26-32 WKS
5	285-084-00022	TRANSFORMER PD MT 167 KVA 1PH NO TAPS 120/240	1	EA	\$14,750.00		
		(PER NBU SPECS)		TOTAL	\$14,750.00		
				DELIVERY	17-19 WKS		
6	285-084-00025	TRANSFORMER PD MT 250KVA 1PH NO TAPS 120/240	7	EA	\$20,765.00		
		(PER NBU SPECS)		TOTAL	\$145,355.00		
				DELIVERY	17-19 WKS		
7	285-084-00026	TRANSFORMER CONV. 15KVA 1PH NO TAPS 120/240	5	EA			\$2,648.57
		(PER NBU SPECS)		TOTAL			\$13,242.85
				DELIVERY			26-32 WKS
8	285-084-00028	TRANSFORMER CONV. 25KVA 1PH NO TAPS 120/240	5	EA		\$1,434.00	
		(PER NBU SPECS)		TOTAL		\$7,170.00	
				DELIVERY		STOCK	
9	285-084-00030	TRANSFORMER CONV. 37.5KVA 1PH NO TAPS 120/240	5	EA			\$3,417.15
		(PER NBU SPECS)		TOTAL			\$17,085.75
				DELIVERY			26-32 WKS
10	285-084-00032	TRANSFORMER CONV. 50KVA 1PH NO TAPS 120/240	10	EA		\$2,900.00	
		(PER NBU SPECS)		TOTAL		\$29,000.00	
				DELIVERY		23-25 WKS	
						REFURBISHED	
11	285-084-00034	TRANSFORMER CONV. 75KVA 1PH NO TAPS 120/240	2	EA			\$8,667.15
		(PER NBU SPECS)		TOTAL			\$17,334.30
				DELIVERY			26-32 WKS
12	285-108-00017	PADMOUNT SWITCHGEAR DEADFRONT SS ENCLOSURE 25KV -MD209	1	EA		\$39,995.00	
		(FEDERAL PACIFIC # PSE-9-54222-AS2-CC-E3-F4-HR)		TOTAL		\$39,995.00	
		(PER NBU SPECS)		DELIVERY		28-30 WKS	



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

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

Submitted by: David Hubbard **Approved by:** Ian Taylor
 Chief Administrative Officer Chief Executive Officer

RECOMMENDED ACTION: Approve Previously Unreported Alternative Procurements for the Electric Line of Business

BACKGROUND

The Purchasing Policy approved by the Board of Trustees on October 31, 2019, defines the process for the use of the alternative procurement procedure for the purchase of goods and services related to the electric utility, a process allowed by Section 252.022(c) of the Texas Local Government Code. This process, authorized by the Board of Trustees, requires NBU staff to notify the Board of any procurement over \$250,000 that utilizes the electric line of business procurement procedure.

While reviewing current practices, the Purchasing department found two (2) procurements had not been properly captured and reported to the Board as required by policy. The Purchasing department, under the leadership of Jesse Luna, conducted a review of previous purchases and contracts and identified two procurements that were not reported. The Purchasing department, beginning with the December 8, 2022, board meeting has changed internal processes to identify and properly report these procurements in a timely manner moving forward. Listed below are the procurements, in excess of \$250,000, using the electric line of business alternative procurement process that were previously unreported.

FINANCIAL IMPACT

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

- Interstate Roadway Illumination Repair, labor and materials contract to repair roadway illumination on IH-35, including lighting at exits, intersections, underpasses, bridges and boat ramp lighting, LEVY Company, Cost of \$500,000.00, Executed August 31, 2022.
- Solar Interconnection and Pole Attachments Administration, service agreement for professional services to administer solar interconnection and pole attachment requests, EN Engineering, LLC, Cost of \$300,000.00, Executed May 27, 2022.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

From: Jenna Mathis **Reviewed by:** Dawn Schriewer
 Customer Service Assistant Chief Financial Officer
 Manager

Submitted by: Dawn Schriewer **Approved by:** Ian Taylor
 Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Approve 2022 Third Quarter Charge-Off Accounts

BACKGROUND

Charge-offs for the third quarter of calendar year 2022 (July, August, September) netted \$140,408.89 for NBU accounts that have unpaid balances. NBU applied \$73,224.26 in customer deposits to the delinquent account balance of \$213,633.15, which reduced the total unpaid balance by 34%. Residential customers accounted for 97% of the number of charge-off accounts.

The accounts that included insufficient funds, due to returned checks and failed auto-draft payments, totaled \$7,633.48.

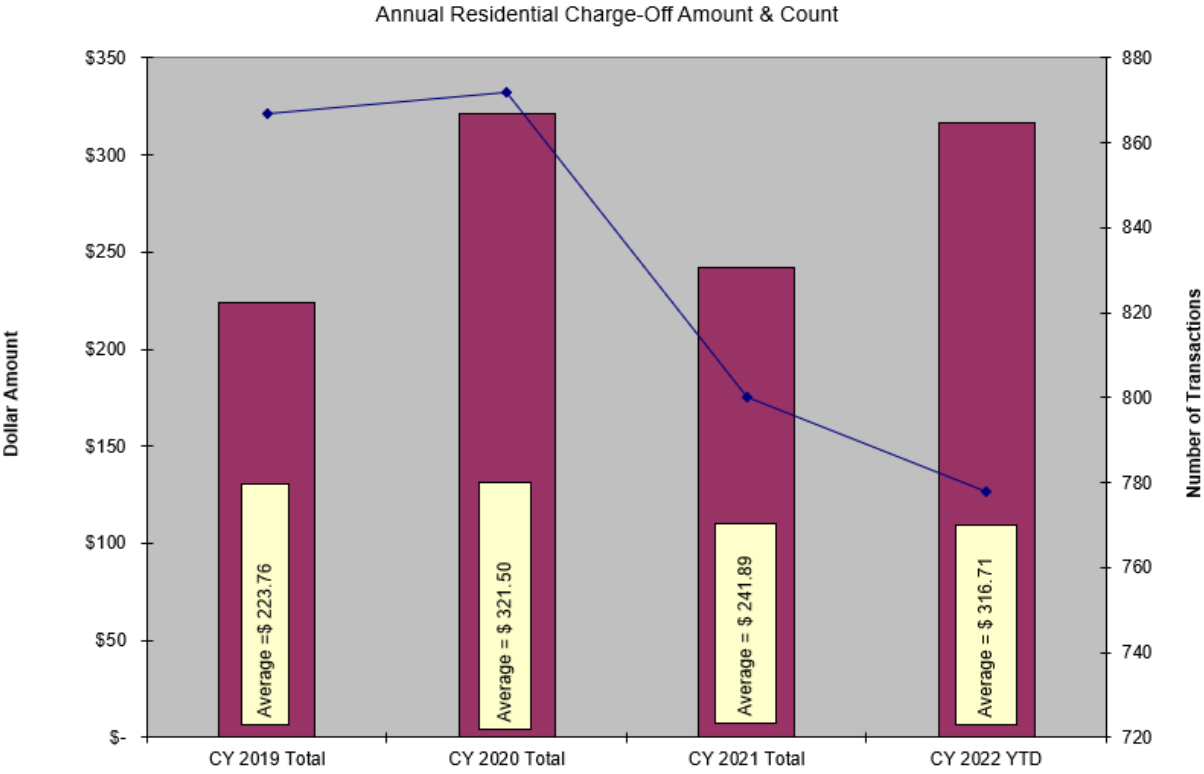
When compared to total revenue billings for the same quarter, the charge-off balance amounts to just over 1/10th of one percent. For every \$100 billed to our customers, we received \$99.83.

The third quarter of 2022 was impacted by market volatility, increase in natural gas, high heat indexes, and the suspension of late fees and disconnections due to non-payment. The increase in outstanding balances is due to higher utility bills and account deposits calculated on previous rates and not equaling a two-month annual average. The number of residential accounts included in the charge-offs increased by 16.49% compared to the previous 3 years' average for the same quarter, and the dollar amount increased by 48.43%.

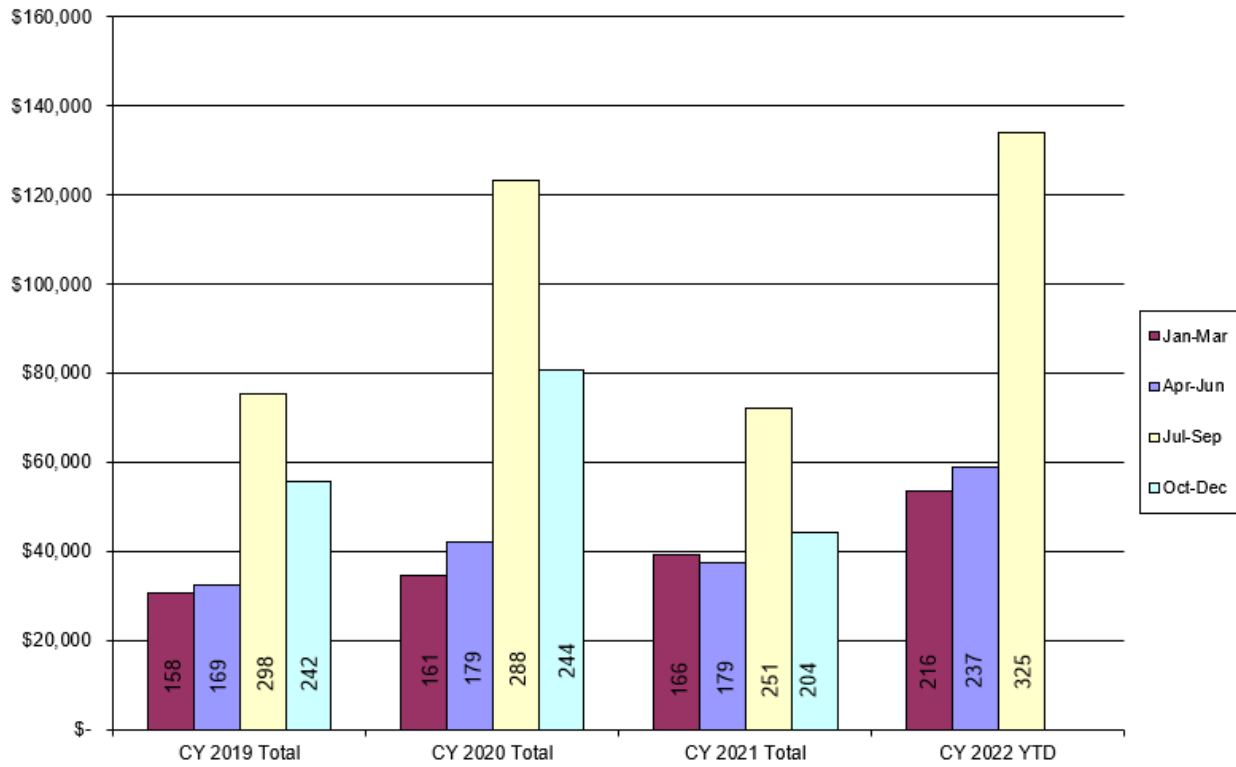
The NBU credit rating summary for this report is as follows:

Credit Rating*	Number of Active Customers	Number of Charge-off Customers	Percentage of Charge-off Customers
A	49,567	47	0.09%
B	7,049	143	2.03%

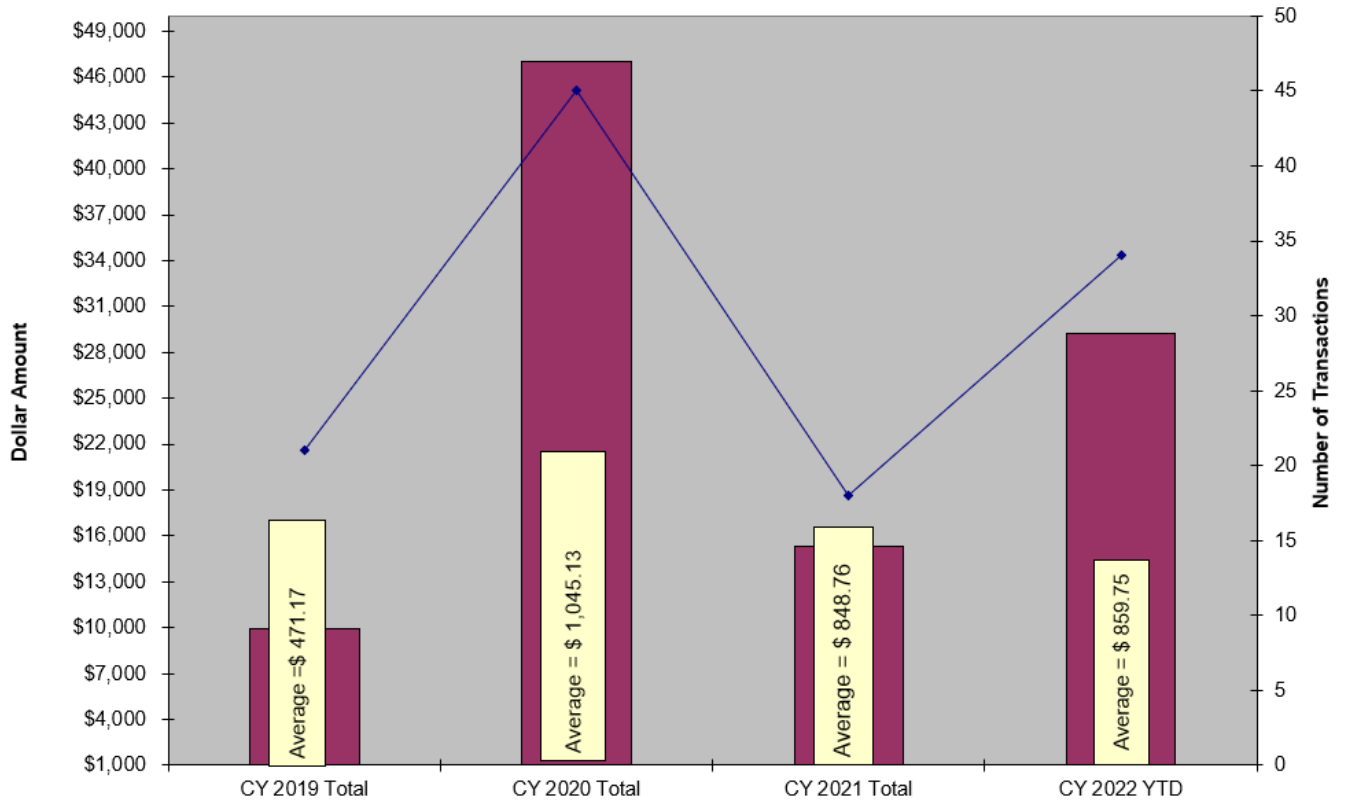
C	2,900	143	4.93%
D	0	1	-
Auto-Draft	6,805	3	0.04%



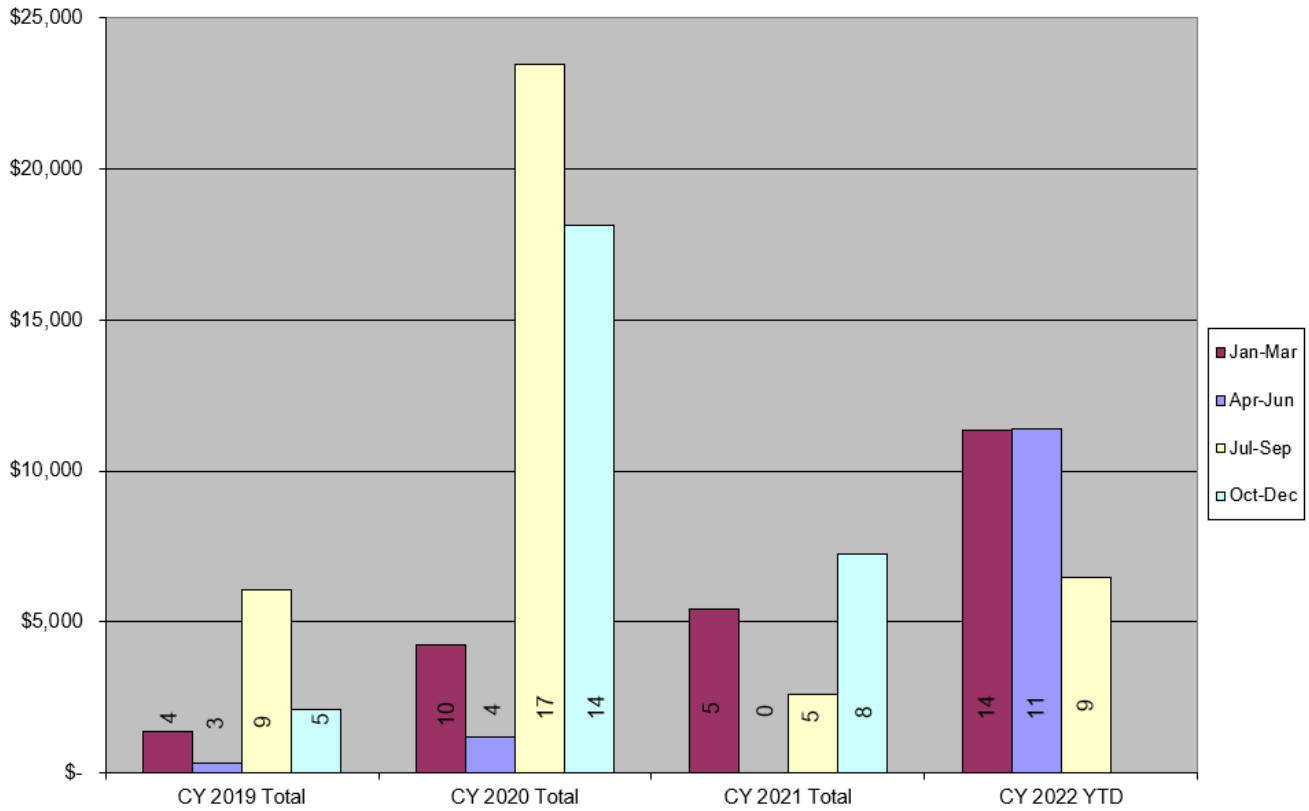
Residential - Quarterly Charge-Off Totals



Annual Commercial Charge-Off Amount & Count



Commercial - Quarterly Charge-Off Totals



FINANCIAL IMPACT

NBU has an estimate included in the Financial Operating Plan for charge off amounts and updates the estimate annually.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

- 1. Charge-off Summary



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

From: John Warren **Reviewed by:** Ashley Van Booven
 Finance Manager Director of Finance

Submitted by: Dawn Schriever **Approved by:** Ian Taylor
 Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize Proposed Changes to the New Braunfels Utilities Financial Policy

BACKGROUND

After a review of NBU's current Financial Policy, NBU staff recommends that the policy be amended as described herein.

NBU Staff recommends that the Financial Policy be revised to: update the language in Section VIII, subsection B, to state that NBU present an annual budget and financial operating plan to the Board of Trustees for approval prior to the start of the new fiscal year. This update will allow NBU to adjust the timing of the budget process to align with rate designs, cost of service studies, and other market conditions that may arise.

NBU's Financial Policy was last reviewed and approved on June 30, 2022.

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. Redlined Financial Policy
2. Clean Financial Policy

Policy Type		Approval Authority				Adopted	Effective
Board Approved		NBU Board of Trustees					
Responsible Executive		Responsible Department				Contact	
Dawn Schriewer		Finance				John Warren	
Reviewed/Approved by Executive Director		Reviewed/Approved by General Counsel & Chief Ethics Officer		Reviewed/Approved by CEO		Approved by NBU Board President	
Name	Date Signed	Name	Date Signed	Name	Date Signed	Name	Date Signed
Dawn Schriewer		Connie Lock		Ian Taylor		Judith Dykes-Hoffmann	
Signature		Signature		Signature		Signature	

I. General Policy Statement

New Braunfels Utilities (NBU) recognizes the importance of having a sound financial condition in order to meet its customer and public service responsibilities. It is NBU’s financial policy to strive to provide its electric, water and wastewater services at the lowest possible costs, consistent with high standards of reliability and innovative essential service. This financial policy is intended to form the framework within which NBU will preserve its financial integrity in order to meet its long-term goals. This policy has been developed in consideration of short- and long-term plans for construction and system additions. A periodic review of this financial policy with necessary revisions may be required to ensure that NBU maintains a high level of financial integrity in order to accomplish these plans. Since NBU’s Investment Policy also addresses NBU’s financial objectives, NBU’s Investment Policy should be used in concert with the Financial Policy.

The objectives of the financial policy are as follows:

1. **Financial Stability:** In seeking to fulfill its customer and public service objectives, NBU will maintain a high level of financial stability and will not compromise its long-term financial integrity to achieve short-term benefits.
2. **Funds from Operations:** NBU will establish rates and charges for services that are sufficient to support the conduct of its activities in an efficient and reliable manner. Funds from operations should provide the necessary funds to support its capital improvements program and maintain a debt service coverage ratio sufficiently in excess of the 1.40x Bond Indenture requirement for the issuance of additional indebtedness. By providing an ample cushion in its debt service coverage ratio, NBU should be in a position to issue additional indebtedness in the market at favorable terms and conditions.

II. Funds from Operations

Each year, NBU staff will develop projected revenue levels and the projected reserve requirements for the upcoming fiscal year and estimate its projected impact on the financial condition of the utility. These projections will be developed after consideration for bond ratings, construction requirements, current business conditions, economic projections, load growth assumptions, and the projected size and frequency of rate adjustments. Specifically, the electric, water, and wastewater systems shall be managed individually to allow for financial self-sufficiency to the extent practicable with regard to their respective cash inflows and outflows, including, but not limited to revenue, general operating expenses, and capital expenditures.

General Fund expenditures will have the following priorities of obligation:

- A. Payment of all reasonable expenses for the operation and maintenance of the electric, water, and wastewater systems.
- B. Payments to meet all debt service requirements of outstanding bond indebtedness including all Interest and Sinking Funds and Bond Reserve Funds.
- C. Payments to any and all Restricted Funds including the System Contingency Fund, Power Stabilization Fund, and other specific funds as directed by the Board of Trustees. See Appendix A for the System Contingency Fund Policy.
- D. Payment to the City of New Braunfels of an amount based upon a formula approved by a Board of Trustees Resolution or other directive.
- E. All net surplus after payment of A through D above may be used to fund necessary capital equipment purchases, system expansion and renovations. All remaining funds will be applied toward targeting a budgeted ending cash balance of 1/4th or more of the upcoming fiscal year's budgeted operating costs (including purchased power cost and purchased water cost).

III. Revenue

In general, NBU shall rely on individual electric, water, and wastewater service rates for all revenue, however, other sources of revenue will be developed within each of the respective lines of businesses' operation and connection policies. Specific policies regarding Water and Wastewater Capital Recovery Fees (e.g., impact fees) will be maintained with receipts separately accounted for and applied to capital system expansions or extensions.

NBU will develop and design rates to recover its costs of specific services and provide a predictable flow of revenues.

IV. Pricing, Rates, and Reserves

NBU will determine revenue requirements for its electric, water, and wastewater services based upon an equitable allocation of costs. All rates will be cost and/or market based

with specific cost-of-service allocations to all necessary areas of required revenues. Cost-of-service updates will be prepared on a periodic basis for comparisons to actual and projected revenue and expenses. Proper and accurate coordination of budget requirements, unusual revenue requirements, and changes in capital requirements will be addressed in each cost-of-service update. NBU will evaluate the proper reserve requirements annually to mitigate NBU's risk.

V. **Financing**

Since its founding in 1942, NBU has utilized a combination of equity, or revenue surplus, and long-term revenue bonds to finance additions to its electric, water, and wastewater systems infrastructure. Long-term revenue bonds are particularly appropriate in situations where it is desirable to spread the financing cost of the capital assets over their useful lives. Using this approach results in both current and future ratepayers being allocated an equitable portion of the cost of the facilities used to provide their service. In order to have an effective financing source of funds, NBU's capital structure must be such that it has a sufficient equity capital base (i.e., a low to moderate debt leverage in NBU's capitalization) to support long-term debt financing.

NBU will selectively utilize sourcing of funds through long-term debt financing by maximizing the use of funds from operations in order to protect NBU's financial soundness and to preserve NBU's access to the long-term debt market. This market access should provide NBU with adequate sources of capital for the growing needs of its customers at a reasonable overall cost of capital.

It is important to generally establish appropriate levels of debt and equity financing. However, substantial changes in the financial markets may arise due to changing political, economic, global, or other significant factors. As a result, it may be necessary at times to alter NBU's guidelines which could impact NBU's interest rates on new issuances of debt and its overall capital structure. Under current conditions, the following financial policy is adopted:

- A. NBU will use long-term debt financing for capital assets having long useful lives and will attempt to establish amortization and debt service payment schedules which coincide with the lives of the related assets.
- B. NBU will establish rates and debt financing structures, terms, and repayment schedules sufficient to generally maintain a system wide debt to capitalization ratio of 55% or less and a debt service coverage ratio of at least 2.4x.
- C. NBU will maintain a minimum of unrestricted days cash on hand of at least 140 days.
- D. For establishing cost of service and for rate setting purposes, NBU will target a debt service coverage ratio of at least 2.4x however, under extraordinary circumstances (unusual and infrequent) the debt service requirement, for the fiscal year the impact of the event occurs, must at least meet the minimum requirements

for the additional bonds test.

- E. NBU has established and maintains a Board-approved Investment Policy which establishes permitted investments and allowable allocation parameters for the various approved investment vehicles. The primary driver is focused on preservation of principal.
- F. In conjunction with the overall financial policy, NBU has established and maintains an Energy Risk Management Policy, a Credit Risk Management Policy, and a Power Stabilization Fund Policy.
 - 1. The Energy Risk Management Policy has been approved by the NBU Board of Trustees and provides the framework for the Power Supply Team to identify and measure risk exposure to the wholesale energy markets and to develop and implement strategies to manage, monitor, measure and report on those risks.
 - 2. The Credit Risk Management Policy has been approved by the NBU Board of Trustees and provides the framework for the Energy Risk Team to monitor and report on the management of energy credit risk, primarily in the areas of reviewing and approving counterparties, monitoring their creditworthiness, and establishing credit limits based on guidelines approved by NBU's Board of Trustees.
 - 3. The Power Stabilization Fund Policy has been approved by the NBU Board of Trustees and provides the framework for the administration of a Power Stabilization Fund, which is utilized to protect customers from higher than anticipated power costs.

VI. Capitalized Interest

In order to partially defer the rate impact of debt service requirements until the asset being financed is placed in service, NBU may opt to capitalize interest proceeds from bonds for an appropriate period (generally, not to exceed 3 years). Accountability of capital associated interest shall be kept separate with capital fund requirements recognizing anticipated interest proceeds.

VII. Alternative Financing

As market conditions evolve, NBU will evaluate alternatives to conventional long-term revenue bond financing to determine the feasibility of such financings based on their terms and conditions and their impact on NBU's overall cost of capital.

- A. Commercial Paper – If market conditions are favorable, the use of commercial paper as a short-term financing vehicle can help offset some of the interest rate risk. NBU may use tax-exempt and/or taxable commercial paper as needed to meet business requirements.

The parameters of the program are as follows:

1. 10% of assets program limit
 2. At least \$50 million in size
 3. Roll program into long-term debt if:
 - a. authorized amount is fully utilized
 - b. determined that market conditions are no longer favorable or
 - c. the program is at the end of the program term
- B. Short-Term Financing – If market or business conditions exist that require an additional infusion of cash for NBU to meet its stated financial objectives and continue to meet its customer and public service responsibilities, NBU may secure other short-term tax-exempt and/or taxable financing alternatives.

VIII. Documentation and Reports

NBU will comply with all statutory and bond and debt reporting requirements on a timely basis. In this regard, NBU will provide the following:

- A. A monthly operating and financial report, requiring review by the Board of Trustees, in such detail as the Board deems necessary.
- B. An annual budget and financial operating plan detailing revenues, expenses, and capital expenditures presented ~~for approval at the June to the~~ Board of Trustees ~~for approval prior to the start of the new fiscal year meeting.~~ In the event a midyear revision to the fiscal year budget is requested, then an analysis and update shall be presented to the Board of Trustees for approval.
- C. An annual audit by an outside professional auditing firm will include necessary details in reconciling all of the year's financial operation. The audit will be submitted for review and approval to the Board of Trustees shortly after the end of the NBU's fiscal year.

Copies of the approved audit will be provided to the City Council of New Braunfels and arrangements made for the presentation and discussion of the audit to City Council, if requested. Compliance with internal audit procedures will be reviewed with the Audit Committee of the Board of Trustees in conjunction with the external auditor's report.

IX. Summary

This policy establishes management guidelines for NBU's financial accountability in order to provide a financial structure conducive to controlling service rates and optimizing service reliability to NBU's customers. It is understood that this policy is a guide and that financial objectives may change over time. This financial policy is intended to be used as a vehicle to preserve NBU's financial integrity in order to meet NBU's long-term goals.

Appendix A – System Contingency Fund Policy

I. Purpose

- This policy is designed to serve as a guideline for the administration of a System Contingency Fund (SCF) for New Braunfels Utilities (NBU) by the individuals designated by the Chief Executive Officer (CEO) as having the authority and responsibility for making such decisions.
- The SCF is utilized according to guidelines, set forth herein, for emergencies and/or disaster declarations that reduce revenue or increase obligations.
- The management of collected monies in the SCF will be governed by NBU's Investment Policy and can only be used to cover funding shortfalls encountered by NBU as in the case of a disaster or catastrophe.
- In the event of conflict between the SCF Policy and the NBU Investment Policy, the provisions of the Investment Policy shall govern. In the event of an inconsistency between SCF Policy and the NBU Investment Policy, the terms and provisions of the Investment Policy shall govern.

II. Roles, Responsibilities, & Policy Review

Chief Financial Officer (CFO)

- The CFO is responsible for overseeing the SCF and how it is invested.
- Once an emergency or local disaster declaration has been issued, the CFO is responsible for determining the length of time for which the SCF can be used to transfer monies to the NBU General Fund in order to meet liquidity needs under these criteria.
- Once a transfer from the SCF has been initiated under emergency or disaster criteria, the CFO is responsible for monitoring all SCF activity on at least a monthly basis until the situation returns to normal or is otherwise resolved.
- The CFO has the right to revoke authority for use of the SCF monies for emergency or disaster declaration purposes at any time.

III. Funding Requirements & Evaluation

Calculation of Funding Requirements

- The SCF amount is calculated based on projected gross annual Operating and Maintenance (O&M) expenses in the range of 90-120 days.

Targets and Limits

- Target: 90 days of budgeted O&M expenses
- Limit: 120 days of budgeted O&M expenses

Evaluation

- The SCF funding requirements will be reviewed on an annual basis during the budget process to determine if the balance is sufficient.
- If changes are needed for the SCF funding requirement throughout the year, the NBU Investment Officers will meet on an ad-hoc basis.

IV. Authorized Collection & Use of Funds**Collection from General Fund**

- The recommended time horizon to replenish the SCF will be determined by the CFO as part of the monthly monitoring process. The time horizon will be unique to each instance in which the fund needs replenishment but generally should not exceed two (2) years.
- The replenishment horizon will depend on how much of the SCF was depleted and is outlined as follows:
 - 30% or less of fund = 1 year to fill
 - 30% to 60% of fund = 1.5 years to fill
 - 60% to 100% of fund = 2 years to fill
- The number of years to fill begins on the date of the physical cash drawdown in the SCF account.

Transfer to/from General Fund

- All transfers to the SCF will be transferred from the General Fund.
- All transfers from the SCF will be transferred to the General Fund.
- Each transfer will be recorded with an accounting entry.

Use of Funds

- The SCF should be used to offset a reduction to revenue or increase in obligations due to unanticipated and/or unforeseen events such as emergencies or disasters.

V. Investments**Permitted Investments, Maturity Limits, & Targets**

- The maximum notional value of the fund that can be invested longer than on a daily basis, shall not exceed thirty (30%) percent of the fund balance.
- As the SCF is not anticipated to be utilized except in the case of extreme situations, maturities in these funds are generally expected to range from short-term to five years.

- Seventy (70%) percent of the fund shall remain liquid and shall only be invested in cash or cash securities.
- Should the cash portion of the fund fall below 35% of the targeted SCF funding amount (90-120 days of budgeted O&M expenses), an ad-hoc review by the NBU Investment Officers will occur to determine whether any adjustments to the fund shall be made.

VI. Emergencies and Disaster Declarations

Definitions

- A local disaster declaration is typically issued by an official representative of the City of New Braunfels and/or Comal County.
- An emergency is an unforeseen event, such as a natural disaster, that has indeterminable impacts on NBU's operations as determined by the Chief Financial Officer.

Use of Funds

- Should an emergency or declaration of disaster be issued for the City of New Braunfels and/or Comal County, the SCF can be utilized to cover any liquidity needs of NBU during an emergency or disaster.

Permitted Investments, Maturity Limits, & Targets

- Once an emergency or local disaster declaration has been issued, no additional investment of SCF monies will be permitted to ensure adequate liquidity to respond to emergency situations.

Policy Type		Approval Authority				Adopted	Effective
Board Approved		NBU Board of Trustees					
Responsible Executive		Responsible Department				Contact	
Dawn Schriewer		Finance				John Warren	
Reviewed/Approved by Executive Director		Reviewed/Approved by General Counsel & Chief Ethics Officer		Reviewed/Approved by CEO		Approved by NBU Board President	
Name	Date Signed	Name	Date Signed	Name	Date Signed	Name	Date Signed
Dawn Schriewer		Connie Lock		Ian Taylor		Judith Dykes-Hoffmann	
Signature		Signature		Signature		Signature	

I. General Policy Statement

New Braunfels Utilities (NBU) recognizes the importance of having a sound financial condition in order to meet its customer and public service responsibilities. It is NBU’s financial policy to strive to provide its electric, water and wastewater services at the lowest possible costs, consistent with high standards of reliability and innovative essential service. This financial policy is intended to form the framework within which NBU will preserve its financial integrity in order to meet its long-term goals. This policy has been developed in consideration of short- and long-term plans for construction and system additions. A periodic review of this financial policy with necessary revisions may be required to ensure that NBU maintains a high level of financial integrity in order to accomplish these plans. Since NBU’s Investment Policy also addresses NBU’s financial objectives, NBU’s Investment Policy should be used in concert with the Financial Policy.

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II. Funds from Operations

Each year, NBU staff will develop projected revenue levels and the projected reserve requirements for the upcoming fiscal year and estimate its projected impact on the financial condition of the utility. These projections will be developed after consideration for bond ratings, construction requirements, current business conditions, economic projections, load growth assumptions, and the projected size and frequency of rate adjustments. Specifically, the electric, water, and wastewater systems shall be managed individually to allow for financial self-sufficiency to the extent practicable with regard to their respective cash inflows and outflows, including, but not limited to revenue, general operating expenses, and capital expenditures.

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- B. Payments to meet all debt service requirements of outstanding bond indebtedness including all Interest and Sinking Funds and Bond Reserve Funds.
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III. Revenue

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NBU will develop and design rates to recover its costs of specific services and provide a predictable flow of revenues.

IV. Pricing, Rates, and Reserves

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V. Financing

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NBU will selectively utilize sourcing of funds through long-term debt financing by maximizing the use of funds from operations in order to protect NBU's financial soundness and to preserve NBU's access to the long-term debt market. This market access should provide NBU with adequate sources of capital for the growing needs of its customers at a reasonable overall cost of capital.

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for the additional bonds test.

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 - 3. The Power Stabilization Fund Policy has been approved by the NBU Board of Trustees and provides the framework for the administration of a Power Stabilization Fund, which is utilized to protect customers from higher than anticipated power costs.

VI. Capitalized Interest

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VII. Alternative Financing

As market conditions evolve, NBU will evaluate alternatives to conventional long-term revenue bond financing to determine the feasibility of such financings based on their terms and conditions and their impact on NBU's overall cost of capital.

- A. Commercial Paper – If market conditions are favorable, the use of commercial paper as a short-term financing vehicle can help offset some of the interest rate risk. NBU may use tax-exempt and/or taxable commercial paper as needed to meet business requirements.

The parameters of the program are as follows:

1. 10% of assets program limit
 2. At least \$50 million in size
 3. Roll program into long-term debt if:
 - a. authorized amount is fully utilized
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- B. Short-Term Financing – If market or business conditions exist that require an additional infusion of cash for NBU to meet its stated financial objectives and continue to meet its customer and public service responsibilities, NBU may secure other short-term tax-exempt and/or taxable financing alternatives.

VIII. Documentation and Reports

NBU will comply with all statutory and bond and debt reporting requirements on a timely basis. In this regard, NBU will provide the following:

- A. A monthly operating and financial report, requiring review by the Board of Trustees, in such detail as the Board deems necessary.
- B. An annual budget and financial operating plan detailing revenues, expenses, and capital expenditures presented to the Board of Trustees for approval prior to the start of the new fiscal year. In the event a midyear revision to the fiscal year budget is requested, then an analysis and update shall be presented to the Board of Trustees for approval.
- C. An annual audit by an outside professional auditing firm will include necessary details in reconciling all of the year's financial operation. The audit will be submitted for review and approval to the Board of Trustees shortly after the end of the NBU's fiscal year.

Copies of the approved audit will be provided to the City Council of New Braunfels and arrangements made for the presentation and discussion of the audit to City Council, if requested. Compliance with internal audit procedures will be reviewed with the Audit Committee of the Board of Trustees in conjunction with the external auditor's report.

IX. Summary

This policy establishes management guidelines for NBU's financial accountability in order to provide a financial structure conducive to controlling service rates and optimizing service reliability to NBU's customers. It is understood that this policy is a guide and that financial objectives may change over time. This financial policy is intended to be used as a vehicle to preserve NBU's financial integrity in order to meet NBU's long-term goals.

Appendix A – System Contingency Fund Policy

I. Purpose

- This policy is designed to serve as a guideline for the administration of a System Contingency Fund (SCF) for New Braunfels Utilities (NBU) by the individuals designated by the Chief Executive Officer (CEO) as having the authority and responsibility for making such decisions.
- The SCF is utilized according to guidelines, set forth herein, for emergencies and/or disaster declarations that reduce revenue or increase obligations.
- The management of collected monies in the SCF will be governed by NBU's Investment Policy and can only be used to cover funding shortfalls encountered by NBU as in the case of a disaster or catastrophe.
- In the event of conflict between the SCF Policy and the NBU Investment Policy, the provisions of the Investment Policy shall govern. In the event of an inconsistency between SCF Policy and the NBU Investment Policy, the terms and provisions of the Investment Policy shall govern.

II. Roles, Responsibilities, & Policy Review

Chief Financial Officer (CFO)

- The CFO is responsible for overseeing the SCF and how it is invested.
- Once an emergency or local disaster declaration has been issued, the CFO is responsible for determining the length of time for which the SCF can be used to transfer monies to the NBU General Fund in order to meet liquidity needs under these criteria.
- Once a transfer from the SCF has been initiated under emergency or disaster criteria, the CFO is responsible for monitoring all SCF activity on at least a monthly basis until the situation returns to normal or is otherwise resolved.
- The CFO has the right to revoke authority for use of the SCF monies for emergency or disaster declaration purposes at any time.

III. Funding Requirements & Evaluation

Calculation of Funding Requirements

- The SCF amount is calculated based on projected gross annual Operating and Maintenance (O&M) expenses in the range of 90-120 days.

Targets and Limits

- Target: 90 days of budgeted O&M expenses
- Limit: 120 days of budgeted O&M expenses

Evaluation

- The SCF funding requirements will be reviewed on an annual basis during the budget process to determine if the balance is sufficient.
- If changes are needed for the SCF funding requirement throughout the year, the NBU Investment Officers will meet on an ad-hoc basis.

IV. Authorized Collection & Use of Funds**Collection from General Fund**

- The recommended time horizon to replenish the SCF will be determined by the CFO as part of the monthly monitoring process. The time horizon will be unique to each instance in which the fund needs replenishment but generally should not exceed two (2) years.
- The replenishment horizon will depend on how much of the SCF was depleted and is outlined as follows:
 - 30% or less of fund = 1 year to fill
 - 30% to 60% of fund = 1.5 years to fill
 - 60% to 100% of fund = 2 years to fill
- The number of years to fill begins on the date of the physical cash drawdown in the SCF account.

Transfer to/from General Fund

- All transfers to the SCF will be transferred from the General Fund.
- All transfers from the SCF will be transferred to the General Fund.
- Each transfer will be recorded with an accounting entry.

Use of Funds

- The SCF should be used to offset a reduction to revenue or increase in obligations due to unanticipated and/or unforeseen events such as emergencies or disasters.

V. Investments**Permitted Investments, Maturity Limits, & Targets**

- The maximum notional value of the fund that can be invested longer than on a daily basis, shall not exceed thirty (30%) percent of the fund balance.
- As the SCF is not anticipated to be utilized except in the case of extreme situations, maturities in these funds are generally expected to range from short-term to five years.

- Seventy (70%) percent of the fund shall remain liquid and shall only be invested in cash or cash securities.
- Should the cash portion of the fund fall below 35% of the targeted SCF funding amount (90-120 days of budgeted O&M expenses), an ad-hoc review by the NBU Investment Officers will occur to determine whether any adjustments to the fund shall be made.

VI. Emergencies and Disaster Declarations

Definitions

- A local disaster declaration is typically issued by an official representative of the City of New Braunfels and/or Comal County.
- An emergency is an unforeseen event, such as a natural disaster, that has indeterminable impacts on NBU's operations as determined by the Chief Financial Officer.

Use of Funds

- Should an emergency or declaration of disaster be issued for the City of New Braunfels and/or Comal County, the SCF can be utilized to cover any liquidity needs of NBU during an emergency or disaster.

Permitted Investments, Maturity Limits, & Targets

- Once an emergency or local disaster declaration has been issued, no additional investment of SCF monies will be permitted to ensure adequate liquidity to respond to emergency situations.

EXHIBITS

1. Resolution #2023-165
2. Redlined Investment Policy
3. Clean Investment Policy

R#2023-165**A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING REVISIONS TO THE INVESTMENT POLICY AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the Board of Trustees of New Braunfels Utilities (“NBU”) has approved an investment policy (“Investment Policy”) pursuant to Chapter 2256 of the Texas Government Code (the “Public Funds Investment Act”) concerning the management of investment programs of NBU;

WHEREAS, the Public Funds Investment Act requires the Board of Trustees to conduct an annual review of the Investment Policy;

WHEREAS, the Public Funds Investment Act requires certain NBU officials to be deemed investment officers;

WHEREAS, NBU staff reviewed the Investment Policy and recommends changes to the Investment Policy, attached as the Exhibit A;

WHEREAS, the Investment Committee of the Board of Trustees of NBU reviewed the proposed changes and determined that the changes to the Investment Policy are prudent and improve its organization; and

WHEREAS, the Board of Trustees of NBU conducted an annual review of the Investment Policy, reviewed the changes that NBU staff and the Investment Committee recommend, and finds that the policy changes are in the best interest of NBU.

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

SECTION 1. The Board of Trustees hereby approves the revised Investment Policy with Chief Financial Officer, Director of Finance, and Financial Manager, designated as Investment Officers of NBU, attached as Exhibit B.

SECTION 2. 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 3. 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 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 5. 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 6. 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 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED, APPROVED, AND ADOPTED, this the 30th day of March, 2023.

Judith Dykes-Hoffmann,
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ian Taylor,
Secretary to the Board
New Braunfels Utilities



New Braunfels Utilities

Investment Policy

Approved by Board of Trustees
on ~~February 24, 2022~~ March 30, 2023

263 E Main Plaza P O Box 310289
New Braunfels, TX 78131-0289
830/629-8400
830/629-8435 (fax)

**NEW BRAUNFELS UTILITIES
INVESTMENT POLICY
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I. INVESTMENT AUTHORITY AND SCOPE OF POLICY

Policy Statement

This policy is designed to serve as a guideline for the investment of all New Braunfels Utilities' (NBU) funds by the individuals designated by the Chief Executive Officer (CEO) and the Board of Trustees as having the authority and responsibility for making such investments. This policy reflects the concept that NBU, by law, manages funds defined as public funds. NBU is a public trust for those assets acquired pursuant to City Charter and Statutes.

This policy serves to satisfy the statutory requirements of Texas Government Code Chapter 2256 (The Public Funds Investment Act, as amended, "PFIA") to define and adopt a formal investment policy. *See Attachment A: Certification of Board Action to Approve Investment Policy.* This policy will be reviewed and approved by the Board of Trustees at least annually according to Section 2256.005(e).

NBU's excess funds shall be kept invested until required for payment of operating and maintenance expenses, debt service, construction costs, claims not covered by insurance, or any other debt or amount rightfully due and owed by NBU. NBU shall maintain a comprehensive cash management program which includes collection of accounts receivable, vendor payment in accordance with invoice terms, and prudent investment of its available cash.

Provisions and restrictions set forth in State and Federal Laws, in Bond Ordinances for each of the separate funds and in other ordinances (including subsequently adopted Bond Ordinances or State or Federal laws enacted), shall govern administration and investment of NBU funds. If there should ever be conflicts between this policy and other laws and ordinances, such other laws and ordinances will control.

Investments shall be made with the primary objectives of:

- Safety and preservation of principal
- Maintenance of sufficient liquidity to meet operating needs
- Maximization of yield on the portfolio
- Public trust from prudent investment activities

When determining the term of an investment, market trends and economic conditions shall be recognized factors within the parameters of projected cash requirements. Arbitrage regulations shall be strictly observed.

Portfolio composition and eligible investments shall be set forth in this policy. Tax-exempt securities within the portfolio shall be utilized primarily for compliance with arbitrage regulations. Arbitrage, as referred to in this policy, concerns the investment of bond proceeds (construction funds), interest and sinking funds, and reserve funds.

It shall be recognized that speculation is inappropriate, and that volatile instruments are to be avoided under any circumstances.

Funds Included

This investment policy applies to all financial assets of all funds of NBU at the present time and any funds to be created in the future.

Investment Officers

In accordance with Chapter 2256, Sec. 2256.005(f), the Board shall designate Investment Officers of NBU as stated in *Attachment B: Certification of Board Action to Designate Authorized Investment Officers*. Each of the employees designated to serve as Investment Officers shall be covered by a Public Employee Dishonesty Policy at a level of not less than \$1,000,000, and will serve under the direction and authority of the Board.

If an Investment Officer has a personal business relationship with an entity -- or is related within the second degree by affinity or consanguinity to an individual -- seeking to sell an investment to NBU, the Investment Officer must file a statement disclosing that personal business interest -- or relationship - - with the Texas Ethics Commission and the Board of Trustees in accordance with Government Code 2256.005(i).

Investment Officers shall refrain from personal business activity that could conflict with proper execution of the investment programs, or which could impair their ability to make impartial investment decisions. Investment Officers shall disclose to the Board any material financial interests in financial institutions that conduct business with NBU, and shall further disclose any large personal financial or investment positions that could be related to the performance of NBU's portfolio. Investment Officers shall subordinate their personal investment transactions to those of NBU, particularly with regard to the timing of purchases and sales.

The Investment Officers, pursuant to the delegation and authority of the Board, shall direct the investment program of NBU. No person may engage in an investment transaction except as provided under the terms of this policy. The designated Investment Officers, through the authority granted by the CEO and by the Board of Trustees, shall be responsible for all investment transactions undertaken and shall establish a system of controls to regulate the activities of subordinate employees.

The Investment Officers have the authority to purchase or sell, or contract to purchase or sell, any approved securities without limitation as to dollar amount, subject to the exceptions noted under Portfolio Management in this policy. Investment Procedures to supplement investment administration and to provide additional guidance on investments shall be prepared by the Investment Officers but are subject to revision without Board action. The Investment Procedures shall be available for review as requested by the Board.

II. INVESTMENT OBJECTIVES

General Statement

NBU funds will be invested in accordance with federal and state laws, this investment policy and applicable written administrative procedures. NBU will invest according to the investment strategy statements for each fund as approved by the Board of Trustees in accordance with Sec. 2256.005(d). *See Attachment C: Certification of Board Action to Approve Fund Investment Strategies.*

Safety and Maintenance of Adequate Liquidity

NBU's paramount objective in any investment transaction is the return of principal; therefore, safety of principal overrides other considerations in any investment transaction. NBU's investment portfolio must be structured in conformance with an investment management plan which provides for liquidity necessary to pay obligations as they become due. A portion of the portfolio will be placed in money market mutual funds or local government investment pools which offer same day liquidity for short term funds.

Diversification

The Investment Portfolio shall be diversified to minimize the risk of loss resulting from overconcentration of assets in a specific maturity, or a specific issuer, or a specific class or type of investment. Investments shall be selected that provide for stability of income and reasonable liquidity with active secondary or resale markets. NBU recognizes that investment risk can result from issuer defaults, market price changes, or various technical complications leading to temporary illiquidity. Risk is managed through portfolio diversification which shall be achieved by the following general guidelines:

- limiting investments to avoid concentration in securities from a specific issuer or business sector (excluding U.S. Treasury Securities),
- investing in securities with varying maturities,
- limiting investment in securities that have higher credit risks,
- continuously investing a portion of the portfolio in readily available funds such as a local government investment pool, or money market funds, to ensure that appropriate liquidity is maintained to meet ongoing obligations.

The NBU Board will establish for the NBU investment portfolio the maximum limits for each instrument as a percentage of total invested funds. These maximum limits are set forth in *Attachment C: Certification of Board Action to Approve Fund Investment Strategies.*

Yield

NBU's objective is to earn a market rate of return on its investments within the constraints imposed by its safety and liquidity objectives, investment strategies for each fund, arbitrage regulations, and state and federal law governing investment of public funds. The core investments are limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

Maturity

Portfolio maturities will be structured to meet NBU financial obligations first, and then, to achieve a market return of interest. When making investment decisions, maturity restraints will be determined based upon the investment strategy for each fund. The maximum allowable stated maturity of any

individual investment owned by NBU is five (5) years. However, NBU may invest funds up to ten (10) years for the Community Assistance Fund.

Disposition of Securities

NBU's Investment Portfolio should pursue a "buy and hold" portfolio strategy. Maturity dates of investments are selected based on cash flow requirements and investments are purchased with the intent to be held until maturity. However, securities may be sold before they mature if market conditions present an opportunity for NBU to benefit from the trade. Securities may be sold for the following reasons:

- A security with declining credit may be sold early to minimize loss of principal
- A security swap would improve the quality, yield, or target duration in the portfolio
- A security may be called by the issuer per the terms of its original issuance
- Liquidity needs of the portfolio require that the security be sold.

Prior to selling a security before its scheduled maturity date, approval of two Investment Officers or one Investment Officer and the CEO, is required.

Quality and Capability of Investment Management

Investment training is required pursuant to Sec. 2256.008(a) and (a-1) of the Public Funds Investment Act for the Board's Treasurer, the Chief Financial Officer (if the treasurer is not the CFO), and each Investment Officer through courses and seminars offered by qualified individuals, professional organizations and associations in order to insure the quality and capability of these individuals in making sound investment decisions and/or appropriately monitoring financial developments. Initial training of at least 10 hours of instruction must be completed within 12 months after taking office or assuming duties; and an additional minimum of 8 hours of additional investment training shall be completed not less than every two consecutive years, such period beginning on the first day of NBU's fiscal year. The training must be provided by an independent source approved by the Board of Trustees or the Investment Committee. *See Attachment H: Certification of Board Action to Approve Independent Sources to Provide Investment Training.*

Investment Strategy Statements By Fund

Bond Reserve Funds

NBU Bond Reserve Funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments appropriate to provide reserves to meet any shortfalls in NBU debt service funds. As Bond Reserve Funds are not anticipated to be utilized except in the case of extreme situations, maturities in these funds are generally expected to be invested for longer terms (one-three years) not to exceed five years. However, in no instance should an investment maturity exceed the latest established debt service requirement/payment date relating to the respective bond issuance. All Bond Reserve Fund investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. The nature of the Bond Reserve Funds is such that involuntary investment liquidations are unlikely, however should they become necessary, the comparatively longer-term nature of the instruments could result in material losses, depending on the financial and economic conditions existing at the time. Bond Reserve Fund investments will be structured to achieve the most competitive yields attainable, given appropriate diversification, maturity, arbitrage and safety requirements.

Bond Debt Service Funds (Interest and Principal Funds)

NBU Debt Service Funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments appropriate to meet periodic payments required by bond amortization schedules. As such, investment maturities are limited by pertinent debt service requirements and by related tax law addressing maximum funding levels for such funds' arbitrage considerations. All Debt Service Fund investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. Due to their specific purpose and short-term nature, involuntary investment liquidations are unlikely in these funds, however should they become necessary, their short-term nature would make material losses highly unlikely. Investments will be structured to achieve the most competitive yields attainable, given the pertinent liquidity requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

Revenue Funds

The Revenue Funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments suitable for a fund requiring a high degree of liquidity. All investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. Additionally, Revenue Funds' investments shall be diversified among a variety of investment instruments. Due to their short-term nature, involuntary investment liquidations are unlikely for the Revenue Funds; however, should they become necessary, the short-term nature of the instruments would make material losses highly unlikely. Each of the Revenue Funds' investments will be structured to achieve the most competitive yields attainable, given the pertinent liquidity requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

System Contingency Fund

The System Contingency Fund (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments appropriate to meet any funding shortfalls encountered by NBU as in the case of a disaster or catastrophe. As the System Contingency Fund is not anticipated to be utilized except in the case of extreme situations, maturities in these funds are generally expected to range from short-term to five years. All System Contingency Fund investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act, the NBU Investment Policy, and the System Contingency Fund Policy as adopted in Appendix A of NBU Financial Policy. The nature of the System Contingency Fund is such that involuntary investment liquidations are unlikely, however should they become necessary, any longer-term investment instruments could result in material losses depending on the financial and economic conditions existing at the time. System Contingency Fund investments will be structured to achieve the most competitive yields attainable, given appropriate diversification, maturity, arbitrage and safety requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

Construction Funds

NBU Construction Funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments appropriate to meet construction expenditure requirements for which the funds were acquired. Maturities are also limited by related tax law

addressing required spending terms. Construction Funds' investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. Because investments are made in accordance with specific fund and expenditure requirements, involuntary investment liquidations are unlikely. Investments will be structured to achieve the most competitive yields attainable, given the pertinent liquidity requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

Other Miscellaneous NBU Funds

Other NBU funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments suitable for their particular purposes, including their unique liquidity requirements. Similarly, the average maturity of investments will be tailored to the individual fund's purposes and requirements. All investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. Because investments are made in accordance with specific fund and expenditure requirements, involuntary investment liquidations are unlikely. Investments will be structured to achieve the most competitive yields attainable, given the pertinent liquidity requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

III. AUTHORIZED AND PROHIBITED INVESTMENTS

Authorized Investments

NBU Investment Officers shall use any or all of the following authorized investment instruments consistent with governing law (Government Code 2256):

- A. Except as provided by Government Code 2256.009(b), the following are authorized investments:
1. obligations, including letters of credit, of the United States or its agencies and instrumentalities;
 2. direct obligations of the State of Texas or its agencies and instrumentalities, rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent;
 3. other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of the State of Texas or the United States or their respective agencies and instrumentalities;
 4. direct obligations of the following United States agencies and instrumentalities: Federal National Mortgage Association, Federal Farm Credit Bank, Federal Home Loan Bank, and the Federal Home Loan Mortgage Corporation.
- B. Certificate of Deposit or Share Certificate if the Certificate is issued by a depository institution that has its main office or branch office in the State of Texas and is:
1. guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor, or
 2. secured by eligible collateral as listed in Section VI, *provided that*:
 1. the funds are invested through a depository institution that has its main office or a branch office in Texas,
 2. the depository institution arranges for the deposit of funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of NBU,
 3. the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States,
 4. the depository institution acts as custodian for NBU with respect to the certificates of deposit issued for the account of NBU, and
 5. at the same time that the funds are deposited and the certificates of deposit are issued for the account of NBU, the depository institution receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the funds invested by NBU through the depository institution selected under B(2)(1) above.

C. No load Money Market Mutual Funds as specified by Board approval (*see Attachment D: Certification of Board Action to Approve Authorized Money Market Mutual Funds*), provided the mutual fund:

1. must be registered and regulated by the Securities and Exchange Commission;
2. provides NBU with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940; and
3. complies with federal Securities and Exchange Commission Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

As provided under section 2256.014(b) of the PFIA, investment in a no-load Money Market Mutual Fund is also authorized if the fund:

1. is registered and regulated by the Securities and Exchange Commission;
2. has an average weighted maturity of less than two years; and
3. either:
 - (A) has a duration of one year or more and is invested exclusively in obligations approved by the PFIA and this policy; or
 - (B) has a duration of less than one year and the investment portfolio is limited to investment grade securities, excluding asset-backed securities.

However, NBU may not (a) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, or invest any portion of bond proceeds, reserves and funds held for debt service, in Mutual Funds described in section 2256.014(b); or (c) invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one Mutual Fund in an amount that exceeds ten (10) percent of the total assets of the Mutual Fund.

D. Eligible specified investment pools (as permitted in the Public Funds Investment Act, Sec. 2256.016-2256.019) and as authorized by the Board. An investment pool shall invest the funds it receives from entities in authorized investments permitted by the Public Funds Investment Act. *See Attachment E: Certification of Board Action to Approve Authorized Investment Pools.* In order to be eligible, an investment pool must meet the following conditions:

1. must be continuously rated no lower than AAA, AAA-m, or an equivalent rating by a national recognized rating agency with a weighted average maturity no greater than 90 days;
2. a Public Fund Investment Pool created to function as a Money Market Mutual Fund must mark its portfolio to market daily, and to the extent reasonably possible, stabilize at a \$1.00 net asset value; the ratio of the market value to book value of the fund must be maintained between 0.995 and 1.005; and
3. the Pool must establish an advisory board composed of qualified members representing participants and non-participants pursuant to Sec.2256.016.

4. a. To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the Investment Officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:
- (1) the types of investments in which money is allowed to be invested;
 - (2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;
 - (3) the maximum stated maturity date any investment security within the portfolio has;
 - (4) the objectives of the pool;
 - (5) the size of the pool;
 - (6) the names of the members of the advisory board of the pool and the dates their terms expire;
 - (7) the custodian bank that will safekeep the pool's assets;
 - (8) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;
 - (9) whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;
 - (10) the name and address of the independent auditor of the pool;
 - (11) the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool; and
 - (12) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios.
- b. To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the Investment Officer or other authorized representative of the entity:
- (1) investment transaction confirmations; and
 - (2) a monthly report that contains, at a minimum, the following information:
 - (a) the types and percentage breakdown of securities in which the pool is invested;
 - (b) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;
 - (c) the current percentage of the pool's portfolio in investments that have stated maturities of more than one year;
 - (d) the book value versus the market value of the pool's portfolio, using amortized cost valuation;
 - (e) the size of the pool;
 - (f) the number of participants in the pool;

- (g) the custodian bank that is safekeeping the assets of the pool;
- (h) a listing of daily transaction activity of the entity participating in the pool;
- (i) the yield and expense ratio of the pool;
- (j) the portfolio managers of the pool; and
- (k) any changes or addenda to the offering circular.

c. Yield shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the Federal Securities and Exchange Commission.

Prohibited Investments

NBU Investment Officers have no authority to use any of the following investment instruments which are strictly prohibited by the Public Funds Investment Act, Section 2256.009(b). These include:

- A. obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- B. obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- C. collateralized mortgage obligations that have a stated final maturity date of greater than ten (10) years; and
- D. collateralized mortgage obligations whose interest rate is determined by an index that adjusts opposite to the changes in a market index.

IV. INVESTMENT RESPONSIBILITY AND CONTROL

Institutions Defined

Investment Officers shall invest NBU funds with any or all of the following institutions or groups consistent with federal and state law and the current Depository Bank Contract:

- A. depository institution that has its main office or branch office in Texas that are guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor, or the National Credit Union Share Insurance Fund, or its successor, and
- B. any government securities brokers and dealers who are licensed under the Texas Securities Act and authorized by the Board of Trustees or the Investment Committee to engage in investment transactions with NBU. *See Attachment F: Certification of Board Action to Approve Eligible Institutions for Investments.*

Depository Restrictions and Security of Funds

Other than for paying agent purposes, NBU shall utilize as depositories only federally or state financial institutions described above in sub-paragraph A of the preceding section and as approved by the Board of Trustees. Said depositories shall be subject to all restrictions set forth in NBU Bond Resolutions and in this policy for all types of investments.

NBU's staff will solicit proposals from qualified financial institutions for bank depository services in accordance with NBU's Purchasing Policy. NBU's staff will evaluate the respondents, submit a recommendation for award to the Investment Committee, and subsequently submit the recommendation for award to the Board of Trustees for approval.

Collateral or Insurance

NBU Investment Officers shall insure that all funds are fully collateralized or insured consistent with federal and state law and the current Bank Depository Contract in one or more of the following manners:

- A. FDIC or NCUSIF Coverage.
- B. Certificates of Deposit issued by institutions that have a main office or branch office in the State of Texas to the extent same are insured by the FDIC or NCUSIF.
- C. Obligations, including letters of credit, of the United States or its agencies and instrumentalities
- D. Obligations of the State of Texas or its agencies and instrumentalities rated as to investment quality by a nationally recognized investment rating firm not less than "AA" or its equivalent.
- E. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of the State of Texas or the United States or their respective agencies and instrumentalities.
- F. Direct obligations of the following United States agencies and instrumentalities: Federal National Mortgage Association, Federal Farm Credit Bank, Federal Home Loan Bank, and the Federal Home Loan Mortgage Corporation.

To the extent not covered by the FDIC or NCUSIF, funds held at a financial institution shall be collateralized at all times. Investment securities pledged as collateral shall at all times be at least equivalent to 102% in aggregate market value, excluding accrued interest, of the amount of funds on deposit plus interest accrued and to accrue thereon, to the extent not covered by the FDIC or NCUSIF. On a monthly basis, NBU will review investment securities pledged as collateral to ensure that sufficient collateral has been posted for the benefit of NBU.

Safekeeping

All purchased securities including Certificates of Deposit shall be held in safekeeping by NBU, or an NBU account in a third party non-affiliated financial institution, or with the Federal Reserve Bank. All pledged securities by the Depository Bank shall be held in safekeeping by NBU or an NBU account in a third party non-affiliated financial institution, or with the Federal Reserve Bank. For approved custodial safekeeping accounts, please see *Attachment G: Certification of Board Action to Approve Safekeeping Accounts*.

Safekeeping receipts must be issued to NBU in a timely manner and must provide the following information:

- A. Effective date of the safekeeping receipt
- B. Description of pledged security
- C. Amount pledged (par value)
- D. Maturity date and rate of interest
- E. Coupon date
- F. Nationally recognized investment firm rating

Securities are to remain pledged to NBU until written notification to release the securities from an NBU Investment Officer is received by the safekeeping financial institution. Securities may be released by an Investment Officer if the safekeeping financial institution provides written confirmation that there remains adequate pledged collateral to NBU as described above.

Securities owned by NBU and collateral securities pledged to NBU must be maintained in safekeeping at a third-party financial institution which is not owned or controlled by, or affiliated with, the same financial institution or holding company from which the security is purchased or from which the collateral is pledged.

Requirements for Investing

In accordance with 2256.005(k), a written copy of this investment policy shall be presented to any person seeking to sell NBU an authorized investment. The NBU Board of Trustees will adopt and annually review a list of qualified brokers authorized to engage in investment transactions with NBU (Attachment F). The registered principal of the business organization seeking to sell an authorized investment shall execute a written instrument substantially to the effect that the registered principal has:

- A. had a qualified representative receive and thoroughly review NBU's Investment Policy; and
- B. acknowledged that the organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities arising out of investment transactions

conducted between NBU and the organization. The responsibility of the broker is limited to reviewing the investments to determine whether they are authorized by the policy.

An Investment Officer may not buy any securities from a person who has not delivered to NBU an instrument in substantially the form provided above according to Section 2256.005(I).

NBU Board Members, Investment Officers and Consultants will evaluate the banking institution or broker/dealer's financial condition to the extent the Board considers necessary prior to establishing any accounts with the broker/dealer or financial institution. Investigation may include a review of appropriate public documents, rating agency reports, and call reports sent to the comptroller of the currency or other appropriate regulator. A banking institution or broker/dealer must be added to the approved list in Attachment F before any business can be transacted.

Certificate of Deposit or share certificate investments may be made with any financial institution so long as it is in full compliance with the requirements set forth in PFIA and this Policy, including, but not limited to, the provisions specified in *Section III – Suitable and Authorized Investments Policy – Investments, Paragraph B*. Any nominal funds incidental or necessary to the establishment of an account with the respective financial institution for purposes of investing in such Certificate of Deposit or share certificate may also be made.

NBU will conduct an ongoing review of publicly available financial records, reports, rating service information and any other data relevant to the financial soundness of any financial institution or broker/dealer with whom NBU is doing business.

Standards of Operation

Bidding Procedure: Investment of NBU funds may be made only after competitive bids are solicited from at least three qualified financial institutions (qualified and approved as set out above) and as provided by State Statute. The bids may be solicited orally. If a financial institution has notified NBU that it is unable or unwilling to bid for investments, it may be presumed that the financial institution is unable or unwilling to bid for the investments until the financial institution notifies NBU otherwise in writing.

All investment decisions shall be internally documented and approved by an Investment Officer. All investments and fund transfers require two signatures from Investment Officers and/or authorized Investment Signatories with at least one being an Investment Officer before execution. Investment Officers may order investments orally, but shall follow up the investment order with a written confirmation to the financial institution or broker/dealer. Written investment instructions shall contain information relative to the name and account number of the fund from which the investment was placed, disposition of interest to be earned, term, invested amount, rate of interest, yield, purchase date, and maturity date of the investment.

Delivery vs. Payment

All investment transactions, except investment pool funds and money market mutual funds, will be settled on "delivery versus payment" basis. That is, NBU shall authorize the release of funds only after it has received notification from the safekeeping bank that purchased the security has been received in NBU's safekeeping account. This notification may be oral, but the safekeeping bank must follow up with an original safekeeping receipt to NBU within 24 hours.

NBU must also have confirmation from a third-party safekeeping bank that adequate collateral has been pledged to NBU before releasing funds for the investment. This confirmation may be oral, but must be confirmed in writing within 24 hours with the original safekeeping receipt if additional pledging was required.

Audit Control

NBU will have an annual financial audit of all funds by an independent auditing firm, which will include an annual compliance audit of management controls on investments and adherence to the entity's established investment policies in accordance with Gov. Code 2256.005(m). As part of the annual financial audit, the auditing firm will review the quarterly investment reports and report the results to the Board of Trustees.

Standard of Care

In accordance with Government Code 2256.006, investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived as described in the Investment Objectives. Investment of funds shall be governed by the following investment objectives, in order of priority: preservation and safety of principal; liquidity; and yield.

In determining whether an Investment Officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

- A. the investment of all funds, or funds under NBU's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and
- B. whether the investment decision was consistent with the written investment policy of NBU.

The Board of Trustees, Investment Officers, and other Accounting Division personnel shall be personally indemnified in the event of investment loss, provided the Investment Policies of the Board of Trustees have been followed.

V. INVESTMENT REPORTING AND PERFORMANCE EVALUATION

Quarterly Report

In accordance with Government Code 2256.023, not less than quarterly, the Investment Officers shall prepare and submit to the Board a written report of investment transactions for all funds for the preceding reporting period within a reasonable time after the end of the period. The report must:

- A. describe in detail the investment position of NBU on the date of the report;
- B. be prepared jointly by all Investment Officers;
- C. be signed by each Investment Officer;
- D. contain a summary statement of each pooled fund group that states the:
 1. beginning market value for the reporting period;
 2. additions and changes to the market value during the period;
 3. ending market value for the period; and
 4. fully accrued interest for the reporting period
- E. state the book value and market value of each separately invested asset at the beginning and end of the reporting period by the type of asset and fund type invested;
- F. state the maturity date of each separately invested asset that has a maturity date;
- G. state the account or fund or pooled group fund for which each individual investment was acquired; and
- H. state the compliance of the investment portfolio as it relates to:
 1. the investment strategy expressed in NBU's investment strategy document; and
 2. relevant provisions of the Public Funds Investment Act.
- I. the reports prepared by the Investment Officers shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board by the independent auditor.

Market Valuation of Investments

The method used to monitor the market price of acquired investments shall be as follows:

- Pools - net asset value as reported by the investment pool on the last day of each month;
- All other investments - as reported in the Wall Street Journal edition issued on the last day of the month or valuations acquired through approved brokers, dealers, financial institutions and/or third-party financial reporting service organizations.

Investment Policy and Strategy Revisions

This Investment Policy may only be amended by a resolution of the NBU Board of Trustees. An Investment Committee consisting of two (2) Board Members, the CEO, NBU Investment Officers, and the Financial Advisor will meet as needed and will review the Investment Policy and strategies annually. Recommended modifications to the policy will be submitted to the Board of Trustees for

review and approval. The Board will document this review by formal action through a resolution, including a record of any changes made.

**Attachment A:
Certification of Board Action to Approve Investment Policy**

At the regular meeting of the Board of Trustees on ~~February 24, 2022~~[March 30, 2023](#), the Board, reviewed and approved the revised New Braunfels Utilities Investment Policy.

Judith Dykes-Hoffmann
NBU Board President

**Attachment B:
Certification of Board Action to Designate Authorized Investment Officers**

At the regular meeting of the Board of Trustees on ~~February 27, 2020~~ March 30, 2023, the Board approved that the following employees serving in the positions listed below are the designated Investment Officers of NBU:

Chief Financial Officer
Director of Finance
Finance Manager

As per Section I, subsection "Investment Officers" of this policy, "the CEO is authorized to serve as an investment signatory on demand and investment accounts, including the opening and closing of such accounts, as designated by action of the Board of Trustees."

Judith Dykes-Hoffmann
John A. Harrell
NBU Board President

**Attachment C:
Certification of Board Action to Approve Fund Investment Strategies**

At the regular meeting of the Board of Trustees on February 27, 2020, the Board approved the following investment strategies in accordance with the investment objectives as stated in the New Braunfels Utilities Investment Policy- *Section II. Investment Objectives*:

The **allowable** range of permitted investments by security types are as follows:

1.	U.S. Treasury Securities	0 to 70%
2.	U.S Government Agencies and Instrumentalities	0 to 70%
3.	Certificates of Deposit	0 to 40%
4.	Money Market Mutual Funds and Authorized Pools (aggregate)	0 to 100%
5.	Obligations of the State of Texas or its agencies and instrumentalities	0 to 15%
6.	Federally Insured Cash Account (FICA)	0 to 50%

The NBU Investment Portfolio shall incorporate a:

- maximum Weighted Average Maturity to Call Date (WAMC) of 300 days or less calculated on the basis of each security's earlier of (i) maturity date or (ii) first call date (from date of measurement), if applicable.
- maximum Weighted Average Maturity (WAM) of 450 days or less.
- minimum amount equal to at least thirty (30) days of total operating expenses in investments which can be converted into next day liquid funds into cash or cash-equivalents without loss of principal. For purposes of this section, the thirty days of total operating expenses shall refer to the annual budgeted amounts for the current fiscal year divided by twelve (12).

John A. Harrell
NBU Board President

Attachment D:
Certification of Board Action to Approve Authorized Money Market Mutual Funds

At the regular meeting of the Board of Trustees on January 26, 2017, the Board approved the following list of authorized Money Market Mutual Funds:

- Federated Government Obligation Money Market Mutual Fund (Ticker: GOTXX)
- DWS Government Cash Institutional Money Market Mutual Fund (Ticker: DBBXX)
- Vanguard Admiral Treasury Money Market Mutual Fund (Ticker: VUSXX)
- Federally Insured Cash Account



Atanacio Campos
NBU Board President

Attachment E:
Certification of Board Action to Approve Authorized Investment Pools

At the regular meeting of the Board of Trustees on ~~February 24, 2022~~[March 30, 2023](#), the Board approved the following list of authorized Investment Pools:

- Texas Local Government Investment Pool (TexPool)
- Texas Short Term Asset Reserve (TexSTAR)
- ~~TexasDAILY~~ (a portfolio established by Texas Range)
- [Texas Cooperative Liquid Assets Securities System Trust \(Texas CLASS\)](#)

Judith Dykes-Hoffmann
NBU Board President

Attachment F:
Certification of Board Action to Approve Eligible Institutions for Investments

At the regular meeting of the Board of Trustees on ~~February 27, 2020~~[March 30, 2023](#), the Board approved the following list of authorized eligible Institutions for Investments:

Banking Institutions

- Frost Bank
- J.P. Morgan Chase Bank, New Braunfels
- Wells Fargo, New Braunfels
- Prosperity Bank, New Braunfels

Government Securities Brokers/ Dealers

- Merrill Lynch
- J.P. Morgan Securities Inc.
- Frost Bank
- Wells Fargo Bank N.A.
- FHN Financial
- Mischler Financial Group

Other Investments Broker/ Dealer

- Hilltop Securities Inc.
- StoneCastle Cash Management, LLC
- US Bank Corporate Trust

[Judith Dykes-Hoffmann](#)

~~John A. Harrell~~

NBU Board President

Attachment G:
Certification of Board Action to Approve Safekeeping Accounts

At the regular meeting of the Board of Trustees on February 27, 2020, the Board approved the following custodial safekeeping accounts:

- Wells Fargo Bank Texas
- JPMorgan Chase Bank
- Frost Bank
- FHN Financial
- Hilltop Securities Inc.
- StoneCastle Cash Management, LLC
- US Bank Corporate Trust
- The Bank of New York Mellon Trust Company, N.A.




John A. Harrell
NBU Board President

Attachment H:
Certification of Board Action to Approve Independent Sources to Provide Investment Training

At the regular meeting of the Board of Trustees on February 24, 2011, the Board approved as part of the Investment Policy the following list of independent sources approved by the Investment Committee to provide investment training for Investment Officers in accordance with the requirements of the Public Funds Investment Act:

- University of North Texas – Center for Public Management
- Government Treasurers of Texas (GTOT)
- Government Finance Officers Association (GFOA)
- Government Finance Officers Association of Texas (GFOAT)
- American Institute of Certified Public Accountants (AICPA)
- Texas Society of Certified Public Accountants (TSCPA)
- Texas Municipal League (TML)
- Texas State University



Guadalupe Castillo
NBU Board President

**Attachment I:
Certification of Board Action to Approve Investment Funds**

At the regular meeting of the Board of Trustees on October 31, 2019, the Board approved the following list of investment funds as indicated for their respective purposes:

Bond Reserve

- Reserve

Bond Debt Service Funds (Interest and Principal Funds) of Bonds approved for issuance by the Board of Trustees.

Revenue Funds

- Temporary Cash

System Contingency Fund

- System Contingency Fund

Construction Funds

- Commercial Paper Proceeds
- Bond Proceeds
- Capital Recovery –Pro Rata
- Capital Recovery –Central Facilities
- Impact Fees –Water
- Impact Fees –Sewer
- Water Resource Development Fund

Other Miscellaneous NBU Funds

- Rate and Debt Flexibility
- Consumer Deposits
- Community Assistance Fund
- Power Supply Fund
- Power Stabilization Fund



John A. Harrell
NBU Board President



New Braunfels Utilities

Investment Policy

Approved by Board of Trustees
on March 30, 2023

263 E Main Plaza P O Box 310289
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**NEW BRAUNFELS UTILITIES
INVESTMENT POLICY
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I. INVESTMENT AUTHORITY AND SCOPE OF POLICY

Policy Statement

This policy is designed to serve as a guideline for the investment of all New Braunfels Utilities' (NBU) funds by the individuals designated by the Chief Executive Officer (CEO) and the Board of Trustees as having the authority and responsibility for making such investments. This policy reflects the concept that NBU, by law, manages funds defined as public funds. NBU is a public trust for those assets acquired pursuant to City Charter and Statutes.

This policy serves to satisfy the statutory requirements of Texas Government Code Chapter 2256 (The Public Funds Investment Act, as amended, "PFIA") to define and adopt a formal investment policy. *See Attachment A: Certification of Board Action to Approve Investment Policy.* This policy will be reviewed and approved by the Board of Trustees at least annually according to Section 2256.005(e).

NBU's excess funds shall be kept invested until required for payment of operating and maintenance expenses, debt service, construction costs, claims not covered by insurance, or any other debt or amount rightfully due and owed by NBU. NBU shall maintain a comprehensive cash management program which includes collection of accounts receivable, vendor payment in accordance with invoice terms, and prudent investment of its available cash.

Provisions and restrictions set forth in State and Federal Laws, in Bond Ordinances for each of the separate funds and in other ordinances (including subsequently adopted Bond Ordinances or State or Federal laws enacted), shall govern administration and investment of NBU funds. If there should ever be conflicts between this policy and other laws and ordinances, such other laws and ordinances will control.

Investments shall be made with the primary objectives of:

- Safety and preservation of principal
- Maintenance of sufficient liquidity to meet operating needs
- Maximization of yield on the portfolio
- Public trust from prudent investment activities

When determining the term of an investment, market trends and economic conditions shall be recognized factors within the parameters of projected cash requirements. Arbitrage regulations shall be strictly observed.

Portfolio composition and eligible investments shall be set forth in this policy. Tax-exempt securities within the portfolio shall be utilized primarily for compliance with arbitrage regulations. Arbitrage, as referred to in this policy, concerns the investment of bond proceeds (construction funds), interest and sinking funds, and reserve funds.

It shall be recognized that speculation is inappropriate, and that volatile instruments are to be avoided under any circumstances.

Funds Included

This investment policy applies to all financial assets of all funds of NBU at the present time and any funds to be created in the future.

Investment Officers

In accordance with Chapter 2256, Sec. 2256.005(f), the Board shall designate Investment Officers of NBU as stated in *Attachment B: Certification of Board Action to Designate Authorized Investment Officers*. Each of the employees designated to serve as Investment Officers shall be covered by a Public Employee Dishonesty Policy at a level of not less than \$1,000,000, and will serve under the direction and authority of the Board.

If an Investment Officer has a personal business relationship with an entity -- or is related within the second degree by affinity or consanguinity to an individual -- seeking to sell an investment to NBU, the Investment Officer must file a statement disclosing that personal business interest -- or relationship - - with the Texas Ethics Commission and the Board of Trustees in accordance with Government Code 2256.005(i).

Investment Officers shall refrain from personal business activity that could conflict with proper execution of the investment programs, or which could impair their ability to make impartial investment decisions. Investment Officers shall disclose to the Board any material financial interests in financial institutions that conduct business with NBU, and shall further disclose any large personal financial or investment positions that could be related to the performance of NBU's portfolio. Investment Officers shall subordinate their personal investment transactions to those of NBU, particularly with regard to the timing of purchases and sales.

The Investment Officers, pursuant to the delegation and authority of the Board, shall direct the investment program of NBU. No person may engage in an investment transaction except as provided under the terms of this policy. The designated Investment Officers, through the authority granted by the CEO and by the Board of Trustees, shall be responsible for all investment transactions undertaken and shall establish a system of controls to regulate the activities of subordinate employees.

The Investment Officers have the authority to purchase or sell, or contract to purchase or sell, any approved securities without limitation as to dollar amount, subject to the exceptions noted under Portfolio Management in this policy. Investment Procedures to supplement investment administration and to provide additional guidance on investments shall be prepared by the Investment Officers but are subject to revision without Board action. The Investment Procedures shall be available for review as requested by the Board.

II. INVESTMENT OBJECTIVES

General Statement

NBU funds will be invested in accordance with federal and state laws, this investment policy and applicable written administrative procedures. NBU will invest according to the investment strategy statements for each fund as approved by the Board of Trustees in accordance with Sec. 2256.005(d). *See Attachment C: Certification of Board Action to Approve Fund Investment Strategies.*

Safety and Maintenance of Adequate Liquidity

NBU's paramount objective in any investment transaction is the return of principal; therefore, safety of principal overrides other considerations in any investment transaction. NBU's investment portfolio must be structured in conformance with an investment management plan which provides for liquidity necessary to pay obligations as they become due. A portion of the portfolio will be placed in money market mutual funds or local government investment pools which offer same day liquidity for short term funds.

Diversification

The Investment Portfolio shall be diversified to minimize the risk of loss resulting from overconcentration of assets in a specific maturity, or a specific issuer, or a specific class or type of investment. Investments shall be selected that provide for stability of income and reasonable liquidity with active secondary or resale markets. NBU recognizes that investment risk can result from issuer defaults, market price changes, or various technical complications leading to temporary illiquidity. Risk is managed through portfolio diversification which shall be achieved by the following general guidelines:

- limiting investments to avoid concentration in securities from a specific issuer or business sector (excluding U.S. Treasury Securities),
- investing in securities with varying maturities,
- limiting investment in securities that have higher credit risks,
- continuously investing a portion of the portfolio in readily available funds such as a local government investment pool, or money market funds, to ensure that appropriate liquidity is maintained to meet ongoing obligations.

The NBU Board will establish for the NBU investment portfolio the maximum limits for each instrument as a percentage of total invested funds. These maximum limits are set forth in *Attachment C: Certification of Board Action to Approve Fund Investment Strategies.*

Yield

NBU's objective is to earn a market rate of return on its investments within the constraints imposed by its safety and liquidity objectives, investment strategies for each fund, arbitrage regulations, and state and federal law governing investment of public funds. The core investments are limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

Maturity

Portfolio maturities will be structured to meet NBU financial obligations first, and then, to achieve a market return of interest. When making investment decisions, maturity restraints will be determined based upon the investment strategy for each fund. The maximum allowable stated maturity of any

individual investment owned by NBU is five (5) years. However, NBU may invest funds up to ten (10) years for the Community Assistance Fund.

Disposition of Securities

NBU's Investment Portfolio should pursue a "buy and hold" portfolio strategy. Maturity dates of investments are selected based on cash flow requirements and investments are purchased with the intent to be held until maturity. However, securities may be sold before they mature if market conditions present an opportunity for NBU to benefit from the trade. Securities may be sold for the following reasons:

- A security with declining credit may be sold early to minimize loss of principal
- A security swap would improve the quality, yield, or target duration in the portfolio
- A security may be called by the issuer per the terms of its original issuance
- Liquidity needs of the portfolio require that the security be sold.

Prior to selling a security before its scheduled maturity date, approval of two Investment Officers or one Investment Officer and the CEO, is required.

Quality and Capability of Investment Management

Investment training is required pursuant to Sec. 2256.008(a) and (a-1) of the Public Funds Investment Act for the Board's Treasurer, the Chief Financial Officer (if the treasurer is not the CFO), and each Investment Officer through courses and seminars offered by qualified individuals, professional organizations and associations in order to insure the quality and capability of these individuals in making sound investment decisions and/or appropriately monitoring financial developments. Initial training of at least 10 hours of instruction must be completed within 12 months after taking office or assuming duties; and an additional minimum of 8 hours of additional investment training shall be completed not less than every two consecutive years, such period beginning on the first day of NBU's fiscal year. The training must be provided by an independent source approved by the Board of Trustees or the Investment Committee. *See Attachment H: Certification of Board Action to Approve Independent Sources to Provide Investment Training.*

Investment Strategy Statements By Fund

Bond Reserve Funds

NBU Bond Reserve Funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments appropriate to provide reserves to meet any shortfalls in NBU debt service funds. As Bond Reserve Funds are not anticipated to be utilized except in the case of extreme situations, maturities in these funds are generally expected to be invested for longer terms (one-three years) not to exceed five years. However, in no instance should an investment maturity exceed the latest established debt service requirement/payment date relating to the respective bond issuance. All Bond Reserve Fund investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. The nature of the Bond Reserve Funds is such that involuntary investment liquidations are unlikely, however should they become necessary, the comparatively longer-term nature of the instruments could result in material losses, depending on the financial and economic conditions existing at the time. Bond Reserve Fund investments will be structured to achieve the most competitive yields attainable, given appropriate diversification, maturity, arbitrage and safety requirements.

Bond Debt Service Funds (Interest and Principal Funds)

NBU Debt Service Funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments appropriate to meet periodic payments required by bond amortization schedules. As such, investment maturities are limited by pertinent debt service requirements and by related tax law addressing maximum funding levels for such funds' arbitrage considerations. All Debt Service Fund investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. Due to their specific purpose and short-term nature, involuntary investment liquidations are unlikely in these funds, however should they become necessary, their short-term nature would make material losses highly unlikely. Investments will be structured to achieve the most competitive yields attainable, given the pertinent liquidity requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

Revenue Funds

The Revenue Funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments suitable for a fund requiring a high degree of liquidity. All investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. Additionally, Revenue Funds' investments shall be diversified among a variety of investment instruments. Due to their short-term nature, involuntary investment liquidations are unlikely for the Revenue Funds; however, should they become necessary, the short-term nature of the instruments would make material losses highly unlikely. Each of the Revenue Funds' investments will be structured to achieve the most competitive yields attainable, given the pertinent liquidity requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

System Contingency Fund

The System Contingency Fund (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments appropriate to meet any funding shortfalls encountered by NBU as in the case of a disaster or catastrophe. As the System Contingency Fund is not anticipated to be utilized except in the case of extreme situations, maturities in these funds are generally expected to range from short-term to five years. All System Contingency Fund investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act, the NBU Investment Policy, and the System Contingency Fund Policy as adopted in Appendix A of NBU Financial Policy. The nature of the System Contingency Fund is such that involuntary investment liquidations are unlikely, however should they become necessary, any longer-term investment instruments could result in material losses depending on the financial and economic conditions existing at the time. System Contingency Fund investments will be structured to achieve the most competitive yields attainable, given appropriate diversification, maturity, arbitrage and safety requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

Construction Funds

NBU Construction Funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments appropriate to meet construction expenditure requirements for which the funds were acquired. Maturities are also limited by related tax law

addressing required spending terms. Construction Funds' investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. Because investments are made in accordance with specific fund and expenditure requirements, involuntary investment liquidations are unlikely. Investments will be structured to achieve the most competitive yields attainable, given the pertinent liquidity requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

Other Miscellaneous NBU Funds

Other NBU funds (as specified in *Attachment I: Certification of Board Action to Approve Investment Funds*) shall include investments suitable for their particular purposes, including their unique liquidity requirements. Similarly, the average maturity of investments will be tailored to the individual fund's purposes and requirements. All investment instruments must meet credit and safety criteria as required by the Public Funds Investment Act and NBU Investment Policy. Because investments are made in accordance with specific fund and expenditure requirements, involuntary investment liquidations are unlikely. Investments will be structured to achieve the most competitive yields attainable, given the pertinent liquidity requirements. Appropriately competitive and reasonable investment instruments will be compared prior to making an investment.

III. AUTHORIZED AND PROHIBITED INVESTMENTS

Authorized Investments

NBU Investment Officers shall use any or all of the following authorized investment instruments consistent with governing law (Government Code 2256):

- A. Except as provided by Government Code 2256.009(b), the following are authorized investments:
1. obligations, including letters of credit, of the United States or its agencies and instrumentalities;
 2. direct obligations of the State of Texas or its agencies and instrumentalities, rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent;
 3. other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of the State of Texas or the United States or their respective agencies and instrumentalities;
 4. direct obligations of the following United States agencies and instrumentalities: Federal National Mortgage Association, Federal Farm Credit Bank, Federal Home Loan Bank, and the Federal Home Loan Mortgage Corporation.
- B. Certificate of Deposit or Share Certificate if the Certificate is issued by a depository institution that has its main office or branch office in the State of Texas and is:
1. guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor, or
 2. secured by eligible collateral as listed in Section VI, *provided that*:
 1. the funds are invested through a depository institution that has its main office or a branch office in Texas,
 2. the depository institution arranges for the deposit of funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of NBU,
 3. the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States,
 4. the depository institution acts as custodian for NBU with respect to the certificates of deposit issued for the account of NBU, and
 5. at the same time that the funds are deposited and the certificates of deposit are issued for the account of NBU, the depository institution receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the funds invested by NBU through the depository institution selected under B(2)(1) above.

- C. No load Money Market Mutual Funds as specified by Board approval (*see Attachment D: Certification of Board Action to Approve Authorized Money Market Mutual Funds*), provided the mutual fund:
1. must be registered and regulated by the Securities and Exchange Commission;
 2. provides NBU with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940; and
 3. complies with federal Securities and Exchange Commission Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

As provided under section 2256.014(b) of the PFIA, investment in a no-load Money Market Mutual Fund is also authorized if the fund:

1. is registered and regulated by the Securities and Exchange Commission;
2. has an average weighted maturity of less than two years; and
3. either:
 - (A) has a duration of one year or more and is invested exclusively in obligations approved by the PFIA and this policy; or
 - (B) has a duration of less than one year and the investment portfolio is limited to investment grade securities, excluding asset-backed securities.

However, NBU may not (a) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, or invest any portion of bond proceeds, reserves and funds held for debt service, in Mutual Funds described in section 2256.014(b); or (c) invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one Mutual Fund in an amount that exceeds ten (10) percent of the total assets of the Mutual Fund.

- D. Eligible specified investment pools (as permitted in the Public Funds Investment Act, Sec. 2256.016-2256.019) and as authorized by the Board. An investment pool shall invest the funds it receives from entities in authorized investments permitted by the Public Funds Investment Act. *See Attachment E: Certification of Board Action to Approve Authorized Investment Pools.* In order to be eligible, an investment pool must meet the following conditions:
1. must be continuously rated no lower than AAA, AAA-m, or an equivalent rating by a national recognized rating agency with a weighted average maturity no greater than 90 days;
 2. a Public Fund Investment Pool created to function as a Money Market Mutual Fund must mark its portfolio to market daily, and to the extent reasonably possible, stabilize at a \$1.00 net asset value; the ratio of the market value to book value of the fund must be maintained between 0.995 and 1.005; and
 3. the Pool must establish an advisory board composed of qualified members representing participants and non-participants pursuant to Sec.2256.016.

4. a. To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the Investment Officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:
- (1) the types of investments in which money is allowed to be invested;
 - (2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;
 - (3) the maximum stated maturity date any investment security within the portfolio has;
 - (4) the objectives of the pool;
 - (5) the size of the pool;
 - (6) the names of the members of the advisory board of the pool and the dates their terms expire;
 - (7) the custodian bank that will safekeep the pool's assets;
 - (8) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;
 - (9) whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;
 - (10) the name and address of the independent auditor of the pool;
 - (11) the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool; and
 - (12) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios.
- b. To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the Investment Officer or other authorized representative of the entity:
- (1) investment transaction confirmations; and
 - (2) a monthly report that contains, at a minimum, the following information:
 - (a) the types and percentage breakdown of securities in which the pool is invested;
 - (b) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;
 - (c) the current percentage of the pool's portfolio in investments that have stated maturities of more than one year;
 - (d) the book value versus the market value of the pool's portfolio, using amortized cost valuation;
 - (e) the size of the pool;
 - (f) the number of participants in the pool;

- (g) the custodian bank that is safekeeping the assets of the pool;
- (h) a listing of daily transaction activity of the entity participating in the pool;
- (i) the yield and expense ratio of the pool;
- (j) the portfolio managers of the pool; and
- (k) any changes or addenda to the offering circular.

c. Yield shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the Federal Securities and Exchange Commission.

Prohibited Investments

NBU Investment Officers have no authority to use any of the following investment instruments which are strictly prohibited by the Public Funds Investment Act, Section 2256.009(b). These include:

- A. obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- B. obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- C. collateralized mortgage obligations that have a stated final maturity date of greater than ten (10) years; and
- D. collateralized mortgage obligations whose interest rate is determined by an index that adjusts opposite to the changes in a market index.

IV. INVESTMENT RESPONSIBILITY AND CONTROL

Institutions Defined

Investment Officers shall invest NBU funds with any or all of the following institutions or groups consistent with federal and state law and the current Depository Bank Contract:

- A. depository institution that has its main office or branch office in Texas that are guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor, or the National Credit Union Share Insurance Fund, or its successor, and
- B. any government securities brokers and dealers who are licensed under the Texas Securities Act and authorized by the Board of Trustees or the Investment Committee to engage in investment transactions with NBU. *See Attachment F: Certification of Board Action to Approve Eligible Institutions for Investments.*

Depository Restrictions and Security of Funds

Other than for paying agent purposes, NBU shall utilize as depositories only federally or state financial institutions described above in sub-paragraph A of the preceding section and as approved by the Board of Trustees. Said depositories shall be subject to all restrictions set forth in NBU Bond Resolutions and in this policy for all types of investments.

NBU's staff will solicit proposals from qualified financial institutions for bank depository services in accordance with NBU's Purchasing Policy. NBU's staff will evaluate the respondents, submit a recommendation for award to the Investment Committee, and subsequently submit the recommendation for award to the Board of Trustees for approval.

Collateral or Insurance

NBU Investment Officers shall insure that all funds are fully collateralized or insured consistent with federal and state law and the current Bank Depository Contract in one or more of the following manners:

- A. FDIC or NCUSIF Coverage.
- B. Certificates of Deposit issued by institutions that have a main office or branch office in the State of Texas to the extent same are insured by the FDIC or NCUSIF.
- C. Obligations, including letters of credit, of the United States or its agencies and instrumentalities
- D. Obligations of the State of Texas or its agencies and instrumentalities rated as to investment quality by a nationally recognized investment rating firm not less than "AA" or its equivalent.
- E. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of the State of Texas or the United States or their respective agencies and instrumentalities.
- F. Direct obligations of the following United States agencies and instrumentalities: Federal National Mortgage Association, Federal Farm Credit Bank, Federal Home Loan Bank, and the Federal Home Loan Mortgage Corporation.

To the extent not covered by the FDIC or NCUSIF, funds held at a financial institution shall be collateralized at all times. Investment securities pledged as collateral shall at all times be at least equivalent to 102% in aggregate market value, excluding accrued interest, of the amount of funds on deposit plus interest accrued and to accrue thereon, to the extent not covered by the FDIC or NCUSIF. On a monthly basis, NBU will review investment securities pledged as collateral to ensure that sufficient collateral has been posted for the benefit of NBU.

Safekeeping

All purchased securities including Certificates of Deposit shall be held in safekeeping by NBU, or an NBU account in a third party non-affiliated financial institution, or with the Federal Reserve Bank. All pledged securities by the Depository Bank shall be held in safekeeping by NBU or an NBU account in a third party non-affiliated financial institution, or with the Federal Reserve Bank. For approved custodial safekeeping accounts, please see *Attachment G: Certification of Board Action to Approve Safekeeping Accounts*.

Safekeeping receipts must be issued to NBU in a timely manner and must provide the following information:

- A. Effective date of the safekeeping receipt
- B. Description of pledged security
- C. Amount pledged (par value)
- D. Maturity date and rate of interest
- E. Coupon date
- F. Nationally recognized investment firm rating

Securities are to remain pledged to NBU until written notification to release the securities from an NBU Investment Officer is received by the safekeeping financial institution. Securities may be released by an Investment Officer if the safekeeping financial institution provides written confirmation that there remains adequate pledged collateral to NBU as described above.

Securities owned by NBU and collateral securities pledged to NBU must be maintained in safekeeping at a third-party financial institution which is not owned or controlled by, or affiliated with, the same financial institution or holding company from which the security is purchased or from which the collateral is pledged.

Requirements for Investing

In accordance with 2256.005(k), a written copy of this investment policy shall be presented to any person seeking to sell NBU an authorized investment. The NBU Board of Trustees will adopt and annually review a list of qualified brokers authorized to engage in investment transactions with NBU (Attachment F). The registered principal of the business organization seeking to sell an authorized investment shall execute a written instrument substantially to the effect that the registered principal has:

- A. had a qualified representative receive and thoroughly review NBU's Investment Policy; and
- B. acknowledged that the organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities arising out of investment transactions

conducted between NBU and the organization. The responsibility of the broker is limited to reviewing the investments to determine whether they are authorized by the policy.

An Investment Officer may not buy any securities from a person who has not delivered to NBU an instrument in substantially the form provided above according to Section 2256.005(I).

NBU Board Members, Investment Officers and Consultants will evaluate the banking institution or broker/dealer's financial condition to the extent the Board considers necessary prior to establishing any accounts with the broker/dealer or financial institution. Investigation may include a review of appropriate public documents, rating agency reports, and call reports sent to the comptroller of the currency or other appropriate regulator. A banking institution or broker/dealer must be added to the approved list in Attachment F before any business can be transacted.

Certificate of Deposit or share certificate investments may be made with any financial institution so long as it is in full compliance with the requirements set forth in PFIA and this Policy, including, but not limited to, the provisions specified in *Section III – Suitable and Authorized Investments Policy – Investments, Paragraph B*. Any nominal funds incidental or necessary to the establishment of an account with the respective financial institution for purposes of investing in such Certificate of Deposit or share certificate may also be made.

NBU will conduct an ongoing review of publicly available financial records, reports, rating service information and any other data relevant to the financial soundness of any financial institution or broker/dealer with whom NBU is doing business.

Standards of Operation

Bidding Procedure: Investment of NBU funds may be made only after competitive bids are solicited from at least three qualified financial institutions (qualified and approved as set out above) and as provided by State Statute. The bids may be solicited orally. If a financial institution has notified NBU that it is unable or unwilling to bid for investments, it may be presumed that the financial institution is unable or unwilling to bid for the investments until the financial institution notifies NBU otherwise in writing.

All investment decisions shall be internally documented and approved by an Investment Officer. All investments and fund transfers require two signatures from Investment Officers and/or authorized Investment Signatories with at least one being an Investment Officer before execution. Investment Officers may order investments orally, but shall follow up the investment order with a written confirmation to the financial institution or broker/dealer. Written investment instructions shall contain information relative to the name and account number of the fund from which the investment was placed, disposition of interest to be earned, term, invested amount, rate of interest, yield, purchase date, and maturity date of the investment.

Delivery vs. Payment

All investment transactions, except investment pool funds and money market mutual funds, will be settled on "delivery versus payment" basis. That is, NBU shall authorize the release of funds only after it has received notification from the safekeeping bank that purchased the security has been received in NBU's safekeeping account. This notification may be oral, but the safekeeping bank must follow up with an original safekeeping receipt to NBU within 24 hours.

NBU must also have confirmation from a third-party safekeeping bank that adequate collateral has been pledged to NBU before releasing funds for the investment. This confirmation may be oral, but must be confirmed in writing within 24 hours with the original safekeeping receipt if additional pledging was required.

Audit Control

NBU will have an annual financial audit of all funds by an independent auditing firm, which will include an annual compliance audit of management controls on investments and adherence to the entity's established investment policies in accordance with Gov. Code 2256.005(m). As part of the annual financial audit, the auditing firm will review the quarterly investment reports and report the results to the Board of Trustees.

Standard of Care

In accordance with Government Code 2256.006, investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived as described in the Investment Objectives. Investment of funds shall be governed by the following investment objectives, in order of priority: preservation and safety of principal; liquidity; and yield.

In determining whether an Investment Officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

- A. the investment of all funds, or funds under NBU's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and
- B. whether the investment decision was consistent with the written investment policy of NBU.

The Board of Trustees, Investment Officers, and other Accounting Division personnel shall be personally indemnified in the event of investment loss, provided the Investment Policies of the Board of Trustees have been followed.

V. INVESTMENT REPORTING AND PERFORMANCE EVALUATION

Quarterly Report

In accordance with Government Code 2256.023, not less than quarterly, the Investment Officers shall prepare and submit to the Board a written report of investment transactions for all funds for the preceding reporting period within a reasonable time after the end of the period. The report must:

- A. describe in detail the investment position of NBU on the date of the report;
- B. be prepared jointly by all Investment Officers;
- C. be signed by each Investment Officer;
- D. contain a summary statement of each pooled fund group that states the:
 1. beginning market value for the reporting period;
 2. additions and changes to the market value during the period;
 3. ending market value for the period; and
 4. fully accrued interest for the reporting period
- E. state the book value and market value of each separately invested asset at the beginning and end of the reporting period by the type of asset and fund type invested;
- F. state the maturity date of each separately invested asset that has a maturity date;
- G. state the account or fund or pooled group fund for which each individual investment was acquired; and
- H. state the compliance of the investment portfolio as it relates to:
 1. the investment strategy expressed in NBU's investment strategy document; and
 2. relevant provisions of the Public Funds Investment Act.
- I. the reports prepared by the Investment Officers shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board by the independent auditor.

Market Valuation of Investments

The method used to monitor the market price of acquired investments shall be as follows:

- Pools - net asset value as reported by the investment pool on the last day of each month;
- All other investments - as reported in the Wall Street Journal edition issued on the last day of the month or valuations acquired through approved brokers, dealers, financial institutions and/or third-party financial reporting service organizations.

Investment Policy and Strategy Revisions

This Investment Policy may only be amended by a resolution of the NBU Board of Trustees. An Investment Committee consisting of two (2) Board Members, the CEO, NBU Investment Officers, and the Financial Advisor will meet as needed and will review the Investment Policy and strategies annually. Recommended modifications to the policy will be submitted to the Board of Trustees for

review and approval. The Board will document this review by formal action through a resolution, including a record of any changes made.

**Attachment A:
Certification of Board Action to Approve Investment Policy**

At the regular meeting of the Board of Trustees on March 30, 2023, the Board, reviewed and approved the revised New Braunfels Utilities Investment Policy.

Judith Dykes-Hoffmann
NBU Board President

Attachment B:
Certification of Board Action to Designate Authorized Investment Officers

At the regular meeting of the Board of Trustees on March 30, 2023, the Board approved that the following employees serving in the positions listed below are the designated Investment Officers of NBU:

Chief Financial Officer
Director of Finance
Finance Manager

As per Section I, subsection "Investment Officers" of this policy, "the CEO is authorized to serve as an investment signatory on demand and investment accounts, including the opening and closing of such accounts, as designated by action of the Board of Trustees."

Judith Dykes-Hoffmann
NBU Board President

**Attachment C:
Certification of Board Action to Approve Fund Investment Strategies**

At the regular meeting of the Board of Trustees on February 27, 2020, the Board approved the following investment strategies in accordance with the investment objectives as stated in the New Braunfels Utilities Investment Policy- *Section II. Investment Objectives*:

The **allowable** range of permitted investments by security types are as follows:

1.	U.S. Treasury Securities	0 to 70%
2.	U.S Government Agencies and Instrumentalities	0 to 70%
3.	Certificates of Deposit	0 to 40%
4.	Money Market Mutual Funds and Authorized Pools (aggregate)	0 to 100%
5.	Obligations of the State of Texas or its agencies and instrumentalities	0 to 15%
6.	Federally Insured Cash Account (FICA)	0 to 50%

The NBU Investment Portfolio shall incorporate a:

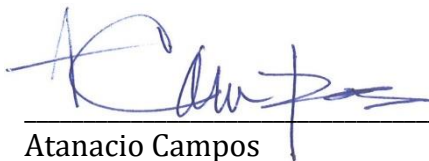
- maximum Weighted Average Maturity to Call Date (WAMC) of 300 days or less calculated on the basis of each security's earlier of (i) maturity date or (ii) first call date (from date of measurement), if applicable.
- maximum Weighted Average Maturity (WAM) of 450 days or less.
- minimum amount equal to at least thirty (30) days of total operating expenses in investments which can be converted into next day liquid funds into cash or cash-equivalents without loss of principal. For purposes of this section, the thirty days of total operating expenses shall refer to the annual budgeted amounts for the current fiscal year divided by twelve (12).

John A. Harrell
NBU Board President

Attachment D:
Certification of Board Action to Approve Authorized Money Market Mutual Funds

At the regular meeting of the Board of Trustees on January 26, 2017, the Board approved the following list of authorized Money Market Mutual Funds:

- Federated Government Obligation Money Market Mutual Fund (Ticker: GOTXX)
- DWS Government Cash Institutional Money Market Mutual Fund (Ticker: DBBXX)
- Vanguard Admiral Treasury Money Market Mutual Fund (Ticker: VUSXX)
- Federally Insured Cash Account



Atanacio Campos
NBU Board President

Attachment E:
Certification of Board Action to Approve Authorized Investment Pools

At the regular meeting of the Board of Trustees on March 30, 2023, the Board approved the following list of authorized Investment Pools:

- Texas Local Government Investment Pool (TexPool)
- Texas Short Term Asset Reserve (TexSTAR)
- TexasDAILY (a portfolio established by Texas Range)
- Texas Cooperative Liquid Assets Securities System Trust (Texas CLASS)

Judith Dykes-Hoffmann
NBU Board President

Attachment F:
Certification of Board Action to Approve Eligible Institutions for Investments

At the regular meeting of the Board of Trustees on March 30, 2023, the Board approved the following list of authorized eligible Institutions for Investments:

Banking Institutions

- Frost Bank
- J.P. Morgan Chase Bank, New Braunfels
- Wells Fargo, New Braunfels
- Prosperity Bank, New Braunfels

Government Securities Brokers/ Dealers

- Merrill Lynch
- J.P. Morgan Securities Inc.
- Frost Bank
- Wells Fargo Bank N.A.
- FHN Financial
- Mischler Financial Group

Other Investments Broker/ Dealer

- Hilltop Securities Inc.
- StoneCastle Cash Management, LLC
- US Bank Corporate Trust

Judith Dykes-Hoffmann
NBU Board President

Attachment G:
Certification of Board Action to Approve Safekeeping Accounts

At the regular meeting of the Board of Trustees on February 27, 2020, the Board approved the following custodial safekeeping accounts:

- Wells Fargo Bank Texas
- JPMorgan Chase Bank
- Frost Bank
- FHN Financial
- Hilltop Securities Inc.
- StoneCastle Cash Management, LLC
- US Bank Corporate Trust
- The Bank of New York Mellon Trust Company, N.A.




John A. Harrell
NBU Board President

Attachment H:
Certification of Board Action to Approve Independent Sources to Provide Investment Training

At the regular meeting of the Board of Trustees on February 24, 2011, the Board approved as part of the Investment Policy the following list of independent sources approved by the Investment Committee to provide investment training for Investment Officers in accordance with the requirements of the Public Funds Investment Act:

- University of North Texas – Center for Public Management
- Government Treasurers of Texas (GTOT)
- Government Finance Officers Association (GFOA)
- Government Finance Officers Association of Texas (GFOAT)
- American Institute of Certified Public Accountants (AICPA)
- Texas Society of Certified Public Accountants (TSCPA)
- Texas Municipal League (TML)
- Texas State University



Guadalupe Castillo
NBU Board President

**Attachment I:
Certification of Board Action to Approve Investment Funds**

At the regular meeting of the Board of Trustees on October 31, 2019, the Board approved the following list of investment funds as indicated for their respective purposes:

Bond Reserve

- Reserve

Bond Debt Service Funds (Interest and Principal Funds) of Bonds approved for issuance by the Board of Trustees.

Revenue Funds

- Temporary Cash

System Contingency Fund

- System Contingency Fund

Construction Funds

- Commercial Paper Proceeds
- Bond Proceeds
- Capital Recovery –Pro Rata
- Capital Recovery –Central Facilities
- Impact Fees –Water
- Impact Fees –Sewer
- Water Resource Development Fund

Other Miscellaneous NBU Funds

- Rate and Debt Flexibility
- Consumer Deposits
- Community Assistance Fund
- Power Supply Fund
- Power Stabilization Fund



John A. Harrell
NBU Board President



Meeting Date: March 30, 2023 **Agenda Type:** Consent Item for Action

From: Sarah Richards **Reviewed by:** David Hubbard
 Director of Customer Chief Administrative Officer
 Solutions

Submitted by: David Hubbard **Approved by:** Ian Taylor
 Chief Administrative Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Make Available the Standard Agreement for Negotiation and Execution of Agreements for Interconnection and Parallel Operation of Distributed Generation, as Required by Senate Bill 398

BACKGROUND

Senate Bill 398 87(R) – 2021 (“SB 398”), relating to certain resources and facilities for distributed generation, passed and was signed into law following the 87th legislative session. Distributed generation facility is defined as a facility installed on the customer's side of the meter but separately metered from the customer (i) with a nameplate capacity of at least 250 kilowatts and not more than 10 megawatts; (ii) that is capable of generating and providing backup or supplementary power to the customer's premises; and (iii) that is owned or operated by a person registered as a power generation company in accordance with Section 39.351. SB 398 amended Section 3., Subchapter B, Chapter 35 of the Utilities Code by adding Section 35.037, which describes requirements for interconnection and operation of distributed generation facilities for food supply by Municipally Owned Utilities (“MOUs”).

It is the intent of the legislature in enacting section 35.037, to allow grocers the ability to deploy generation in the ERCOT power region, in areas that have not implemented retail customer choice. Under SB 398, New Braunfels Utilities (“NBU”) and other MOUs are now required to (i) consider certain distributed generation requests; (ii) make available a standard application and interconnection agreement; and (iii) respond to applications within a specified timeline. At the board meeting on January 26, 2023, NBU staff provided a presentation about this process and requested input on the proposed Standard Agreement for Interconnection and Parallel Operation of Distributed Generation (“Standard Agreement”).

NBU staff requests that the Board of Trustees approve the Standard Agreement for negotiation and execution of agreements for Interconnection and Parallel Operation of Distributed Generation, as required by SB 398.

FINANCIAL IMPACT

None.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

EXHIBITS

1. Agreement for Interconnection and Parallel Operation of Distributed Generation
2. Application for Interconnection and Parallel Operation of Distributed Generation

**AGREEMENT FOR INTERCONNECTION AND PARALLEL OPERATION
OF DISTRIBUTED GENERATION**

This Interconnection Agreement (“Agreement”) is made and entered into this _____ day of _____, _____, by _____ New Braunfels Utilities, (“NBU”), and _____ (“Customer”), a _____ [specify whether an individual or a corporation, and if a corporation, name state, municipal corporation, cooperative corporation, or other], each hereinafter sometimes referred to individually as “Party” or both referred to collectively as the “Parties.”

Place a check mark in the applicable space or spaces below to indicate the type of entity entering into this Agreement:

Option 1: For purposes of this Agreement, the end-use customer will act as a Party to this Agreement.

Option 2: For purposes of this Agreement, the entity other than the end-use customer that owns the distributed generation facility (also referred to as “Generator”) will act as a Party to this Agreement.

Option 3: For purposes of this Agreement, the entity other than the end-use customer that owns the premises upon which the distributed generation facility will be located (also referred to as “Premises Owner”) will act as a Party to this Agreement.

Option 4: For purposes of this Agreement, an entity who by contract is assigned ownership rights to energy produced from distributed renewable generation located at the

premises of the end-use customer on the end-use customer's side of the meter, will act as a Party to this Agreement.

Notwithstanding any other provision herein, the entity referred to as "Customer" herein shall refer to the entity defined in the option selected above by the end-use customer.

If any option other than Option 1 as outlined above is selected, the end-use customer must sign, print his or her name, and date the affirmation in the End-Use Customer Affirmation Schedule attached to this Agreement.

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. **Scope of Agreement** -- This Agreement is applicable to conditions under which NBU and Customer agree that one or more generating facility or facilities of ten megawatts or less and related interconnecting facilities to be interconnected at less than 60 kilovolts ("Facilities") may be interconnected to NBU's facilities, as described in Exhibit A. If Customer is not the end-use customer, Customer affirms that the end-use customer has approved of the design and location of the Facilities.

2. **Establishment of Point(s) of Interconnection** -- NBU and Customer agree to interconnect Facilities at the locations specified in this Agreement, in accordance with the Code of Ordinances of the City of New Braunfels, NBU Electrical Connection Policy, NBU Service Conditions Policy, or any new or successor rule or policy adopted by NBU addressing the interconnection or operation of generation facilities (the "Rules") and as described in the attached Exhibit A (the "Point(s) of Interconnection").

3. **Responsibilities of NBU and Customer**

a. Customer shall, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for, Facilities specified on Exhibit A. Customer shall conduct operations of Facilities in compliance with all aspects of the Rules, and NBU shall conduct

operations on its facilities in compliance with all aspects of the Rules, and as further described and mutually agreed to in the applicable Facility Schedule. Maintenance of Facilities shall be performed in accordance with the applicable manufacturer's recommended maintenance schedule. Customer agrees to cause Facilities to be constructed in accordance with specifications equal to or greater than those provided by the National Electrical Safety Code, approved by the American National Standards Institute, in effect at the time of construction.

- b. Each Party covenants and agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of, facilities on its side of the point of common coupling so as to reasonably minimize the likelihood of a disturbance, originating in the facilities of one Party, affecting or impairing the facilities of the other Party, or other facilities with which NBU is interconnected.
- c. NBU shall notify Customer if there is evidence that operation of Facilities causes disruption or deterioration of service to other utility customers or if the operation of Facilities causes damage to NBU's facilities or other facilities with which NBU is interconnected. NBU and Customer shall work cooperatively and promptly to resolve the problem.
- d. Customer shall notify NBU of any emergency or hazardous condition or occurrence with Facilities which could affect safe operation of NBU's facilities or other facilities with which NBU is interconnected.
- e. Customer shall provide NBU at least 30 days' written notice of a change in ownership; any circumstances necessitating a change in the person who is the Customer to this Agreement; or cessation of operations of one or more Facilities. Upon notice by Customer of circumstances necessitating a change in the person who is the Customer to this Agreement, NBU shall undertake in a reasonably expeditious manner entry of a new Agreement with the change in person who is the Customer.

4. Limitation of Liability and Indemnification

- a. Notwithstanding any other provision in this Agreement, with respect to NBU's provision of electric service to the end-use customer other than the interconnections service addressed by this Agreement, NBU's liability to the end-use customer shall be limited as set forth in NBU's Service Conditions Policy, which is incorporated herein by reference.
- b. Neither NBU nor Customer shall be liable to the other for damages for anything that is beyond such Party's control, including an act of God, labor disturbance, act of a public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, a curtailment, order, or regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, or the making of necessary repairs upon the property or equipment of either party.
- c. Notwithstanding anything to the contrary in this Agreement, **CUSTOMER 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, DEMANDS, 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 CUSTOMER'S FACILITIES. 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.**

- d. NBU and Customer shall each be responsible for the safe installation, maintenance, repair, and condition of their respective facilities on their respective sides of the Points of Interconnection. NBU does not assume any duty of inspecting Customer's Facilities.
- e. For the mutual protection of Customer and NBU, only with NBU prior authorization are the connections between NBU's service wires and Customer's service entrance conductors to be energized.

5. Right of Access, Equipment Installation, Removal & Inspection -- Upon reasonable notice, NBU may send a qualified person to the premises where the Facilities are located at or immediately before the time Facilities first produce energy to inspect the interconnection, and observe Facilities' commissioning (including any testing), startup, and operation for a period of up to three days after initial startup of Facilities.

Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, NBU shall have access to the premises where the Facilities are located for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its obligation to provide service to its customers.

Customer warrants it has, or has obtained from other entities, all necessary rights to provide NBU with access to the premises and Facilities, as necessary or appropriate for NBU to exercise its rights under this Agreement and the Rules.

6. Disconnection of Facilities -- Customer retains the option to disconnect from NBU's facilities. Customer shall notify NBU of its intent to disconnect by giving NBU at least

thirty days' written notice. Such disconnection shall not be a termination of this Agreement unless Customer exercises rights under Section 7.

Customer shall disconnect Facilities from NBU's facilities upon the effective date of any termination under Section 7.

NBU shall have the right to suspend service in cases where continuance of service to Customer will endanger persons or property. During the forced outage of NBU's facilities serving Customer, NBU shall have the right to suspend service to effect immediate repairs of NBU's facilities, but NBU shall use its best efforts to provide Customer with reasonable prior notice.

7. Effective Term and Termination Rights -- This Agreement becomes effective when executed by both Parties and shall continue in effect until terminated. The Agreement may be terminated for the following reasons: (a) Customer may terminate this Agreement at any time, by giving NBU sixty days' written notice; (b) NBU may terminate upon failure by Customer to generate energy from Facilities in parallel with NBU's facilities within twelve months after the final interconnection date; (c) either Party may terminate by giving the other Party at least sixty days' written notice that the other Party is in default of any of the material terms and conditions of the Agreement, so long as the notice specifies the basis for termination and there is reasonable opportunity to cure the default; or (d) NBU may terminate by giving Customer at least sixty days' written notice if possible in the event that (i) there is a material change in an applicable rule, ordinance, policy, or statute that necessitates termination of this Agreement, or (ii) the Public Utilities Commission of Texas' substantive rules are amended to adopt a new or revised form of interconnection agreement for use by parties interconnecting distributed generation projects similar to the Facilities.

8. Governing Law and Regulatory Authority -- 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. Amendment -- This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced to writing and executed by the Parties.

10. Entirety of Agreement and Prior Agreements Superseded -- This Agreement, including the attached Exhibit A and Facility Schedules, which are expressly made a part hereof for all purposes, constitutes the entire agreement and understanding between the Parties with regard to the interconnection of the facilities of the Parties at the Points of Interconnection expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. This Agreement replaces all prior agreements and undertakings, oral or written, between the Parties with regard to the subject matter hereof. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement.

11. Written Notices -- Written notices given under this Agreement are deemed to have been duly delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to:

- a. If to NBU:

New Braunfels Utilities
 Attn: Director of Electric Services
 355 FM 306
 New Braunfels, TX 78130

With copy to:

New Braunfels Utilities
 Attn: General Counsel

263 Main Plaza
New Braunfels, TX 78130

b. If to Customer:

The above-listed names, titles, and addresses of either Party may be changed by written notification to the other, notwithstanding Section 10.

12. Invoicing and Payment -- Invoicing and payment terms for services associated with this agreement shall be consistent with applicable rate, tariff, and fee schedules established by NBU or the City of New Braunfels.

13. Disclosure of Information to End-Use Customer -- If Customer is not the end-use customer, NBU is hereby authorized to provide any information requested by the end-use customer concerning the Facility.

14. No Third-Party Beneficiaries -- This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

15. No Waiver -- The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties.

16. Headings -- The descriptive headings of the various parts of this Agreement have been inserted for convenience of reference only and are to be afforded no significance in the interpretation or construction of this Agreement.

17. Multiple Counterparts -- This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives.

NEW BRAUNFELS UTILITIES

CUSTOMER

BY: _____

BY: _____

PRINTED NAME

PRINTED NAME

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

**AGREEMENT FOR INTERCONNECTION AND PARALLEL OPERATION
OF DISTRIBUTED GENERATION**

EXHIBIT A

LIST OF FACILITY SCHEDULES AND POINTS OF INTERCONNECTION

Facility Schedule No.

Name of Point of Interconnection

[Insert Facility Schedule number and name for each Point of Interconnection]

FACILITY SCHEDULE NO.

[The following information is to be specified for each Point of Interconnection, if applicable.]

1. Customer Name:

2. Premises Owner Name:

3. Facility location:

4. Delivery voltage:

5. Metering (voltage, location, losses adjustment due to metering location, and other):

6. Normal Operation of Interconnection:

7. One line diagram attached (check one): _____ Yes / _____ No

If Yes, then the one-line drawing should show the most current drawing(s) available as of the signing of this Schedule. NBU and Customer agree drawing(s) may be updated to meet as-built or design changes that occur during construction. Customer understands and agrees that any changes that substantially affect the protective or functional requirements required by the NBU will need to be reviewed and accepted by NBU.

8. Equipment to be furnished by NBU:

(This section is intended to generally describe equipment to be furnished by NBU to effectuate the interconnection and may not be a complete list of necessary equipment.)

9. Equipment to be furnished by Customer:

(This section is intended to describe equipment to be furnished by Customer to effectuate the interconnection and may not be a complete list of necessary equipment.)

10. Cost Responsibility and Ownership and Control of NBU Facilities:

Unless otherwise agreed or prescribed by applicable regulatory requirements or other law, any payments received by NBU from Customer will remain the property of NBU. NBU shall at all times have title and complete ownership and control over facilities installed by NBU.

11. Modifications to Customer Facilities.

Customer understands and agrees that, before making any modifications to its Facilities that substantially affect the protective or interconnection parameters or requirements used in the interconnection process (including in a Pre-interconnection Study performed by NBU), Customer will both notify NBU of, and receive approval by NBU for, such modifications. Customer further understands and agrees that, if required pursuant to the Rules, it will submit a new Application for Interconnection and Parallel Operation request for the desired modifications.

12. Supplemental terms and conditions attached (check one): Yes / _____ No

a. **Insurance Requirements.**

- a. The amount of such insurance coverage per occurrence shall be not less than defined in the table below and name NBU as an additional insured. The amount may be increased at the sole discretion of NBU if the nature of the projects so requires.

System Size	Insurance Requirement
Greater than 250 kW and less than or equal to 500 kW	\$1,000,000
Greater than 500 kW	\$2,000,000

- b. The certificate of insurance shall provide that the insurance policy will not be changed or canceled during its term without thirty days' written notice to NBU. The term of the insurance shall be concurrent with the term of this Agreement.
- c. Customer shall provide proof of such insurance to NBU prior to execution of this Agreement

and subsequently on request by NBU.

END-USE CUSTOMER AFFIRMATION SCHEDULE

The end-use customer selecting the entity who owns the DG facility (the DG owner or Option 2 entity), the owner of the premises at which the DG facility is located (premises owner or Option 3 entity), or the person who by contract is assigned ownership rights to energy produced by the DG facility (Option 4 entity) to act as Customer and Party to the Interconnection Agreement must sign and date the consent below.

“I affirm that I am the end-use customer for the distributed generation facility addressed in Facility Schedule No. __[insert applicable number] in the Interconnection Agreement between New Braunfels Utilities and _____[insert name of Customer], and that I have selected _____ [insert name of Customer] or successor in interest to act as Customer and a Party to this Interconnection Agreement rather than me.

[END-USE CUSTOMER NAME]

SIGNATURE: _____

DATE: _____

(250 kW OR GREATER)

This application is required for all requests for systems with total capacity of 250 kW or greater. Requests for systems <250kW should XXX.

Please note that all applicable items must be accurately completed before New Braunfels Utilities (NBU) can process the distributed generation (DG) application and permit interconnection. Incomplete applications will not be processed until complete. Additional information may be required.

Please submit this completed application and the required attachments to the NBU Service Center, by mail to: NBU, Attention: Electric Engineering – DG Review, 355 FM 306, New Braunfels, Texas 78130. You may also email the completed application and attachments to electricengineering@nbutexas.com. For application questions, call 830.608.8951.

Application Checklist

- Copy enclosed of completed Distributed Generation Application.
- Copy enclosed of site electrical one-line diagram and schematic drawings showing the configuration of all Distributed Generation equipment and relevant interconnection with utility sources. *Systems rated 2 MW or greater must include drawings signed and stamped by a professional engineer licensed in the state of Texas.*
- Copy enclosed of Elevation Plans detailing arrangement of electrical devices collocated with utility metering equipment.
- Copy enclosed of Site Plan detailing proposed layout of major equipment such as disconnect switch(es) in relation to meter, generator, main service meter, and precise physical location of the proposed distributed generation facility (e.g., USGS topographic map or other diagram or documentation).
- Copy enclosed of any site documentation that describes and details the operation of the protection and control schemes as well as proposed directory/plaque location.
- Copy enclosed of schematic drawings for all grounding methods, protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).
- For customers that intend to power site with NBU electric service: Load sheet, load balance by phase, estimated maximum demand, and load factor.
- Certificate of Insurance: Insurance coverage is required for certain systems as is indicated below. *Please see Agreement for Interconnection and Parallel Operation of Distributed Generation for additional details.*

System Size	Insurance Requirement
Greater than 250 kW and less than or equal to 500 kW	\$1,000,000
Greater than 500 kW	\$2,000,000

- Application fee:** Provide \$1,300.00 application fee via credit card, check or money order. Application will not be processed until payment is received. Please indicate your payment method:
 - Payment via credit card.** NBU accepts Visa, Mastercard and Discover. NBU will call you to process payment. Please provide name and phone number of person who will make payment:
 Name _____ Best phone number _____
 - Payment via check or money order.** Check or money order made payable to New Braunfels Utilities. Please write "DG Application" and the customer's last name in the "For" section. Mail or drop off at the address above.

Customer Signature

I hereby certify that, to the best of my knowledge, all of the information provided in this Interconnection Request is true and correct.

Signature of Interconnection Customer

Date

Customer Information

Customer's Name: _____

Address: _____

Contact Person: _____ Email Address: _____

Telephone (Normal): _____ (Emergency): _____

Account Number (if applicable): _____

Application Preparer Information

Information Prepared and Submitted By:

Name: _____

Address: _____

Email Address: _____ Telephone: _____

Signature of Preparer

Date

Emergency Contact(s)

Name of DG Owner or DG Owner's designated representative who can be contacted by NBU at any time throughout ownership of DG system in case of emergency or important issues concerning the DG System.

DG Owner or designated representative (if not same as above): _____

Email Address: _____ Telephone (24 hrs / 7 days a wk): _____

Installer / Contractor (if not same as above): _____

Email Address: _____ Telephone (24 hrs / 7 days a wk): _____

Generator Details

Is this DG system and upgrade to an existing and installed DG system? Yes No

Number of Units: _____ Manufacturer: _____

Type (Synchronous, Induction, Backup or Inverter): _____

Fuel Source Type (Solar, Natural Gas, Wind, etc.): _____

Kilowatt Rating (95 F at location): _____ Kilovolt-Ampere Rating (95 F at location): _____

Power Factor: _____ Voltage Rating: _____

Number of Phases: _____ Frequency: _____

Do you plan to export power? Yes No If Yes, maximum amount expected: _____

If Yes, description of wholesale services offered (e.g. ancillary services): _____

Do you intend to power your site with NBU electric service? Yes No

If "yes", note additional application attachment is required as noted on the application checklist.

Pre-Certification Label or Type Number (e.g., UL-1741 Utility Interactive or IEEE 1547.1): _____

Expected Energization and Start-up Date: _____

Normal operation of interconnection: _____

Examples: provide power to meet base load, demand management, standby, back-up, other (if other please describe)

Confirm that generator will disconnect from distribution grid during NBU outages: Yes No

Describe the generator system performance during transient system conditions/outages: _____



Meeting Date: March 30, 2023 **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: Ryan Kelso **Approved by:** Ian Taylor
 Chief Operations Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Senate Bill 3 Emergency Preparedness Plan Generators Phase 1 Project

BACKGROUND

This Professional Services Agreement (the “Agreement”) with Freese and Nichols, Inc. (“FNI”) provides project management, preliminary engineering design, final design, field services, permitting and coordination with stakeholders, bid phase services, and construction phase services for the New Braunfels Utilities (“NBU”) Senate Bill 3 Emergency Preparedness Plan (“EPP”) Generators Phase 1 Project (the “Project”). The Project consists of installation of permanent generators required by NBU’s recently approved Texas Commission on Environmental Quality EPP. The generators will be located at the Grandview Pump Station, Well #4 Pump Station, Westpointe Flow Control Valve, and Oak Run Flow Control Valve.

NBU staff requests that the Board of Trustees approve the Agreement with FNI 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 March 2024. NBU staff plans to begin construction in April 2024 and completing construction by April 2026.

FINANCIAL IMPACT

The total financial impact for the Agreement with FNI for the Project is \$500,305, including supplemental services. The Project is budgeted within the fiscal year 2023 through fiscal year 2026 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

Safety and Security

Stewardship

EXHIBITS

1. Professional Services Agreement with FNI

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 **FREESE AND NICHOLS, 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 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 work and 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 locality 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 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. Evidence of such insurance shall be attached as Exhibit C. 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:

Freese and Nichols, Inc.
4055 International Plaza, Suite 200
Fort Worth, Texas 76109

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 cybersecurity event or breach, the Professional shall notify NBU immediately. **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. To the extent this Agreement relates to critical infrastructure in the State of Texas, 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 2274.0103 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 2274 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.

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 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, “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 acknowledgement and obligation are in addition to and complimentary 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.

(The remainder of this page intentionally left blank)

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: Ian Taylor
Title: CEO

PROFESSIONAL:
FREESE AND NICHOLS, INC.,
a Texas corporation

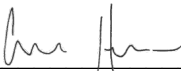
By:  _____
Name: Anne Hoskins
Title: Principal

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide project management, preliminary engineering, final design, field services, permitting and stakeholders, bid, and construction phase services (collectively the “Services”) for the Emergency Preparedness Plan (“EPP”) Generators, Phase 1 Project. The EPP Generators, Phase 1 Project shall consist of installation of generators required by NBU’s recently approved Texas Commission on Environmental Quality EPP (the “Project”) located at multiple NBU facilities in New Braunfels, Texas.

Phase 1 Project Facilities

- 1) Back-up electric generating facilities with natural gas supply and an automatic transfer switch shall be installed at the following NBU facilities:
 - a) Grandview Pump Station;
 - b) Well #4 Pump Station;
 - c) Westpointe Flow Control Valve (generator will power flow control valve only and will not power other electrical facilities on site); and
 - d) Oak Run Flow Control Valve.

SERVICES

The Professional shall provide the following Services in accordance with the tasks described herein.

Task 1. Project Management

1. The Professional shall provide the following project management services described herein.
 - 1.1. SCHEDULE. The Professional shall develop a baseline design schedule for the Project and prepare updated design schedules for the Project on a monthly basis on or before the 25th day of each month for NBU to monitor progress and identify design submittal dates. The Professional shall provide the schedules to the NBU Project Manager 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 to NBU electronic monthly

Project progress reports and submit written invoices on or before the 25th day of each month for the previous month's effort. The Professional shall provide progress reports to the NBU Project Manager via email.

- 1.4. PROJECT CONTROLS. The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, the following:
 - 1.4.1. assigning a senior advisor to oversee the QA/QC program;
 - 1.4.2. developing cost estimates using recent bid tabs from similar projects or vendor prices;
 - 1.4.3. using Microsoft Project or similar to manage the schedule; and
 - 1.4.4. coordinating communication with subconsultants through emails and meetings.

Task 2. Preliminary Engineering Phase

2. Upon NBU providing a notice to proceed ("NTP") to the Professional, the Professional shall perform the preliminary engineering phase services described below.
 - 2.1. MEETINGS. The Professional shall provide meeting agendas and meeting minutes to NBU via email for the following meetings:
 - 2.1.1. project kick-off meeting with NBU (one (1) meeting);
 - 2.1.2. preliminary engineering report ("PER") review meeting (one (1) meeting); and
 - 2.1.3. meetings with additional stakeholders (two (2) meetings).
 - 2.2. PUMP STATION ANALYSIS. The Professional shall analyze the pump station design requirements as described below.
 - 2.2.1. The Professional shall determine the electrical equipment requirement and layout and provide a one-line diagram and overall process diagram for the pump station to NBU via email.
 - 2.2.2. The Professional shall perform preliminary sizing and capacity of the load for each of the sites.
 - 2.2.3. The Professional shall size the generators according to the load it will serve.
 - 2.2.4. The Professional shall prepare a life cycle cost analysis of the generator, the automatic transfer switch and miscellaneous costs that includes the supervisory control and data acquisition ("SCADA") connection and the natural gas service.

- 2.2.5. The Professional shall design the connection of the new generator system to the existing SCADA to provide the following information: 1) generator ready; 2) generator running; and 3) automatic transfer switch (“ATS”) transferred to the generator.
- 2.2.6. All generators shall be fed by natural gas adjacent to the sites (within 50 feet). The Professional shall design the gas pipeline from the existing facilities to the generators.
- 2.2.7. The Professional shall design noise attenuation for the Oak Run Flow Control Valve site.
- 2.2.8. The Professional assumes the existing SCADA system is in operation and it can receive the new data to be transmitted to NBU.

2.3. 30% DESIGN DOCUMENTS

- 2.3.1. The Professional shall perform up to two (2) preliminary site visits to gather Project information.
- 2.3.2. The Professional shall perform collection and review of existing data, reports, mapping, and records from NBU. The Professional shall review documents associated with the Project. 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.
- 2.3.3. The Professional shall prepare 30% design drawings including plan views of all proposed infrastructure within the Project site.
- 2.3.4. The Professional shall prepare a Class 4 opinion of probable construction cost (“OPCC”) based on 30% design drawings.

- 2.4. PRELIMINARY ENGINEERING REPORT. The Professional shall prepare a PER that includes 30% design plans and describes the scope of the Project for final design, right-of-way (“ROW”) requirements, easement requirements, permitting, constructability, OPCC, and schedule. The PER shall include Project implementation, phasing and packaging for all portions of the Project. The Professional shall submit a draft PER for NBU review and comment as well as a final PER incorporating all NBU comments. The final PER shall be submitted to the NBU Project Manager within 30 days of receiving comments.

2.5. DELIVERABLES. The Professional shall provide the following preliminary engineering phase deliverables to NBU:

2.5.1. a PER and a Class 4 OPCC – one (1) PDF electronic file; and

2.5.2. 30% design drawings – one (1) PDF electronic file and one (1) electronic KMZ or SHP file.

Task 3. Final Design Phase

3. Upon approval of the PER and 30% design documents, the Professional shall perform the final design phase services described below.

3.1. MEETINGS. The Professional shall provide a meeting agenda and meeting minutes to NBU via email for the following meetings:

3.1.1. 90% design review meeting (1 meeting);

3.1.2. meeting with property owners (1 meeting);

3.1.3. meeting with franchise utilities (1 meeting);

3.1.4. permitting meeting with City of New Braunfels (1 meeting); and

3.1.5. and meeting with additional stakeholders (1 meeting).

3.2. 90% DESIGN DOCUMENTS. The Professional shall prepare 90% plans, specifications and OPCC based on decisions made in the preliminary design phase. Design documents shall include:

3.2.1. plan view and/or site layout the proposed facilities;

3.2.2. an electrical one-line diagram;

3.2.3. description on the generators and the automatic transfer switches for the proposed facilities;

3.2.4. complete specifications with the exception of NBU's standard specifications; and

3.2.5. Class 2 OPCC based on 90% design documents.

3.3. 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare 100% plans, specifications and OPCC. 100% design documents shall include:

3.3.1. a final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase. NBU shall provide the Professional easement requirements for each parcel via email to incorporate into the plans;

- 3.3.2. Project file types to include: DWG, MXD, and KMZ;
 - 3.3.3. preparation of the bid form; and
 - 3.3.4. a Class 1 OPCC based on 100% design documents.
- 3.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU:
- 3.4.1. 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 2 OPCC; and
 - 3.4.2. 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.

Task 4. Field Services

- 4. The Professional shall perform the field services described below.
 - 4.1. TOPOGRAPHIC SURVEY. The Professional shall obtain a topographic, utility and boundary survey as described below.
 - 4.1.1. The Professional shall tie in all existing surface topographic features and structures for the facilities shown in Figure 1. This shall include but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges, and flow line), channels and drainage ways (tops, toes, and flow line), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits, visible valves, meters, clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits) mailboxes, etc. Trees shall be tagged and tabulated by size and species-specific in compliance with the City of New Braunfels Tree Preservation ordinance as defined in the City of New Braunfels City Code Section 144-5.3. The survey limits shall extend approximately 100 feet on intersecting streets. The Professional shall provide sufficient ground shots to create one (1) foot contours

for the Project.

- 4.1.2. The Professional shall conduct a utility survey and locate existing utilities within the Project boundary in Figure 1. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipal owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey. The Professional shall bear all costs for the Services associated with utility locates.
 - 4.1.3. The Professional shall locate up to three (3) geotechnical borings and tie them in to the Project survey.
 - 4.1.4. The Professional shall set and install control points and/or benchmarks as required for the survey work. The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing.
 - 4.1.5. The Professional shall research and review adjoining plats and deeds along the survey corridor. The Professional shall locate property corners and identify existing right-of-way, along the survey corridor, based on found monuments and record documents.
- 4.2. EASEMENT DOCUMENTS. The Professional shall prepare metes and bounds descriptions and exhibits for required easements for the Project for up to two (2) parcels based on the following criteria:
- 4.2.1. the Professional shall perform deed, plat and courthouse records research, request title reports and obtain copies of deeds and easement documents;
 - 4.2.2. the Professional shall survey property corners, fences and appurtenant property evidence;
 - 4.2.3. easements shall consist of a permanent easement and a temporary construction easement and shall include the following:
 - 4.2.3.1. there shall be a separate document for permanent easements and temporary easements for each parcel;
 - 4.2.3.2. easements shall be signed and sealed by a registered professional land surveyor, currently registered in the State of Texas;

- 4.2.3.3. each easement shall have attached to it a copy of the corresponding deed for that property and a closure computation sheet for the easement tract;
 - 4.2.3.4. a draft copy of the easement shall be submitted by the Professional via email to NBU for review;
 - 4.2.3.5. the Professional shall incorporate comments as appropriate and submit one final copy of the easement and deed to NBU via email; and
 - 4.2.3.6. each draft metes and bounds exhibit shall be revised up to one (1) time per NBU's review.
- 4.2.4. exhibit plat and legal description must meet all the rules of the Texas Board of Professional Land Surveying and the Professional Land Surveying Practices Act and the Manual of Practice for Land Surveying in the State of Texas as published by the Texas Society of Professional Surveyors. The latest revision shall be used;
- 4.2.5. legal descriptions shall include sufficient information to identify the location, boundaries, monumentation, and area of the described tract, as well as its relationship to the parent tract out of which it is surveyed and shall include the following:
- 4.2.5.1. each legal description shall be accompanied by an exhibit plat that depicts the worded description;
 - 4.2.5.2. legal descriptions and exhibit plats shall be reproduced on 8.5" x 14" size paper and All shall be legible;
 - 4.2.5.3. the exhibit plat or legal description should be able to stand alone; and
- 4.2.6. the Professional shall stake final easement boundaries.
- 4.3. GEOTECHNICAL DATA REPORT. The Professional shall conduct a geotechnical investigation to complete a geotechnical data report ("GDR") for the Project as described below.
- 4.3.1. Field Exploration.
- 4.3.1.1. 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 and along the proposed water main alignments.

- 4.3.1.2. The Professional shall coordinate with NBU, 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.
- 4.3.1.3. The Professional shall drill exploratory borings for the proposed improvements according to the schedule provided below:
- 4.3.1.3.1. one boring to a maximum depth of 20 feet below existing grade at the Grandview Pump Station site; and
- 4.3.1.3.2. one boring to a maximum depth of 30 feet at the Well #4 site.
- 4.3.1.4. 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 continuously within the upper 10 feet and at 5-foot intervals using 3-inch diameter Shelby tube samples and a 2-inch diameter split-spoon sampler in conjunction with the standard penetration test (“SPT”). Rock and rock-like materials will be cored and/or tested in-situ testing (SPT or the Texas Cone Penetration Test) if encountered, at 5-foot intervals.
- 4.3.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.
- 4.3.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.
- 4.3.1.7. The Professional shall patch borings drilled through pavement with like material (asphalt, concrete) upon completion of backfilling.
- 4.3.1.8. The Professional shall have personnel experienced in logging borings, directing the drilling, and handling and transporting the samples. The Professional shall provide visual classification of the subsurface stratigraphy in general accordance to the American Society for Testing and Materials, standard number D2488 and the Unified Soil Classification System during drilling and sampling.
- 4.3.2. The Professional shall provide laboratory testing to include the following:
- 4.3.2.1. testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials; and

- 4.3.2.2.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 type of tests:
- 4.3.2.2.1. Atterberg limits tests (up to 4 tests);
 - 4.3.2.2.2. percent passing the #200 Sieve (up to 4 tests);
 - 4.3.2.2.3. moisture content tests (up to 8 tests); and
 - 4.3.2.2.4. unconfined compressive strength tests (with unit weights; up to ten (10) tests).
- 4.3.3. The Professional shall prepare a GDR that includes the following information and recommendations, as applicable:
- 4.3.3.1.a summary of the field and laboratory sampling and testing program;
 - 4.3.3.2.boring logs and laboratory testing results;
 - 4.3.3.3.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;
 - 4.3.3.4.trenchless water main construction feasibility and recommendations of auger boring and/or horizontal directional drilling;
 - 4.3.3.5.a general discussion of expected construction related issues; and
 - 4.3.3.6.earthwork related recommendations for use during development of plans and specifications.

Task 5. Permitting & Stakeholders

5. The Professional shall coordinate with the following stakeholders/agencies as described below.
- 5.1. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit a permit application to the City of New Braunfels to obtain a permit for:
 - 5.1.1. a Commercial Development Permit – The Commercial Development Permit will not require drainage analysis given the limited additional impervious cover proposed for the new generators.
 - 5.2. EASEMENT ACQUISITION COORDINATION. The Professional shall provide support to NBU and/or an NBU hired consultant to obtain easements for up to two (2) parcels. The

Professional shall provide the following easement acquisition coordination support services:

- 5.2.1. attend up to two (2) meetings per easement with NBU, the hired consultant and/or the property owner; and
- 5.2.2. review draft and final easement documents for up to two (2) parcels.

Task 6. Bid Phase Services

- 6. Upon completion of the final design, the Professional shall proceed with the bid phase services described below. All portions of the Project shall be bid as one collective bid package.
 - 6.1. PREBID CONFERENCE. The Professional shall attend a pre-bid conference to be administered by NBU. The Professional shall assist NBU with preparation of agenda, provide NBU with meeting notes, and coordinate conference responses with NBU. Written responses to issues identified at the pre-bid conference shall be in the form of addenda issued after the conference.
 - 6.2. . INTERPRET BID DOCUMENTS. The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare 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 analyzing the bids received for the Project by researching contractor qualifications and references. The Professional shall participate in the evaluation of bids and draft a letter of recommendation memorializing the evaluation committee's selection.
 - 6.4. CONFORMED CONSTRUCTION DOCUMENTS. The Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications.
 - 6.5. DELIVERABLES.
 - 6.5.1. Addenda - one (1) PDF electronic copy and bidders;
 - 6.5.2. Letter of recommendation - one (1) PDF electronic copy; and
 - 6.5.3. Conformed construction documents - one (1) PDF electronic copy.

Task 7. Construction Phase Services

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

7.1. FACILITY INTEGRATION AND OPERATIONS (“FIO”). The Professional shall develop an FIO memorandum that provides specific instructions on how the new facilities should be integrated into the existing water system, as well as special operating instructions. The FIO memorandum shall generally include:

7.1.1.description of new facilities – major components and equipment, purpose and intent and how new facilities tie to existing infrastructure;

7.1.2.integration requirements - completion & testing procedures, NBU staff required, responsibilities and notifications; and

7.1.3.operational & maintenance requirements - design settings & controls, operating procedures and maintenance procedures.

7.2. MEETINGS AND SITE VISITS. The Professional shall provide the following services for meetings and site visits:

7.2.1.assist NBU in conducting a pre-construction conference with the construction contractor and prepare agenda, prepare and provide NBU with meeting notes and coordinate conference responses with NBU;

7.2.2.conduct one construction document control workshop for the contractor;

7.2.3.attend up to a total of 24 bi-weekly and 6 monthly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor;

7.2.4.attend up to a total of 12 monthly site visits during construction of the Project, as distinguished from the continuous services of a resident Project representative (RPR), 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 any non-conforming work performed by the contractor, observed on the site visits;

7.2.5.conduct two (2) substantial completion inspections and punch list reviews of the

Project with NBU's representatives for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare a list of deficiencies to be corrected by the contractors before recommendation of final payment; and

7.2.6. conduct one (1) final completion inspection 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 a recommendation of final payment.

7.3. SUBMITTAL MANAGEMENT. The Professional shall use FNiManager, a document management system for construction documents. The Professional shall monitor the processing of contractor's submittals (shop drawings, requests for information, schedules, certified test reports, etc.), provide for filing and retrieval of Project documentation, and verify that the contractor is sending and processing submittals in accordance with the schedules. The Professional shall produce monthly reports and submit to NBU indicating the status of all submittals in the review process

7.3.1. SUBMITTAL REVIEW. The Professional shall review all contractor submittals for compliance with the design concepts to include the following:

- 7.3.1.1. shop drawings (up to ten (10));
- 7.3.1.2. record data (up to ten (10));
- 7.3.1.3. requests for information (up to five (5));
- 7.3.1.4. schedules (up to 18);
- 7.3.1.5. certified test reports (up to ten (10));
- 7.3.1.6. operation and maintenance manuals (up to two (2)); and
- 7.3.1.7. miscellaneous submittals (up to ten (10)).

7.4. CHANGE ORDERS. The Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project as described below.

7.4.1. The Professional shall establish procedures and document construction changes required to implement modifications to the Project.

7.4.2. The Professional shall process contract modifications and negotiate with the contractor at NBU's direction to determine the cost and time impacts of these changes.

- 7.4.3. The Professional shall prepare field/change order documentation for up to three (3) field orders for minor alterations and up to 3 change orders.
- 7.4.4. The Professional shall evaluate notices of contractor claims and make initial recommendations to NBU on the merit and value of the claim based on information submitted by the contractor or available Project documentation. The Professional shall negotiate a settlement value with the contractor at NBU's direction.
- 7.5. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for NBU and contractor during the course of construction per the schedule assumed herein.
- 7.6. PAY ESTIMATES. The Professional shall review and comment on monthly and final estimates for payment to the contractor pursuant to the general conditions of the construction contract during the course of the construction Project per the schedule assumed herein.
- 7.7. RESIDENT REPRESENTATION. The Professional shall provide a full-time (24 hours per week) RPR on the site for 3 months and provide an average of four (4) hours per week of construction management time. The duties, responsibilities and the limitations of authority of the RPR, and designated assistants, are as described herein.
- 7.7.1. Communication
- 7.7.1.1. The RPR shall establish the communication procedures for all parties involved in the Project. The communication procedures shall detail the amount of time all parties have to respond to questions, submittals, or other documents, and the most efficient transmission of communication (via email, phone, etc.). These procedures shall be provided in writing and reviewed with NBU, engineer of record ("EOR"), and the contractor. NBU shall approve all communication procedures.
- 7.7.1.2. The RPR shall conduct periodic progress meetings with NBU, EOR, and the contractor to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any Project related issues.
- 7.7.1.3. The RPR shall prepare an agenda prior to the progress meetings and record and distribute the meeting minutes to NBU, EOR, and the contractor.

7.7.1.4. The RPR shall submit monthly reports of the construction progress to NBU. The reports shall describe the construction progress and summarize Project costs, cash flow, construction schedule, pending and approved contract modifications, change order status, and outstanding issues.

7.7.2. Quality Assurance

7.7.2.1. The RPR shall observe the contractor's work to determine if the work is proceeding in accordance with the contract. The RPR shall prepare site visit reports to be submitted electronically to NBU documenting the RPR's observations.

7.7.2.2. The RPR shall document when non-conforming work is observed and submit this documentation via email to NBU and the contractor. The Professional shall verify and document when the observed non-conforming work has been corrected and submit documentation to that effect to NBU via email.

7.7.2.3. The RPR shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.

7.7.2.4. The RPR shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in accordance with applicable testing and inspection bureaus who set standards for the testing of materials, witness tests, and factory testing.

7.7.2.5. The RPR shall provide specifically qualified personnel to conduct specialty observations for structural, mechanical, electrical, and instrumentation systems as requested by NBU.

7.7.3. Document Management

7.7.3.1. The RPR shall be responsible for submittal management as described in Task 7.3. The RPR shall perform an initial review of the submittals and electronically send the submittals to the EOR and/or NBU for a detailed review and response.

7.7.3.2. The RPR shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties

for documents, and of (ii) the EOR in reviewing and responding to submittals. The RPR shall verify that documentation is being processed according to the schedule.

7.7.3.3. The RPR shall prepare monthly reports that monitor the status of all submittals in the review process. The RPR shall submit an electronic copy of the report to NBU via email once a month.

7.7.4. Schedule Management

7.7.4.1. The RPR shall review the baseline, the projected, and the monthly construction progress schedules submitted by the contractor. The RPR shall monitor the progress of the work completed relative to the planned progress and address any identified schedule delays by emailing the EOR, NBU, and the contractor promptly.

7.7.5. Cost Management

7.7.5.1. The RPR shall review the schedule of values and payment requests prepared by the contractor. The RPR shall establish with NBU and the contractor procedures to review the monthly quantities of work in place and the corresponding payment requests for work completed.

7.7.5.2. The RPR shall prepare monthly cash flow requirements based upon information provided by the contractor. The RPR shall update cash flow reports monthly and include these reports with monthly updates to NBU.

7.7.5.3. The RPR shall verify quantities of work in place, review the payment requests and supporting documentation, and provide an opinion of whether the payment requested matches the work completed to NBU via email.

7.7.6. Issues Management

7.7.6.1. The RPR shall provide an initial interpretation of the drawings and specifications when questions arise concerning the definition of the drawings and specifications. The RPR shall coordinate a resolution to these issues based upon a final interpretation of the drawings and specifications by the EOR, NBU, and the contractor.

7.7.6.2. The RPR shall track and document issues, procure a resolution, and notify the EOR, NBU, and the contractor via email promptly.

7.7.7.Change Management

- 7.7.7.1. The RPR shall be responsible for change management as described in Task 7.4.
- 7.7.7.2. The RPR shall establish and document procedures for administering changes to the construction contract.
- 7.7.7.3. The RPR shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's Texas engineering seal affixed.

7.7.8.Project Completion

- 7.7.8.1. The RPR shall coordinate the start-up and commissioning of the facility and all of the process systems with the EOR, the contractor, and NBU. The RPR shall provide engineering and technical assistance to the contractor during the commissioning process.
- 7.7.8.2. When the contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the RPR shall conduct a review of the Project to determine conformance or non-conformance with the Project design and construction documents. The RPR shall determine if a review of the work is required by the EOR, and if so, shall schedule the reviews of the work with the EOR. The RPR shall prepare a list of deficiencies to be corrected by the contractor before substantial completion is granted and any partial release or reduction of retainage is approved. The RPR shall prepare a certificate of substantial completion that includes a list of work to be completed prior to issuance of a final completion certificate.
- 7.7.8.3. The RPR shall conduct a final review of the Project for conformance with all of the Project documents. The RPR shall confirm work is complete and in accordance with the Project documents prior to recommending final payment.
- 7.7.8.4. The RPR shall assist NBU in obtaining permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the contractor. The RPR shall review and confirm that the contractor has submitted all required documents to NBU prior to recommending the final payment.

7.7.9. Materials Transfer

7.7.9.1. The RPR shall coordinate the transfer of and acceptance by the contractor of any NBU-furnished equipment or materials.

7.7.9.2. The RPR shall coordinate the transfer of and acceptance by NBU of any contractor-furnished spare parts, materials, keys, etc.

7.7.10. Record Drawings

7.7.10.1. The RPR shall receive and review as-built drawings from the contractor. The RPR shall electronically transmit drawings and other documents to the EOR for the preparation of the record drawings. These drawings shall include notations that reflect as-built Project components and conditions. The record drawings shall include RPR's notes, the contractor's field notes, and NBU's field notes made during the construction process.

7.7.11. Limitations of Authority of the RPR

7.7.11.1. The RPR shall not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized by the EOR and NBU.

7.7.11.2. The RPR shall not exceed limitations of EOR's authority as set forth in the Agreement or the contract documents.

7.7.11.3. The RPR shall not undertake any of the responsibilities of the contractor, subcontractor, suppliers, or contractor's superintendent.

7.7.11.4. The RPR shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the contract documents.

7.7.11.5. The RPR shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work or any activities or operations of NBU or the contractor.

7.7.11.6. The RPR shall not accept shop drawing or sample submittals from anyone other than the contractor.

7.7.11.7. The RPR shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by NBU.

7.8. CLOSE-OUT DOCUMENTS

7.8.1.RECORD DRAWINGS. The Professional shall prepare the record drawings based on the revised redline construction drawings and information furnished by the construction 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 60 days of final completion.

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

- address;
- year built;
- description;
- square footage of building;
- building value; and
- contents value.

7.8.3 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 30 days after substantial completion by the contractor. Information on each sheet includes, but is not limited to, the following:

- equipment identification;
- location;
- network structure;
- warranty date
- manufacturer;
- model;
- serial number;
- rated flow (if applicable); and
- diameter (if applicable).

7.9. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

7.9.1.one (1) PDF electronic copy of FIO memorandum;

7.9.2.Project site visit memos and construction progress meeting minutes;

7.9.3.one (1) PDF electronic copy and one (1) georeferenced DWG file of record drawings including plans and specifications in accordance with NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor; and

7.9.4.one (1) PDF electronic copy of an asset information memorandum.

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 below.

Project Milestones	Start Date	End Date
Notice to Proceed	4/2/2023	
30% Preliminary Design	4/2/2023	7/7/2023
90% Final Design	7/10/2023	9/29/2023
100% Final Design	10/2/2023	10/20/2023
Permitting	10/23/2023	1/12/2024
Bid Phase	10/23/2023	3/28/2024
Construction Phase	4/1/2024	4/1/2026

FIGURE 1

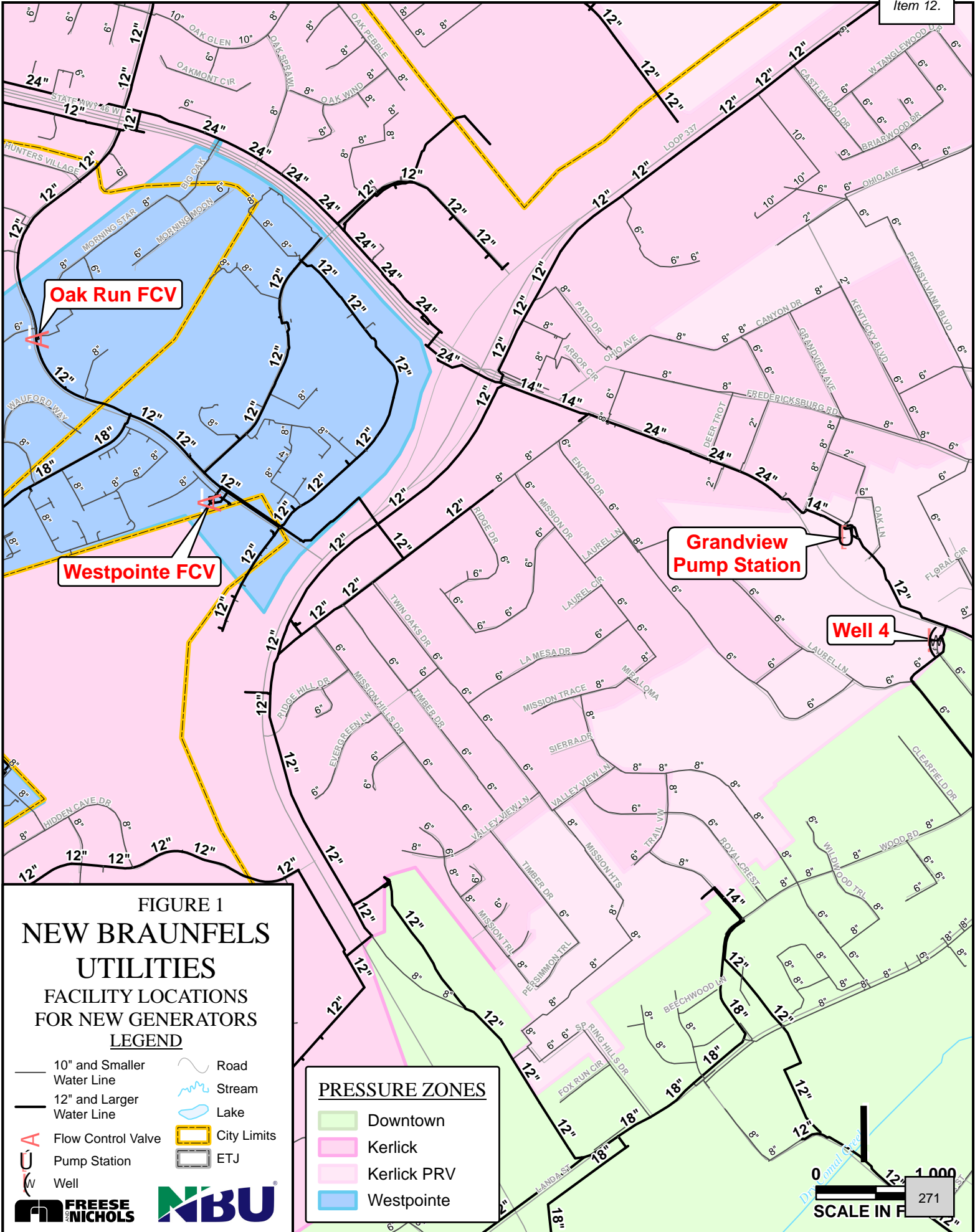


Exhibit B

Compensation

NBU agrees to pay the Professional for the Services and the Supplemental Services rendered under this Agreement in accordance with the table below and made 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 \$460,305.

Task	Cost
Task 1: Project Management	\$40,347
Task 2: Preliminary Design Phase	\$82,704
Task 3: Final Design Phase	\$173,613
Task 4: Permitting & Stakeholders	\$4,422
Task 5: Bid Phase	\$12,514
Task 6: Construction Phase (including Resident Representation)	\$146,705
Total	\$460,305

Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$40,000; 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.

Exhibit C
Evidence of Insurance



Meeting Date: March 30, 2023 **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 &
 Systems Compliance

Submitted by: Ryan Kelso **Approved by:** Ian Taylor
 Chief Operations Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Approve Additional Construction Contract Contingency with Harper Brothers Construction, LLC in the Amount of \$350,000 for the Construction of the FM 306 Pump Station Expansion and Discharge Line Project

BACKGROUND

On December 9, 2021, the New Braunfels Utilities (“NBU”) Board of Trustees approved a construction contract with Harper Brothers Construction, LLC (“Harper Brothers”) for the construction of the FM 306 Pump Station Expansion and Discharge Line Project, which includes (i) construction of a new outdoor pump station, (ii) demolition/abandonment of the existing pump station and associated piping, valving, and instrumentation (iii) electrical/SCADA/instrumentation for the new pump station, (iv) site work and drainage improvements (v) approximately 9,000 linear feet (“LF”) of 24-inch and 36-inch water line from the FM 306 pump station site to the tie-in at the intersection of Goodwin Lane and Pebble Creek Run (the “Project”).

Anticipating project change orders, the NBU Board approved an initial contingency of \$1,000,000 with the original construction contract. Since its approval, the Project has required that NBU use \$663,785.64 of the initial contingency amount for the addition of pumps, motors, and variable frequency drives to the Harper Brothers construction scope, and the extension of a bore by approximately 22 linear feet to resolve conflict with a gas line.

NBU has since identified the need to include a redesigned railroad bore to meet Union Pacific Railroad direction. NBU staff estimates \$350,000 will cover anticipated costs for this and any remaining unforeseen issues to complete the Project.

In order not to cause delays during construction, NBU staff requests that the Board of Trustees approve the additional \$350,000 in construction contract contingency with Harper Brothers for the Project. NBU staff will use the remaining contingency for unknown change orders that are needed as the Project continues. All contract change orders will be presented to the Board through the monthly change order log.

This item is being presented to the Board because it modifies a previously Board approved contract.

FINANCIAL IMPACT

The Board originally approved a construction contract including the initial contingency in the amount of \$7,750,794 for the construction of the Project. NBU has since processed 2 change orders in the amount of \$663,785.64. The combined amount of the construction contract and the 2 change orders is \$7,415,579.64.

Adding the additional \$350,000 will bring the total contingency to \$1,350,000 or approximately 20% of the original contract amount. The total contract amount of \$6,750,794, with the original contingency of \$1,000,000, and the additional requested contingency of \$350,000 totals \$8,100,794.

LINK TO STRATEGIC PLAN

Stewardship

Customers and Community

EXHIBITS

1. Board Write-up from December 9, 2021



Meeting Date: December 9, 2021 **Agenda Type:** Consent Items for Action

From: Shawn Schorn, P.E. **Reviewed by:** Michael Short, P.E.
 Chief Engineer of Water Director of Water Services
 Services

Submitted by: Ryan Kelso **Approved by:** Ian Taylor
 Chief Operations Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Harper Brothers Construction, LLC for the Construction of the FM 306 Pump Station Expansion and Discharge Line Project

BACKGROUND

On September 14, 2021, New Braunfels Utilities (“NBU”) issued a request for bids for the FM 306 Pump Station Expansion and Discharge Line Project, which includes (i) construction of a new outdoor pump station, (ii) demolition/abandonment of the existing pump station and associated piping, valving, and instrumentation, (iii) electrical/SCADA/instrumentation for the new pump station, (iv) site work and drainage improvements, and (v) approximately 9,000 linear feet (“LF”) of 24-inch and 36-inch water line from the FM 306 pump station site to the tie-in at the intersection of Goodwin Lane and Pebble Creek Run (the “Project”). The Project is required to serve future growth in the Kohlenberg Pressure Zone.

On October 5, 2021, NBU received four (4) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of Harper Brothers Construction, LLC (“Harper Brothers”) for the Project. Harper Brothers was the lowest responsible bidder with a base bid of \$6,750,794.

NBU staff requests that the Board of Trustees approve the Construction Contract Agreement with Harper Brothers for the Project.

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

FINANCIAL IMPACT

The total construction contract with Harper Brothers for the Project is \$6,750,794. The Project is budgeted within fiscal year 2022 through fiscal year 2023 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency in the amount of

\$1,000,000, which is roughly 15% of the contract amount, is being added to the project construction budget. The total contract amount plus contingency equals \$7,750,794.

LINK TO STRATEGIC PLAN

Recognized as a Trusted Community Partner Dedicated to Excellence in Service

EXHIBITS

1. Construction Contract with Harper Brothers
2. Letter of Recommendation from Freese and Nichols, Inc.
3. Bid Tab RFB #02625

Bidders	Total Base Bid (Ductile Iron Pipe)	Total Base Bid + Add/Alternates (PVC Pipe)
Harper Brothers Construction, LLC	\$6,750,794.00	\$6,832,324.00
MGC Contractors, Inc.	\$8,180,635.00	\$8,618,925.00
PGC Generator Contractors, LLC	\$7,873,181.76	\$8,627,858.76
Spiess Construction Co., Inc.	\$7,755,970.00	\$8,133,140.00



Meeting Date:	<u>March 30, 2023</u>	Agenda Type:	<u>Consent Items for Action</u>
From:	<u>Adam Willard, P.E.</u> Chief Engineer of Water Systems	Reviewed by:	<u>Michael Short, P.E.</u> Director of Water Services and Compliance
Submitted by:	<u>Ryan Kelso</u> Chief Operations Officer	Approved by:	<u>Ian Taylor</u> Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with MGC Contractors, Inc. for the Construction of the Sam C. McKenzie Water Reclamation Facility Headworks Conveyor and Discharge Outfall Replacement Project

BACKGROUND

On December 27, 2022, New Braunfels Utilities (“NBU”) issued a request for bids for the Sam C. McKenzie Water Reclamation Facility (“WRF”) Headworks Conveyor and Discharge Outfall Replacement Project, which includes (i) construction of a new screw conveyor, including demolition, salvage, hauling, and disposal of the existing belt conveyor; (ii) outfall repairs; (iii) electrical, instrumentation, and controls; (iv) security and access; (v) stormwater pollution prevention and erosion control; (vi) site restoration; and (vii) all other appurtenances necessary to complete the project (the “Project”). These maintenance items were requested by Water Operations to be addressed at the existing WRF, so this Project was separated out as construction package #1 from the larger McKenzie WRF Expansion project (construction package #2).

On January 24, 2023, NBU received three (3) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of MGC Contractors, Inc. (“MGC”) for the Project. MGC was the lowest responsible bidder and submitted a base bid of \$1,100,100.

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

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

FINANCIAL IMPACT

The total financial impact of the Contract with MGC for the Project is \$1,100,100. The McKenzie WRF Expansion Project is budgeted within the fiscal year 2023 through fiscal year 2026 NBU Board approved Capital Improvements Projects Budget, however construction package #1 is included in fiscal year 2023 through fiscal year 2024 of that budget.

Anticipating the need for project change orders, a contract contingency in the amount of \$110,000, which is approximately 10% of the total contract amount, will be added to the project construction budget. The total Contract amount plus contingency is \$1,210,100.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

1. Construction Contract with MGC
2. Letter of Recommendation from Quiddity
3. Bid Tab – (RFB 02665)

Bid Tab	
<i>Bidder</i>	<i>Total Cost</i>
MGC Contractors Inc.	\$1,100,100
Associated Construction Partners, Ltd.	\$1,584,000
Spiess Construction Co., Inc.	\$1,847,523

THIS AGREEMENT (the “Agreement” or the “Contract”) is between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **MGC CONTRACTORS, 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;**
- Design Drawings for Construction of Sam C. McKenzie Jr. Water Reclamation Facility Headworks Conveyor and Discharge Outfall Replacement for New Braunfels Utilities prepared by Quiddity Engineering, LLC. dated June 27, 2022; and**
- Technical Specifications for Construction of Sam C. McKenzie Jr. Water Reclamation Facility Headworks Conveyor and Discharge Outfall Replacement for New Braunfels Utilities prepared by Quiddity Engineering, LLC. dated June 27, 2022**

1.02 The Work is generally described as follows:

The Project has been designed by Quiddity Engineering, LLC. The Project is anticipated to include some or all of the following items within its scope: (i) construction of a new screw conveyor, including demolition, salvage, hauling and disposal of the existing belt conveyor; (ii) outfall repairs; (iii) electrical, instrumentation, and controls; (iv) security and access (v) stormwater pollution prevention and erosion 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:

Sam C. McKenzie Jr. Water Reclamation Facility Headworks Conveyor and Discharge Outfall Replacement

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

**Bethany A. Miller, P.E.,
Quiddity Engineering, LLC
6330 West Loop South, Suite 150
Bellaire, Texas 77401**

(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 **three hundred and thirty (330) 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 *Liquidated Damages*

A. The Contractor and NBU recognize that time is of the essence of this Agreement and that NBU will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by NBU if the Work is not completed on time. Accordingly, instead of requiring any such proof, NBU and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to NBU **One Thousand Dollars (\$1,000.00)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by NBU, the Contractor shall pay to **One Thousand Dollars (\$1,000.00)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 *Special Damages*

A. In addition to the amount provided for in liquidated damages, the Contractor shall reimburse NBU (1) for 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 (2) for the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After 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 Paragraph 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.

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 liquidated damages, in accordance with Section 14.02 of the General Conditions:
 - a. 95% (percent) of Work completed; and
 - 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. 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. To the extent this Agreement relates to critical infrastructure in the State of Texas, 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 2274.0103 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 2274 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.

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 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, “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*

A. When the Contractor delivers the executed counterparts of the Agreement to NBU, the Contractor shall also deliver to NBU, with copies to each named insured and additional insured, the certificates and other evidence of insurance required to be provided by the Contractor in accordance with the Insurance Rider that is Exhibit A to this Agreement. Evidence of insurance is attached as Exhibit C to this Agreement.

Exhibit A – Insurance Rider

Exhibit B – Contractor's Bid Form

Exhibit C – Evidence of Insurance

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:

MGC CONTRACTORS, INC.:

By: _____

By: MR

Printed Name: Ian Taylor
Title: Chief Executive Officer

Printed Name: Mike Pentor

Title: Vice President

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: Morgan Hamilton

Title: _____

Title: Administrative Assistant

Address for giving notices:

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.)

License No.: _____
(Where Applicable)

Agent for service or process:

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

END OF DOCUMENT

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:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ \$1,000,000 Per Occurrence ▪ \$2,000,000 General Aggregate ▪ \$2,000,000 Products/Completed Operations Aggregate ▪ \$1,000,000 Personal And Advertising Injury ▪ Designated Construction Project(s) General Aggregate Limit 	<ul style="list-style-type: none"> ▪ Current ISO edition of CG 00 01 ▪ 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. ▪ 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. ▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers' compensation state. ▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> ○ Contractual Liability Limitation CG 21 39 ○ Amendment of Insured Contract Definition CG 24 26 ○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95 ○ Any Classification limitation ○ Any Construction Defect Completed Operations exclusion ○ Any endorsement modifying the Employer's Liability exclusion or deleting exception to it ○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage ○ Any Habitational or Residential exclusion applicable to the Work ○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured ○ Any Punitive, Exemplary or Multiplied Damages exclusion ○ Any Subsidence exclusion
Business Auto Liability	Amount of coverage shall be no less than: <ul style="list-style-type: none"> ▪ \$1,000,000 Combined Single Limit 	<ul style="list-style-type: none"> ▪ Current ISO edition of CA 00 01 ▪ Arising out of any auto (Symbol 1), including owned, hired and non-owned
Workers' Compensation and	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ Statutory Limits 	<ul style="list-style-type: none"> ▪ The State in which work is to be performed must listed under Item 3.A. on the Information

Employer's Liability	<ul style="list-style-type: none"> ▪ \$1,000,000 Each Accident and Disease ▪ Alternate Employer endorsement 	<p>Page</p> <ul style="list-style-type: none"> ▪ 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. ▪ 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.
Excess Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$5,000,000 Each Occurrence 	<ul style="list-style-type: none"> ▪ Coverage shall "follow form" over underlying policies listed herein.
Professional Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 Each Claim ▪ \$2,000,000 Annual Aggregate ▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Claim. ▪ 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. ▪ Policies written on a Claims Made basis shall be maintained for at least two years beyond termination of the Agreement. 	<ul style="list-style-type: none"> ▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement. ▪ 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"> ○ bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors ○ habitational or residential operations ○ mold and/or microbial matter and/or fungus and/or biological substance ▪ Any retroactive date must be effective prior to beginning of services for the Owner. ▪ 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.

CONTRACT AGREEMENT

<p>Contractors Pollution Liability</p>	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 Each Claim ▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Claim. ▪ The policy must provide coverage for: <ul style="list-style-type: none"> ○ the full scope of the named insured's operations (on going and completed) as described within the scope of work for this Agreement ○ loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall ○ third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations; ○ diminution of value and Natural Resources damages ○ contractual liability ○ claims arising from non owned disposal sites utilized in the performance of this Agreement. 	<ul style="list-style-type: none"> ▪ 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. ▪ 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"> ○ Insured vs. insured actions. However exclusion for claims made between insured within the same economic family are acceptable. ○ impaired property that has not been physically injured ○ 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. ○ property damage to the work performed by the contractor ○ faulty workmanship as it relates to clean up costs ○ work performed by subcontractors ▪ 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. ▪ The policy will offer an extended discovery or extended reporting clause of at least three (3) years. ▪ 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 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>Builders Risk</p>	<ul style="list-style-type: none"> ▪ 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. ▪ 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 	<ul style="list-style-type: none"> ▪ Insureds shall include Owner Parties, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds. ▪ Such insurance shall cover: <ul style="list-style-type: none"> ○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes

CONTRACT AGREEMENT

<p>parties, with that other insurance being excess, secondary and non-contributing.</p> <ul style="list-style-type: none"> ▪ The policy must provide coverage for: <ul style="list-style-type: none"> ○ Agreed Value Included ○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Included ○ Debris removal additional limit \$1,000,000 ○ Earthquake and Earthquake Sprinkler Leakage \$5,000,000 ○ Flood Included ○ Freezing Included ○ Mechanical breakdown including hot & cold testing \$1,000,000 ○ Ordinance or law \$ 25,000 ○ Pollutant clean-up and removal Included ○ Preservation of property Included ○ Theft \$10,000 • Deductible shall not exceed <ul style="list-style-type: none"> ○ All Risks of Direct Damage, Per Occurrence, except 2% subject to \$50,000 minimum ○ Named Storm \$100,000 ○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence \$100,000 ○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V 	<p>and wiring, excavations, grading, backfilling or filling;</p> <ul style="list-style-type: none"> ○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site; ○ all property including materials and supplies on site for installation; ○ all property including materials and supplies at other locations but intended for use at the site; ○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and ○ other Work at the site identified in the Agreement to which this Exhibit is attached. • No protective safeguard warranty shall be permitted. • 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"> ○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; ○ occupancy, in whole or in part; ○ the date on which release of substantial completion is executed; or ○ the date on which the insurable interests of Contractor in the Covered Property has ceased. • A waiver of subrogation provision shall be provided in favor of all insureds listed above.
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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 14.

4. BIDDER will complete the Work for the following prices:

Base Bid Items

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
1	Mobilization, and start-up, including performance and payment bond for 100% of the contractor complete as specified for the lump sum of:	LS	1	\$80,000	\$80,000
2	Construction of Sam C. McKenzie, Jr. Water Reclamation Facility Headworks Conveyor and Discharge Outfall Replacement including but not limited to the demolition, hauling, and disposal of existing belt conveyor and concrete repair; procurement, installation, startup/testing, etc. of new screw conveyor; outfall repairs complete and in place; conduit and wire; site security and access items; all required electrical and instrumentation work; controls; temporary facilities and all incidental components as shown on the construction drawings and contract documents necessary to construct, tie-in and make for an operational system; all other miscellaneous items specified or shown in the contract documents but not included in other bid items, including adjustments and work necessary for a complete working system, complete as specified for the sum of	LS	1	\$959,600	\$959,600
3	Installation, maintenance, and record keeping of a Storm Water Pollution Prevention Plan (SWPPP) for the Water Reclamation Facility Site and all associated offsite work, complete as specified for the sum of	LS	1	\$8,000	\$8,000
4	Provision of a trench safety system, complete as specified for the sum of	LS	1	\$2,500	\$2,500
5	<u>OWNER'S CONTINGENCY</u>	LS	1	\$50,000	\$50,000

TOTAL BASE BID (Add Bid Items 1-5)

\$ 1,100,100.00

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

Item 14.

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 liquidated 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.
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
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 January 12, 2023 Received mf
Addendum No. 2 dated January 19, 2023 Received ND
Addendum No. 3 dated _____ Received _____

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

Wendy S. Henry
Secretary, *if bidder is a corporation

(Seal)

MGC Contractors, Inc.
Company Name of Bidder

[Signature]
Authorized Signature

January 24, 2023
Date

Mike Panter
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

223 Lucinda Drive

New Braunfels, TX 78130
Address

(210) 694-0565
Telephone Number/Fax Number

END OF DOCUMENT

Exhibit C – Evidence of Insurance



January 26, 2023

Ms. Paula Dubois
New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

Re: Construction of Sam C. McKenzie, Jr. Water Reclamation Facility
Headworks Conveyor and Discharge Outfall Replacement
New Braunfels Utilities
Recommendation of Award

Dear Ms. Dubois:

New Braunfels Utilities (NBU) received bids for the referenced contract on January 24, 2023 at 1:00 pm. Bids were publicly opened and read at 2:00 pm on that same date.

Three (3) contractors submitted proposals for this work. A summary tabulation of the bids is enclosed for your review. MGC Contractors, Inc. submitted the lowest base bid proposal in the amount of \$1,100,100.00.

Both NBU and Quiddity have worked with MGC Contractors, Inc. in the past, and we find them to be an acceptable contractor. We recommend the referenced contract be awarded to MGC Contractors, Inc. on the basis of their base bid proposal in the amount of \$1,100,100.00.

If you have any questions, please feel free to contact us at 713.777.5337.

Sincerely,

A handwritten signature in blue ink that reads "C. Drew Crow".

C. Drew Crow, PE

CDC:nrw

K:\05487\05487-0012-00 Sam C. McKenzie, Jr. Water Reclamation F\2 Design Phase\Bid Documents\Conveyor & Outfall Replacement\NBU McKenzie WRF Conveyor and Outfall Replacement ROA 20230126.docx

Enclosure

BID TABULATION SHEET

BIDS WERE RECEIVED IN THE OFFICE OF

Item 14.



Construction of Sam C. McKenzie, Jr. Water Reclamation Facility Headworks
Conveyor and Discharge Outfall Replacement

New Braunfels Utilities

New Braunfels Utilities

Time: 2:00 PM

Public Bid

NBU RFB #:02665; Quiddity Job No. 05487-0012-00

Date: 1/24/2023

	BIDDERS						
	MGC Contractors Inc.	Associated Construction Partners, Ltd.	Spiess Construction Co., Inc.				
Base Bid	\$1,100,100.00	\$1,584,000.00	\$1,847,523.00				
Bid Security	✓	✓	✓				
Addendum No. 1	✓	✓	✓				
Addendum No. 2	✓	✓	✓				
Conflict of Interest Questionnaire	✓	✓	✓				
Form 1295	✓	✓	✓				
Israel Verification Form	✓	✓	✓				
Firearm Verification Form	✓	✓	✓				
Prohibition of Energy Company Boycott Verification Form	✓	✓	✓				

OWNER: New Braunfels Utilities				BID NO. 1		BID NO. 2		BID NO. 3	
PROJECT: Sam C. McKenzie, Jr. Water Reclamation Facility Headworks Conveyor and Discharge Outfall Replacement				MGC Contractors Inc.		Associated Construction Partners, Ltd.		Spiess Construction Co., Inc.	
DATE: 1/24/2023				223 Lucinda Drive		215 W Bandera Rd., Ste. 114-461		PO Box 2849	
ENGINEER: C. Drew Crow, PE				New Braunfels, TX 78130		Boerne, TX 78006		Santa Maria, CA 93457	
JOB NO. : 05487-0012-00				210-694-0565		210-698-8714 / 210-698-8712		805-937-5859 / 805-934-4432	
ITEM NO.	DESCRIPTION	UNIT	PLAN QUANTITY	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
BASE BID									
1	Mobilization, and start-up, including performance and payment bond for 100% of the contract complete as specified for the lump sum of:	LS	1.0	\$80,000.00	\$80,000.00	\$75,000.00	\$75,000.00	\$90,000.00	\$90,000.00
2	Construction of Sam C. McKenzie, Jr. Water Reclamation Facility Headworks Conveyor and Discharge Outfall Replacement including but not limited to the demolition, hauling, and disposal of existing belt conveyor and concrete repair; procurement, installation, startup/testing, etc. of new screw conveyor; outfall repairs complete and in place; conduit and wire; site security and access items; all required electrical and instrumentation work; controls; temporary facilities and all incidental components as shown on the construction drawings and contract documents necessary to construct, tie-in and make for an operational system; all other miscellaneous items specified or shown in the contract documents but not included in other bid items, including adjustments and work necessary for a complete working system, complete as specified for the sum of	LS	1.0	\$959,600.00	\$959,600.00	\$1,443,000.00	\$1,443,000.00	\$1,672,523.00	\$1,672,523.00
2	Installation, maintenance, and record keeping of a Storm Water Pollution Prevention Plan (SWPPP) for the Water Reclamation Facility Site and all associated offsite work, complete as specified for the sum of	LS	1.0	\$8,000.00	\$8,000.00	\$15,000.00	\$15,000.00	\$25,000.00	\$25,000.00
4	Provision of a trench safety system, complete as specified for the sum of	LS	1.0	\$2,500.00	\$2,500.00	\$1,000.00	\$1,000.00	\$10,000.00	\$10,000.00
5	OWNER'S CONTINGENCY	LS	1.0	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
TOTAL BASE BID					\$1,100,100.00		\$1,584,000.00		\$1,847,523.00



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

From: John Warren **Reviewed by:** Ashley Van Booven
 Finance Manager Director of Finance

Submitted by: Dawn Schriewer **Approved by:** Ian Taylor
 Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Approve Changes to the List of Authorized Representatives at Financial Institutions and Authorize President and CEO/Secretary to Execute Documentation in Connection Therewith

BACKGROUND

NBU's staff reviewed its banking and investment accounts at the various financial institutions in which NBU conducts business. Due to staffing changes in the Finance Department, it was determined that NBU needs to update its authorized representatives for the Texas Local Government Investment Pool ("TexPool") account, which requires NBU Board approval.

NBU Staff recommends that the following employees be reaffirmed and/or added as authorized representatives in order to authorize fund transfers at TexPool: (i) Dawn Schriewer, Chief Financial Officer, (ii) Ashley Van Booven, Director of Finance (iii) John Warren, Finance Manager, (iv) Thomas Varner, Financial Analyst II, and (v) Amy Chapple, Financial Analyst I.

NBU's staff recommends that the NBU Board approve the TexPool Resolution Amending Authorized Representatives.

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. TexPool Resolution Amending Authorized Representatives

4. Amy Chapple Financial Analyst I
 Name Title
8 3 0 3 1 2 7 9 3 3 achapple@nbutexas.com
 Phone Fax Email

 Signature

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

John Warren
Name

In addition and at the option of the Participant, one additional Authorized Representative can be designated to perform only inquiry of selected information. *This limited representative cannot perform transactions.* If the Participant desires to designate a representative with inquiry rights only, complete the following information.

Ashley Van Booven Director of Finance
 Name Title
8 3 0 6 2 9 8 4 5 6 avanbooven@nbutexas.com
 Phone Fax Email

D. That this Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool Participant Services receives a copy of any such amendment or revocation. This Resolution is hereby introduced and adopted by the Participant at its regular/special meeting held on the 3 0 day of March, 2 0 2 3.

Note: Document is to be signed by your Board President, Mayor or County Judge and attested by your Board Secretary, City Secretary or County Clerk.

New Braunfels Utilities
Name of Participant*

SIGNED

 Signature*
Dr. Judith Dykes-Hoffmann
 Printed Name*
Board President
 Title*

ATTEST

 Signature*
Ian Taylor
 Printed Name*
Board Secretary
 Title*

2. Delivery Instructions

Please return this document to **TexPool Participant Services:**

Email: texpool@dstsystems.com

Fax: 866-839-3291



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

From: Brent Lundmark **Reviewed by:** Michael Short, P.E.
 Water Treatment & Compliance Manager Director of Water Services and Compliance

Submitted by: Ryan Kelso **Approved by:** Ian Taylor
 Chief Operations Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with WW Peerless, LLC DBA Peerless Equipment for Water Well Pump Diagnostic, Repair, and Replacement Services

BACKGROUND

On November 7, 2022, New Braunfels Utilities (“NBU”) issued a request for proposals to award to one or more respondents for labor, material, and equipment to perform well pump diagnostic, repair, and replacement services at various water and wastewater facilities throughout NBU’s system for predictive and unplanned services (the “Services”).

On December 2, 2022, NBU received two (2) proposals for the Services during the public solicitation process. NBU staff evaluated the proposals and determined both proposals to be the most advantageous to NBU considering the relative importance of price and the other evaluation factors included in the request for proposals. NBU staff recommends the selection of WW Peerless, LLC DBA Peerless Equipment (“Peerless”) and Weisinger Incorporated (“Weisinger”) for the Services. NBU presented the Services and Goods Agreement with Weisinger as a separate agenda item.

NBU staff requests that the Board of Trustees approve the services and goods agreement with Peerless.

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

FINANCIAL IMPACT

The total financial impact of the agreement with Peerless is \$1,250,000 with a not to exceed amount of \$250,000 for the initial one-year term, and \$250,000 for each of the four (4) additional one-year terms. The Agreement is budgeted between the Water Treatment & Compliance Operations and Maintenance budget (“O&M Budget”) and the Capital Improvement Projects Aging Infrastructure budget (“Capital Budget”) for fiscal year 2023 and will be budgeted in the O&M and Capital Budgets of fiscal year 2024 through fiscal year 2027.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

EXHIBITS

1. Contract with Peerless Equipment
2. Summary of Recommendation
3. Bid Tabulation

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 **WW PEERLESS, LLC**, a Texas limited liability company, **DBA PEERLESS EQUIPMENT** (the “Vendor” or “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 1, 2023, to March 31, 2024 (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 March 31, 2028

2. **Scope of Services, Purchases.**
 - 2.1. **Scope of Services.** 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, 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 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 Vendor can be paid under this Agreement for Services and goods.

 - 3.2. **Billing Period.** NBU shall pay 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 Vendor for any goods purchased in accordance with the terms stated therein. All invoices provided by 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 Vendor’s invoice, 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 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.** 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, Vendor shall promptly furnish satisfactory proof of compliance to NBU.
- 4.2. **Warranties.**
- a. **Performance Warranty.** 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 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. 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. 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 Vendor's expense, in a manner acceptable to NBU. 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 Vendor shall replace such item and shall not charge NBU for such replacement.
- 4.3. **Personnel.** Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. 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, Vendor shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

- 4.4. Licenses; Materials. Vendor shall maintain in current status all federal, state, and local licenses and permits required for Vendor to perform the Services and operate its business. NBU has no obligation to provide 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 Vendor.
- 4.5. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, 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 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 VENDOR SET FORTH HEREIN SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**
- 4.6. Insurance. Vendor shall continuously during the Term comply with the following requirements regarding insurance:
- a. Insurer Qualifications. Without limiting any obligations or liabilities of Vendor, 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 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 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. 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 Vendor. 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. Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- i. Use of Subcontractors. 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, 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 Vendor. 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, 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. Evidence of such insurance shall be attached as Exhibit C. 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 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. 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. Vendor shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on Vendor's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by 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. Vendor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by Vendor, or anyone employed by 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 Vendor 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 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. Vendor shall maintain Workers' Compensation insurance to cover 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.
- i. 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. Vendor represents and warrants that 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. Vendor further agrees that 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 Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Vendor, 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. 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. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. 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 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. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

d. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, 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 2274.0103 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 2274 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.

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 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, “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. 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 Vendor. Upon termination for convenience, 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, Vendor may suspend work if Vendor reasonably determines that working conditions at the site (outside 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 Vendor that are materially interfering with the normal progress of the work. Vendor's suspension of work hereunder shall be without prejudice to any other remedy of 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 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 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 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 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 Vendor shall be relieved of any subsequent obligation under this Agreement.

7. Confidentiality; Texas Public Information Act.

- 7.1. Confidentiality of Records. 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 Vendor's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Vendor's duties under this Agreement. Persons requesting such information should be immediately referred to NBU. Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of 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) Vendor 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 Vendor created by 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 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. 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, 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.

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 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 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 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 Vendor with non-exclusive, limited access to NBU's information technology infrastructure. Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all 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. 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. Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by 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 Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, 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, 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 Vendor in connection with this Agreement is believed to have been compromised or in the event of a

cybersecurity event or breach, Vendor shall notify NBU immediately. 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. 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 Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify Vendor of such claim or suit, NBU's failure to so notify Vendor shall not diminish Vendor's indemnity obligations hereunder. Vendor shall have control of any such suit and NBU shall cooperate with Vendor in connection with its defense at the expense of Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if Vendor believes that such Service or good is likely to become the subject of an infringement claim, 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. Vendor acknowledges that Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. Vendor shall not represent, either expressly or through implication, that 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 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 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. 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 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 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 Vendor any amount 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 Vendor any amount 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 Water 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 Vendor:

Peerless Equipment
 313 Hwy 90E
 Hondo, Texas 78861

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 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 10 day of March, 2023.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ian Taylor
Title: CEO

VENDOR:

WW PEERLESS, LLC,
a Texas limited liability company,
DBA PEERLESS EQUIPMENT

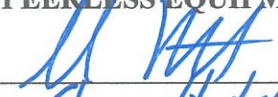
By: 
Name: Edwyn Hatcher
Title: President

Exhibit A – Scope of Services

The Vendor shall provide all labor, material, and equipment to perform well pump diagnostic, repair, and replacement services at existing water and wastewater facilities throughout New Braunfels Utilities' ("NBU") system for predictive maintenance and planned and un-planned (emergency) services (the "Services").

The Services are intended to be as needed to address planned service during the winter months and emergency repair throughout the year. Additionally, NBU may deviate from the requested materials as needed to meet the schedule and production needs of facilities.

The Vendor shall provide service in accordance with the following sections:

I. General Requirements

- a) NBU will work directly with the Vendor to establish a schedule for each material repair or order. The following are intended to establish a typical or baseline schedule for services:
 - i) **Standard Repairs:** Standard repairs are those considered to occur in a standard time frame and the Vendor shall make standard repairs within 40 business days or less of receipt of authorization from NBU. The Vendor shall provide a quote for repairs within 10 business days or less of receipt of repair request from NBU. The final repair report shall be submitted by the Vendor no more than 20 business days or less following the completion of repairs.
 - ii) **Emergency/Expedited Repairs:** Emergency repairs are those considered to occur under conditions that require an expedited repair and the Vendor shall make those repairs within 3 business days or less of receipt of authorization from NBU. The Vendor shall provide a quote for repairs within 48 hours or less of receipt of repair request. The final repair report shall be submitted by the Vendor within 10 business days or less following the completion of repairs.
- b) **Emergency repair requirements:**
 - i) Emergency repairs may require the Vendor to provide 24-hour services or repair work to meet the schedule and requirements of NBU. This request will be provided on an as needed basis and at the sole request of NBU.
 - ii) All requests between the months of May and September will be considered emergency repairs unless otherwise specified by NBU.
- c) **Unit Responsibility and Coordination**
 - i) The Vendor shall be responsible for the adequacy and compatibility of all pumping unit components including but not limited to the pump, couplings, motor and their compatibility.
 - ii) Any component of each complete pumping unit not provided by the Vendor shall be designed, fabricated, tested, and installed under the supervision of the Vendor by an individual experienced in the design of pumping equipment.

II. Well Pump Diagnostic, Repair, and Replacement

The Vendor shall perform the following Services:

- 1) NBU generally has the following existing well pump infrastructure to be covered by this contract:
 - i) Vertical Turbine Pumps
 - 1) Well #2
 - (a) Approximate Depth: 220 feet
 - (b) Approximate Column Size: 10-inch
 - (c) Special Notes:
 - (i) On a raised platform
 - 2) Well #3
 - (a) Approximate Depth: 220 feet
 - (b) Approximate Column Size: 12-inch
 - (c) Special Notes:
 - (i) On a raised platform
 - (ii) Positive pressure well (Artesian)
 - 3) Well #4
 - (a) Approximate Depth: 365 feet
 - (b) Approximate Column Size: 12-inch
 - (c) Special Notes:
 - (i) In a building with roof hatches
 - (ii) Lead Set
 - 4) Well #5
 - (a) Approximate Depth: 400 feet
 - (b) Approximate Column Size: 12-inch
 - (c) Special Notes:
 - (i) On a raised platform with limited/tight access
 - (ii) Positive pressure well (Artesian)
 - 5) Well #6
 - (a) Approximate Depth: 140 feet
 - (b) Approximate Column Size: 12-inch
 - (c) Special Notes:
 - (i) In a building with roof hatches
 - ii) Submersibles
 - 1) Well #13
 - (a) Approximate Depth: 500 feet
 - (b) Approximate Column Size: 6-inch
 - (c) Approximate Horsepower: 50 hp
 - 2) Well #14, 15, 16, and 17
 - (a) Approximate Depth: 500 feet
 - (b) Approximate Column Size: 8-inch to 10-inch
 - 3) Well #18
 - (a) Approximate Depth: 607 feet

- (b) Approximate Column Size: 6-inch
- (c) Approximate Horsepower: 50 hp

- 4) Well #19
 - (a) Approximate Depth: 990 feet
 - (b) Casing to 760 feet 10-3/4 inch
 - (c) Approximate Colum Size : 4 inch
 - (d) Special Note:
 - (i) New well in design

2) Services shall fall into the following types of service:

- i) Planned Services:
 - 1) Annual Diagnostic Services of all wells.
 - 2) NBU estimates 2-3 wells will be taken out of service for repair and evaluation during winter months. This number is not guaranteed, and the number of wells to be serviced will be provided by NBU.
- ii) Emergency Repairs and Replacements, as needed.

3) Well Pump Annual Diagnostic Services

- a) For each well pump diagnostic, the Vendor shall provide NBU with the results and any recommendations for repair work, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement, and/or machine needs.
- b) Vendor shall complete the following for each well:
 - i) performance testing for wells and pumps;
 - ii) electrical diagnostics;
 - iii) water level measurement and recording;
 - iv) vibration and thermal analysis; and
 - v) diagnostic services will be planned for each well pump on an annual basis.

4) Well Pump Repair and Replacement

- a) The Vendor shall disconnect motor and provide crane if necessary for removal of motor. A licensed electrician must performs this task.
 - i) NBU requires split bolts for motor lead connections in lieu of Polaris connections.
- b) Vendor shall disassemble and remove pump and provide crane or equipment for removal of pump.
- c) For each well pump repair, the Vendor shall provide NBU with the repair work scope and a tear down and inspection report, which is supported with photographs when appropriate, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement and/or machine needs.
- d) The Vendor shall indicate probable failure modes in the repair work scope and the final repair report. No repairs shall be initiated without prior written authorization from NBU.
- e) The Vendor shall provide projected completion and delivery dates with each repair estimate. Additionally, the Vendor shall provide any recommendations/alternatives that may improve performance and longevity of pumping system.

- f) Upon completion of each repair, the Vendor shall submit a final repair report within 10 days, with details as indicated above. The reports shall thoroughly document the work performed including, but not limited to, the following:
 - i) tear down report, including possible root causes of failures;
 - ii) description of all work performed;
 - iii) description of all parts installed;
 - iv) description of modified or repaired parts;
 - v) results of any testing performed;
 - vi) final balance reports;
 - vii) final assembly dimensions;
 - viii) Manufacturer curves and tested curves of specific pump (if tested);
 - ix) digital photographs of as-found conditions, post cleaning, during assembly and final assembly; and
 - x) material certifications.
- g) All testing and repairs shall be performed at the Vendor's repair facility by competent and certified employees.
- h) The Vendor shall complete the following for each well that is removed for repair:
 - i) Televising of casing and screens or open hole; and
 - ii) Geophysical Well Logging, if required by NBU.
- i) The Vendor's shop equipment shall include all tools and test equipment necessary for the proper execution of this contract. The Vendor must have equipment such as but not limited to burn-out oven, balancing machine, or a large dipping vat.
- j) All repairs shall meet or exceed the OEM specifications for the pump manufacturer.
- k) If an existing well pump nameplate is illegible, a new nameplate shall be supplied by the Vendor that will replace the original. New nameplates shall be made of corrosion resistant metal and have stamped or engraved lettering.
- l) Repair requirements:
 - i) Pump repairs shall include the replacement of seals, bearings, bolts, gaskets, shafts, couplings, mechanical seals, impellers and vanes, and bowls.
 - ii) Column piping shall be blasted and recoated unless significant pitting or pinholes are prevalent, then the column piping shall be replaced.
 - iii) Line shaft bearings shall be nitrile with a bronze backing including either a bronze or cast-iron bearing retainer.
 - iv) Bowls shall be fabricated of Cast Iron AL48-CL30, free of detrimental defects. Water passages shall be free of blow holes, sand holes, and shall be accurately machined and fitted.
 - v) Impellers shall be stainless steel or an aluminum-bronze.
 - vi) Screens shall be cleaned and jetted.
 - vii) Vendor shall be responsible for the cranes and equipment required to pull the pumps. Three (3) well pumps are located on elevated platforms and two (2) are located within buildings that requires the use of roof hatches for removal.
 - viii) Well pump column piping is typically of a threaded pipe construction.
- m) Vendor shall provide a licensed employee meeting the certification requirements of the State of Texas for drilling and servicing of wells.
- n) Record results shall be returned to NBU in electronic format. Results will be expected daily for duration of project.

5) Well Camera Survey, if requested by NBU

- a) Camera surveying equipment must have the following capabilities:
 - i) televising of the well casing and screens with color;
 - ii) camera with 360° view orthogonal to the downhole view camera;
 - iii) capable of entering 2 ½" pipe;
 - iv) counting of footage on screen as survey is performed;
 - v) capable of taking still photographs;
 - vi) date of survey performed on camera footage; and
 - vii) DC5150 and DW-2000 are the only approved camera well survey operating systems.
- b) Professional Geologist
 - i) If available, Vendor shall provide in-house professional geoscientist ("P.G.") to review the camera survey and provide suggestions on performance enhancement of the well.
- c) The Vendor must provide footage of the surveyed well in USB format to the engineer/owner.
- d) The Vendor must provide a written report of the findings in the well within 10 days.

III. NBU Responsibilities

a. Site Access: NBU will provide access to each site and assist the Vendor with accessing the equipment.

b. Pump/Motor Delivery and Pickup: In its sole discretion, NBU may elect to remove and deliver the pump or motor to the Vendor's facility for testing and repair.

c. Water Well BacT samples: NBU will collect any required bacteriological samples for analysis after pump or well repairs.

Exhibit C
Evidence of Insurance

EVALUATION REPORT

RFP #02659 - WATER & WASTEWATER PUMP AND MOTOR SERVICES

EXECUTIVE SUMMARY

On December 28, 2022, the Evaluation Committee (EC) evaluated the proposals submitted by four (4) firms in response to the Request for Proposals (“RFP”) for Water & Wastewater Pump and Motor Services in accordance with pre-established evaluation procedures. These firms that submitted a response are as follows:

Austin Armature Works
Lonestar Armature
Peerless Equipment
Weisinger Incorporated

The RFP was separated into three (3) different groups, which were as follows:

Group A: Water & Wastewater System Facility Pumps

Group B: Well Pump Diagnostic, Repair & Replacement

Group C: Motor Repair and Maintenance

Process Followed

The EC is comprised of NBU voting members assisted by Sean Mason (consultant) in an advisory, non-voting capacity. The EC has reviewed and evaluated the firms' responses and qualifications in accordance with the Evaluation Documents, which define policies and procedures to be followed in evaluating each proposal. The evaluation is based upon the following criteria:

- Firm’s Overall Experience and Experience with Similar Projects – 40 points
- Proposal Pricing – 35 points
- Project Approach and Response Time – 25 points

As indicated in the RFP, it is NBU’s intent to award this contract to multiple respondents for each Group.

Exhibit B details the rankings of each proposal.

SUMMARY OF FINDINGS

The evaluation resulted in the following ranking:

Group A:

Austin Armature Works – Rank 1 (tied)

Lonestar Armature – Rank 1 (tied)

Weisinger Incorporated – Rank 3

Group B:

Weisinger Incorporated – Rank 1

Peerless Equipment – Rank 2

Group C:

Austin Armature Works – Rank 1 (tied)

Lonestar Armature – Rank 1 (tied)

Overall these firms met or exceeded the RFP requirements due to their: overall firm experience in the industry, extensive employee training, and employee experience.

Pricing was competitive amongst all the firms. Weisinger Incorporated elected to sub-contract Group A to another vendor, which would increase cost and lead times.

Based on the evaluation above, the EC recommends the following multiple awards for each group:

Group A:

Austin Armature Works

Lonestar Armature

Group B:

Peerless Equipment

Weisinger Incorporated

Group C:

Austin Armature Works

Lonestar Armature

Group A

Ven

Austin Armature Works

Lonestar Armature

Field Service Rates

Field Service Technician	\$110/Reg Time	\$165/OT	\$75/hr In Shop; \$85/Hr In Field
Drive Controls Technician	\$150/Reg Time	\$225/OT	
Crane Truck	\$120/hr. onsite		\$85/hr; \$375/hr over 7000 lbs
Baker Motor Tester	\$250/per day		
Thermal Imaging Camera	\$250/per day		
Laser Allignment Tool	\$250/per day		
Welder	\$250/per day		
Alignment Shims	\$4.50/shim		
Diagnostic Service Cost			\$75/Hr
Pump Tear Down & Inspect			Included in Diagnostic
Machining Rates			\$125/Hr

Shop Rates

All Trades	\$95/Reg Time	\$135/OT
Rush Rate	\$150	

Subcontract Rates

Mark-up Rates	23% mark-up
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Other Rates

Parts Mark-up	25% mark-up
replacement Pump costs	20% mark-up

dors

Peerless Equipment

Weisinger Incorporated



\$115/Reg Time \$175/OT

\$280/hr; \$365/OT

\$1,000

\$2,000

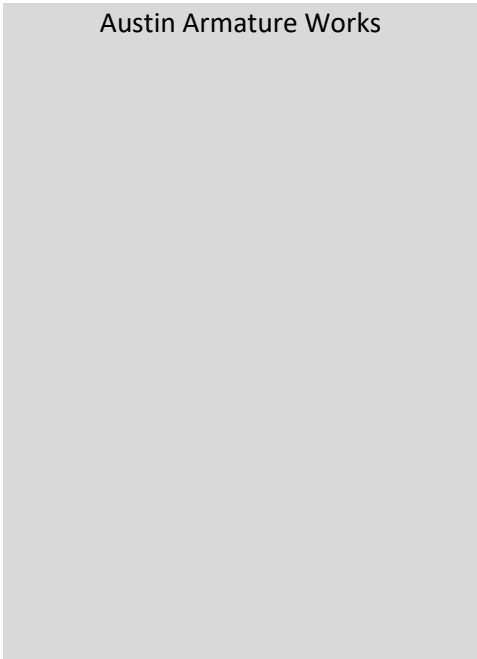
\$175/Reg Time \$240/OT

30% mark-up

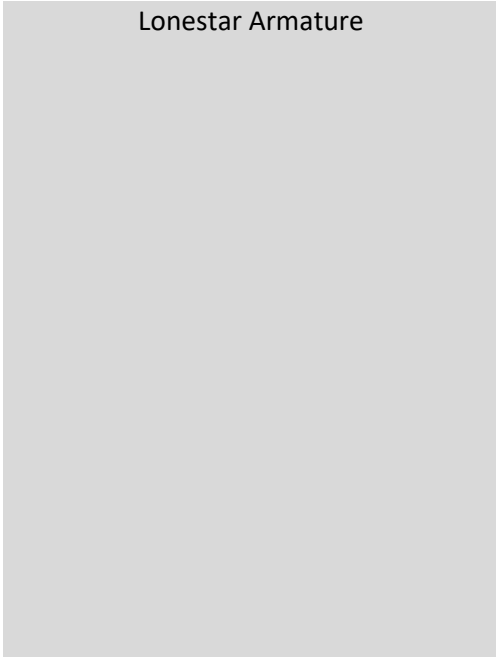
25% mark-up

Group B

- Diagnostic Service Cost
- Mobilization/Demobilization
- Pump Tear Down & Inspection
- Pump Removal
- Crane Rates
- Labor Rates
- Labor Rate - Overtime
- Machining Rates
- Parts Mark-up
- Well Video logs
- geophysical log
- Rehab Well Standard Rates
- Specialty Service Rates
- Travel/Delivery/Hauling
- Replacement Pump
- Other Items



Vendors



Lonestar Armature

Peerless Equipment
\$175
\$800
\$300
\$420/hr
cost + 1.30 % markup
\$125/hr
\$250/hr
\$175/hr
cost + 1.40 % markup
\$2,500
\$4,000
\$420/hr
cost + 1.35% markup
\$500 per round trip
cost + 1.35% markup
cost + 1.40% markup

Weisinger Incorporated

\$1150/EA

\$3000-\$5000/EA

\$2000/EA

varies - see price sheet

\$280/hr or Cost +20% (over 17 ton)

\$115/hr

multiplier - 1.35% or 1.65%

\$175/hr

cost + 30%

\$2400/EA

cost + 20%

\$480/hr

varies - see price sheet

\$280/hr

cost + 30%

cost + 20%

Group B

	Austin Armature Works	Lonestar Armature
Diagnostic Service Cost		\$75/hr
Motor Tear down & inspection		included in diagnostic service
mobilization and demobilization		\$85/hr
motor removal		\$85/hr
Crane Rates		\$75/hr \$375/hr over 7000 lbs
Labor Rates		\$75 hr In shop / \$85 hr In field
Labor Rate - Overtime		1.5X or 2X strait time
Machining Rates		\$125/hr
Parts Mark-up		25%
Travel/Delivery/Hauling		\$75/hr
Replacement Motor		25% mark up
Other Items		
Field Service Technician	\$110 Reg Time \$165 OT	
Drive Controls Tech	\$150 Reg Time \$225 OT	
Crane Truck	\$120/hr	
Baker Motor Tester	\$250/day	
Thermal Imaging Camera	\$250/day	
Laser Alignment Tool	\$250/day	
Welder	\$250/day	
Alignment Shims	\$4.50 Shim	
Shop Rates		
All Trades	\$95 Reg Time \$135 OT	
Rush Rate	\$150	
Subcontract Rates	cost + 23% markup	
Repair Material Rates	cost + 23% markup	
New Equipment Sold	cost + 23% markup	
Teco W & GE Motors	50% off Man. List price	

Vendors

Peerless Equipment

Weisinger Incorporated





Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

From: Brent Lundmark **Reviewed by:** Michael Short, P.E.
 Water Treatment & Compliance Manager Director of Water Services and Compliance

Submitted by: Ryan Kelso **Approved by:** Ian Taylor
 Chief Operations Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Weisinger Incorporated for Water Well Pump Diagnostic, Repair, and Replacement Services

BACKGROUND

On November 7, 2022, New Braunfels Utilities (“NBU”) issued a request for proposals to award to one or more respondents for labor, material, and equipment to perform well pump diagnostic, repair, and replacement services at various water and wastewater facilities throughout NBU’s system for predictive and unplanned services (the “Services”).

On December 2, 2022, NBU received two (2) proposals for the Services during the public solicitation process. NBU staff evaluated the proposals and determined both proposals to be the most advantageous to NBU considering the relative importance of price and the other evaluation factors included in the request for proposals. NBU staff recommends the selection of WW Peerless, LLC DBA Peerless Equipment (“Peerless”) and Weisinger Incorporated (“Weisinger”) for the Services. NBU presented the Services and Goods Agreement with Peerless as a separate agenda item.

NBU staff requests that the Board of Trustees approve the services and goods agreement with Weisinger.

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

FINANCIAL IMPACT

The total financial impact of the agreement with Weisinger is \$1,250,000 with a not to exceed amount of \$250,000 for the initial one-year contract term, and \$250,000 for each of the four (4) additional one-year terms. The Agreement is budgeted between the Water Treatment & Compliance Operations and Maintenance budget (“O&M Budget”) and the Capital Improvement Projects Aging Infrastructure budget (“Capital Budget”) for fiscal year 2023 and will be budgeted in the O&M and Capital Budgets of fiscal year 2024 through fiscal year 2027.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

EXHIBITS

1. Contract with Weisinger Incorporated
2. Summary of Recommendation
3. Bid Tabulation

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 **WEISINGER INCORPORATED**, a Texas corporation (the “Vendor” or “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 1, 2023, to March 31, 2024 (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 March 31, 2028

2. **Scope of Services, Purchases.**
 - 2.1. **Scope of Services.** 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, 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 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 Vendor can be paid under this Agreement for Services and goods.

 - 3.2. **Billing Period.** NBU shall pay 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 Vendor for any goods purchased in accordance with the terms stated therein. All invoices provided by 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 Vendor’s invoice, 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 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. 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, Vendor shall promptly furnish satisfactory proof of compliance to NBU.
- 4.2. Warranties.
 - a. Performance Warranty. 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 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. 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. 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 Vendor's expense, in a manner acceptable to NBU. 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 Vendor shall replace such item and shall not charge NBU for such replacement.
- 4.3. Personnel. Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. 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, Vendor shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

- 4.4. Licenses; Materials. Vendor shall maintain in current status all federal, state, and local licenses and permits required for Vendor to perform the Services and operate its business. NBU has no obligation to provide 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 Vendor.
- 4.5. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, 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 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 VENDOR SET FORTH HEREIN SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**
- 4.6. Insurance. Vendor shall continuously during the Term comply with the following requirements regarding insurance:
- a. Insurer Qualifications. Without limiting any obligations or liabilities of Vendor, 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 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 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. 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 Vendor. 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. Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- i. Use of Subcontractors. 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, 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 Vendor. 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, 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. Evidence of such insurance shall be attached as Exhibit C. 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 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. 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. Vendor shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on Vendor's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by 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. Vendor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by Vendor, or anyone employed by 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 Vendor 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 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. Vendor shall maintain Workers' Compensation insurance to cover 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. Vendor represents and warrants that 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. Vendor further agrees that 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 Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Vendor, 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. 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. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. 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 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. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

- d. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, 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 2274.0103 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 2274 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.

- 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 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, “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. 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 Vendor. Upon termination for convenience, 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, Vendor may suspend work if Vendor reasonably determines that working conditions at the site (outside 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 Vendor that are materially interfering with the normal progress of the work. Vendor's suspension of work hereunder shall be without prejudice to any other remedy of 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 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 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 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 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 Vendor shall be relieved of any subsequent obligation under this Agreement.

7. Confidentiality; Texas Public Information Act.

- 7.1. Confidentiality of Records. 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 Vendor's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Vendor's duties under this Agreement. Persons requesting such information should be immediately referred to NBU. Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of 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) Vendor 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 Vendor created by 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 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. 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, 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.

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 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 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 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 Vendor with non-exclusive, limited access to NBU's information technology infrastructure. Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all 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. 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. Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by 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 Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, 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, 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 Vendor in connection with this Agreement is believed to have been compromised or in the event of a

cybersecurity event or breach, Vendor shall notify NBU immediately. **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.** **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 Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify Vendor of such claim or suit, NBU's failure to so notify Vendor shall not diminish Vendor's indemnity obligations hereunder. Vendor shall have control of any such suit and NBU shall cooperate with Vendor in connection with its defense at the expense of Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if Vendor believes that such Service or good is likely to become the subject of an infringement claim, 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.** Vendor acknowledges that Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. Vendor shall not represent, either expressly or through implication, that 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 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 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. 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 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 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 Vendor any amount 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 Vendor any amount 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 Water 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 Vendor:

Weisinger Incorporated
 18150 IH 45N
 PO Box 909
 Willis, Texas 77378

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 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 _____, 20__.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ian Taylor
Title: CEO

VENDOR:

WEISINGER INCORPORATED,
a Texas corporation

By:  _____
Name: Michael Weisinger
Title: Vice President

Exhibit A – Scope of Services

The Vendor shall provide all labor, material, and equipment to perform well pump diagnostic, repair, and replacement services at existing water and wastewater facilities throughout New Braunfels Utilities’ (“NBU”) system for predictive maintenance and planned and un-planned (emergency) services (the “Services”).

The Services are intended to be as needed to address planned service during the winter months and emergency repair throughout the year. Additionally, NBU may deviate from the requested materials as needed to meet the schedule and production needs of facilities.

The Vendor shall provide service in accordance with the following sections:

I. General Requirements

- a) NBU will work directly with the Vendor to establish a schedule for each material repair or order. The following are intended to establish a typical or baseline schedule for services:
 - i. Standard Repairs: Standard repairs are those considered to occur in a standard time frame and the Vendor shall make standard repairs within 40 business days or less of receipt of authorization from NBU. The Vendor shall provide a quote for repairs within 10 business days or less of receipt of repair request from NBU. The final repair report shall be submitted by the Vendor no more than 20 business days or less following the completion of repairs.
 - ii. Emergency/Expedited Repairs: Emergency repairs are those considered to occur under conditions that require an expedited repair and the Vendor shall make those repairs within 3 business days or less of receipt of authorization from NBU. The Vendor shall provide a quote for repairs within 48 hours or less of receipt of repair request. The final repair report shall be submitted by the Vendor within 10 business days or less following the completion of repairs.
- b) Emergency repair requirements:
 - i. Emergency repairs may require the Vendor to provide 24-hour services or repair work to meet the schedule and requirements of NBU. This request will be provided on an as needed basis and at the sole request of NBU.
 - ii. All requests between the months of May and September will be considered emergency repairs unless otherwise specified by NBU.
- c) Unit Responsibility and Coordination
 - i. The Vendor shall be responsible for the adequacy and compatibility of all pumping unit components including but not limited to the pump, couplings, motor and their compatibility.
 - ii. Any component of each complete pumping unit not provided by the Vendor shall be designed, fabricated, tested, and installed under the supervision of the Vendor by an individual experienced in the design of pumping equipment.

II. Well Pump Diagnostic, Repair, and Replacement

The Vendor shall perform the following Services:

a) NBU generally has the following existing well pump infrastructure to be covered by this contract:

- 1) Vertical Turbine Pumps
 - a) Well #2
 - (a) Approximate Depth: 220 feet
 - (b) Approximate Column Size: 10-inch
 - (c) Special Notes:
 - (i) On a raised platform
 - b) Well #3
 - (a) Approximate Depth: 220 feet
 - (b) Approximate Column Size: 12-inch
 - (c) Special Notes:
 - (i) On a raised platform
 - (ii) Positive pressure well (Artesian)
 - c) Well #4
 - (a) Approximate Depth: 365 feet
 - (b) Approximate Column Size: 12-inch
 - (c) Special Notes:
 - (i) In a building with roof hatches
 - (ii) Lead Set
 - d) Well #5
 - (a) Approximate Depth: 400 feet
 - (b) Approximate Column Size: 12-inch
 - (c) Special Notes:
 - (i) On a raised platform with limited/tight access
 - (ii) Positive pressure well (Artesian)
 - e) Well #6
 - (a) Approximate Depth: 140 feet
 - (b) Approximate Column Size: 12-inch
 - (c) Special Notes:
 - (i) In a building with roof hatches
- 2) Submersibles
 - a) Well #13
 - (a) Approximate Depth: 500 feet
 - (b) Approximate Column Size: 6-inch
 - (c) Approximate Horsepower: 50 hp
 - b) Well #14, 15, 16, and 17
 - (a) Approximate Depth: 500 feet
 - (b) Approximate Column Size: 8-inch to 10-inch
 - c) Well #18
 - (a) Approximate Depth: 607 feet
 - (b) Approximate Column Size: 6-inch
 - (c) Approximate Horsepower: 50 hp

- d) Well #19
 - (a) Approximate Depth: 990 feet
 - (b) Casing to 760 feet 10-3/4 inch
 - (c) Approximate Colum Size : 4 inch
 - (d) Special Note:
 - (i) New well in design

b) Services shall fall into the following types of service:

- 1) Planned Services:
 - a) Annual Diagnostic Services of all wells.
 - b) NBU estimates 2-3 wells will be taken out of service for repair and evaluation during winter months. This number is not guaranteed, and the number of wells to be serviced will be provided by NBU.
- 2) Emergency Repairs and Replacements, as needed.

c) Well Pump Annual Diagnostic Services

- i. For each well pump diagnostic, the Vendor shall provide NBU with the results and any recommendations for repair work, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement, and/or machine needs.
- ii. Vendor shall complete the following for each well:
 - 1) performance testing for wells and pumps;
 - 2) electrical diagnostics;
 - 3) water level measurement and recording;
 - 4) vibration and thermal analysis; and
 - 5) diagnostic services will be planned for each well pump on an annual basis.

d) Well Pump Repair and Replacement

- i. The Vendor shall disconnect motor and provide crane if necessary for removal of motor. A licensed electrician must performs this task.
 - 1) NBU requires split bolts for motor lead connections in lieu of Polaris connections.
- ii. Vendor shall disassemble and remove pump and provide crane or equipment for removal of pump.
- iii. For each well pump repair, the Vendor shall provide NBU with the repair work scope and a tear down and inspection report, which is supported with photographs when appropriate, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement and/or machine needs.
- iv. The Vendor shall indicate probable failure modes in the repair work scope and the final repair report. No repairs shall be initiated without prior written authorization from NBU.
- v. The Vendor shall provide projected completion and delivery dates with each repair estimate. Additionally, the Vendor shall provide any recommendations/alternatives that may improve performance and longevity of pumping system.
- vi. Upon completion of each repair, the Vendor shall submit a final repair report within 10 days, with details as indicated above. The reports shall thoroughly document the work performed including, but not limited to, the following:
 - 1) tear down report, including possible root causes of failures;
 - 2) description of all work performed;

- 3) description of all parts installed;
 - 4) description of modified or repaired parts;
 - 5) results of any testing performed;
 - 6) final balance reports;
 - 7) final assembly dimensions;
 - 8) Manufacturer curves and tested curves of specific pump (if tested);
 - 9) digital photographs of as-found conditions, post cleaning, during assembly and final assembly; and
 - 10) material certifications.
- vii. All testing and repairs shall be performed at the Vendor's repair facility by competent and certified employees.
- viii. The Vendor shall complete the following for each well that is removed for repair:
- 1) Televising of casing and screens or open hole; and
 - 2) Geophysical Well Logging, if required by NBU.
- ix. The Vendor's shop equipment shall include all tools and test equipment necessary for the proper execution of this contract. The Vendor must have equipment such as but not limited to burn-out oven, balancing machine, or a large dipping vat.
- x. All repairs shall meet or exceed the OEM specifications for the pump manufacturer.
- xi. If an existing well pump nameplate is illegible, a new nameplate shall be supplied by the Vendor that will replace the original. New nameplates shall be made of corrosion resistant metal and have stamped or engraved lettering.
- xii. Repair requirements:
- 1) Pump repairs shall include the replacement of seals, bearings, bolts, gaskets, shafts, couplings, mechanical seals, impellers and vanes, and bowls.
 - 2) Column piping shall be blasted and recoated unless significant pitting or pinholes are prevalent, then the column piping shall be replaced.
 - 3) Line shaft bearings shall be nitrile with a bronze backing including either a bronze or cast-iron bearing retainer.
 - 4) Bowls shall be fabricated of Cast Iron AL48-CL30, free of detrimental defects. Water passages shall be free of blow holes, sand holes, and shall be accurately machined and fitted.
 - 5) Impellers shall be stainless steel or an aluminum-bronze.
 - 6) Screens shall be cleaned and jetted.
 - 7) Vendor shall be responsible for the cranes and equipment required to pull the pumps. Three (3) well pumps are located on elevated platforms and two (2) are located within buildings that requires the use of roof hatches for removal.
 - 8) Well pump column piping is typically of a threaded pipe construction.
- xiii. Vendor shall provide a licensed employee meeting the certification requirements of the State of Texas for drilling and servicing of wells.
- xiv. Record results shall be returned to NBU in electronic format. Results will be expected daily for duration of project.

e) Well Camera Survey, if requested by NBU

- i. Camera surveying equipment must have the following capabilities:
 - 1) televising of the well casing and screens with color;
 - 2) camera with 360° view orthogonal to the downhole view camera;

- 3) capable of entering 2 ½" pipe;
 - 4) counting of footage on screen as survey is performed;
 - 5) capable of taking still photographs;
 - 6) date of survey performed on camera footage; and
 - 7) DC5150 and DW-2000 are the only approved camera well survey operating systems.
- ii. Professional Geologist
 - 1) If available, Vendor shall provide in-house professional geoscientist ("P.G.") to review the camera survey and provide suggestions on performance enhancement of the well.
 - iii. The Vendor must provide footage of the surveyed well in USB format to the engineer/owner.
 - iv. The Vendor must provide a written report of the findings in the well within 10 days.

III. NBU Responsibilities

- a. Site Access: NBU will provide access to each site and assist the Vendor with accessing the equipment.
- b. Pump/Motor Delivery and Pickup: In its sole discretion, NBU may elect to remove and deliver the pump or motor to the Vendor's facility for testing and repair.
- c. Water Well BacT samples: NBU will collect any required bacteriological samples for analysis after pump or well repairs.

Exhibit B

Price List/ Payment Terms

NBU shall pay Vendor for the Services and goods rendered under this Agreement Total Compensation not to exceed \$250,000 annually and \$1,250,000 for the duration of the Agreement.

Exhibit C

Evidence of Insurance

EVALUATION REPORT

RFP #02659 - WATER & WASTEWATER PUMP AND MOTOR SERVICES

EXECUTIVE SUMMARY

On December 28, 2022, the Evaluation Committee (EC) evaluated the proposals submitted by four (4) firms in response to the Request for Proposals (“RFP”) for Water & Wastewater Pump and Motor Services in accordance with pre-established evaluation procedures. These firms that submitted a response are as follows:

Austin Armature Works
Lonestar Armature
Peerless Equipment
Weisinger Incorporated

The RFP was separated into three (3) different groups, which were as follows:

Group A: Water & Wastewater System Facility Pumps

Group B: Well Pump Diagnostic, Repair & Replacement

Group C: Motor Repair and Maintenance

Process Followed

The EC is comprised of NBU voting members assisted by Sean Mason (consultant) in an advisory, non-voting capacity. The EC has reviewed and evaluated the firms' responses and qualifications in accordance with the Evaluation Documents, which define policies and procedures to be followed in evaluating each proposal. The evaluation is based upon the following criteria:

- Firm’s Overall Experience and Experience with Similar Projects – 40 points
- Proposal Pricing – 35 points
- Project Approach and Response Time – 25 points

As indicated in the RFP, it is NBU’s intent to award this contract to multiple respondents for each Group.

Exhibit B details the rankings of each proposal.

SUMMARY OF FINDINGS

The evaluation resulted in the following ranking:

Group A:

Austin Armature Works – Rank 1 (tied)

Lonestar Armature – Rank 1 (tied)

Weisinger Incorporated – Rank 3

Group B:

Weisinger Incorporated – Rank 1

Peerless Equipment – Rank 2

Group C:

Austin Armature Works – Rank 1 (tied)

Lonestar Armature – Rank 1 (tied)

Overall these firms met or exceeded the RFP requirements due to their: overall firm experience in the industry, extensive employee training, and employee experience.

Pricing was competitive amongst all the firms. Weisinger Incorporated elected to sub-contract Group A to another vendor, which would increase cost and lead times.

Based on the evaluation above, the EC recommends the following multiple awards for each group:

Group A:

Austin Armature Works

Lonestar Armature

Group B:

Peerless Equipment

Weisinger Incorporated

Group C:

Austin Armature Works

Lonestar Armature

Group A

Ven

Austin Armature Works

Lonestar Armature

Field Service Rates

Field Service Technician	\$110/Reg Time	\$165/OT	\$75/hr In Shop; \$85/Hr In Field
Drive Controls Technician	\$150/Reg Time	\$225/OT	
Crane Truck	\$120/hr. onsite		\$85/hr; \$375/hr over 7000 lbs
Baker Motor Tester	\$250/per day		
Thermal Imaging Camera	\$250/per day		
Laser Allignment Tool	\$250/per day		
Welder	\$250/per day		
Alignment Shims	\$4.50/shim		
Diagnostic Service Cost			\$75/Hr
Pump Tear Down & Inspect			Included in Diagnostic
Machining Rates			\$125/Hr

Shop Rates

All Trades	\$95/Reg Time	\$135/OT
Rush Rate	\$150	

Subcontract Rates

Mark-up Rates	23% mark-up
---------------	-------------

Other Rates

Parts Mark-up	25% mark-up
replacement Pump costs	20% mark-up

dors

Peerless Equipment

Weisinger Incorporated



\$115/Reg Time \$175/OT

\$280/hr; \$365/OT

\$1,000

\$2,000

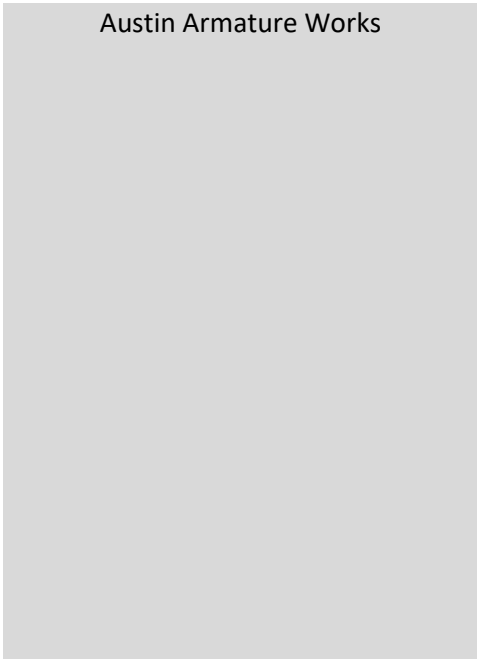
\$175/Reg Time \$240/OT

30% mark-up

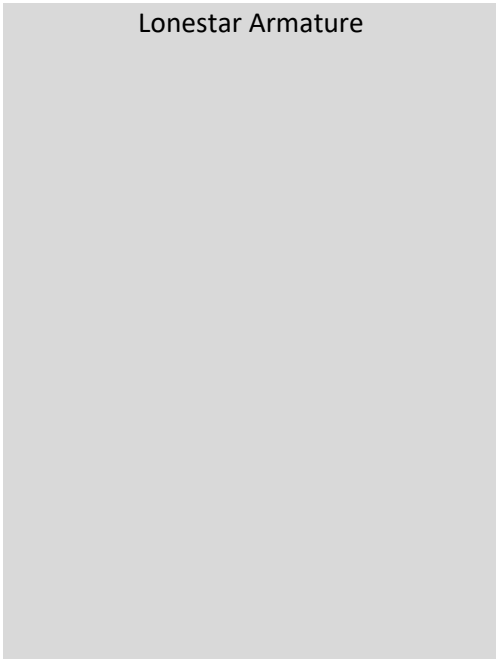
25% mark-up

Group B

- Diagnostic Service Cost
- Mobilization/Demobilization
- Pump Tear Down & Inspection
- Pump Removal
- Crane Rates
- Labor Rates
- Labor Rate - Overtime
- Machining Rates
- Parts Mark-up
- Well Video logs
- geophysical log
- Rehab Well Standard Rates
- Specialty Service Rates
- Travel/Delivery/Hauling
- Replacement Pump
- Other Items



Vendors



Lonestar Armature

Peerless Equipment
\$175
\$800
\$300
\$420/hr
cost + 1.30 % markup
\$125/hr
\$250/hr
\$175/hr
cost + 1.40 % markup
\$2,500
\$4,000
\$420/hr
cost + 1.35% markup
\$500 per round trip
cost + 1.35% markup
cost + 1.40% markup

Weisinger Incorporated

\$1150/EA

\$3000-\$5000/EA

\$2000/EA

varies - see price sheet

\$280/hr or Cost +20% (over 17 ton)

\$115/hr

multiplier - 1.35% or 1.65%

\$175/hr

cost + 30%

\$2400/EA

cost + 20%

\$480/hr

varies - see price sheet

\$280/hr

cost + 30%

cost + 20%

Group B

	Austin Armature Works	Lonestar Armature
Diagnostic Service Cost		\$75/hr
Motor Tear down & inspection		included in diagnostic service
mobilization and demobilization		\$85/hr
motor removal		\$85/hr
Crane Rates		\$75/hr \$375/hr over 7000 lbs
Labor Rates		\$75 hr In shop / \$85 hr In field
Labor Rate - Overtime		1.5X or 2X strait time
Machining Rates		\$125/hr
Parts Mark-up		25%
Travel/Delivery/Hauling		\$75/hr
Replacement Motor		25% mark up
Other Items		
Field Service Technician	\$110 Reg Time \$165 OT	
Drive Controls Tech	\$150 Reg Time \$225 OT	
Crane Truck	\$120/hr	
Baker Motor Tester	\$250/day	
Thermal Imaging Camera	\$250/day	
Laser Alignment Tool	\$250/day	
Welder	\$250/day	
Alignment Shims	\$4.50 Shim	
Shop Rates		
All Trades	\$95 Reg Time \$135 OT	
Rush Rate	\$150	
Subcontract Rates	cost + 23% markup	
Repair Material Rates	cost + 23% markup	
New Equipment Sold	cost + 23% markup	
Teco W & GE Motors	50% off Man. List price	

Vendors

Peerless Equipment

Weisinger Incorporated





Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

From: Brent Lundmark **Reviewed by:** Michael Short, P.E.
 Water Treatment & Director of Water Services and
 Compliance Manager Compliance

Submitted by: Ryan Kelso **Approved by:** Ian Taylor
 Chief Operations Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Austin Armature Works, LP for Water and Wastewater Systems Pump and Motor Repair, Maintenance, and Replacement Services

BACKGROUND

On November 7, 2022, New Braunfels Utilities (“NBU”) issued a request for proposals to award to one or more respondents for labor, material, and equipment to monitor, maintain, and replace existing water and wastewater system facility pumps (“Pump Services”) and motor repair and maintenance services (“Motor Services”) at various facilities throughout the NBU water and wastewater system for predictive maintenance and planned and un-planned services (the “Services”).

On December 2, 2022, NBU received three (3) proposals for the Services during the public solicitation process. NBU staff evaluated the proposals and determined two of the proposals to be the most advantageous to NBU considering the relative importance of price and the other evaluation factors included in the request for proposals. NBU staff recommends the selection of Austin Armature Works, LP (“Austin Armature”) and Lonestar Armature, LLC (“Lonestar Armature”) for the Services. NBU presented the Services and Goods Agreement with Lonestar Armature as a separate agenda item.

NBU staff requests that the Board of Trustees approve the services and goods agreement with Austin Armature.

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

FINANCIAL IMPACT

The total financial impact of the agreement with Austin Armature is \$2,500,000 with a not to exceed amount of \$500,000 for the initial one-year term and \$500,000 for each of the four (4) additional one-year terms. The Agreement is budgeted between the Water Treatment & Compliance Operations and Maintenance budget (“O&M Budget”) and the Capital Improvement Projects Aging Infrastructure budget (“Capital Budget”) for fiscal year 2023 and will be budgeted in the O&M and Capital Budgets of fiscal year 2024 through fiscal year 2027.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

EXHIBITS

1. Contract with Austin Armature Works
2. Summary of Recommendation
3. Bid Tabulation

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 **AUSTIN ARMATURE WORKS, LP**, a Texas limited partnership (the “Vendor” or “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 1, 2023, to March 31, 2024 (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 March 31, 2028

2. **Scope of Services, Purchases.**
 - 2.1. **Scope of Services.** 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, 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 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 Vendor can be paid under this Agreement for Services and goods.

 - 3.2. **Billing Period.** NBU shall pay 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 Vendor for any goods purchased in accordance with the terms stated therein. All invoices provided by 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 Vendor’s invoice, 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 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. 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, Vendor shall promptly furnish satisfactory proof of compliance to NBU.
- 4.2. Warranties.
- a. Performance Warranty. 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 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. 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. 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 Vendor's expense, in a manner acceptable to NBU. 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 Vendor shall replace such item and shall not charge NBU for such replacement.
- 4.3. Personnel. Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. 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, Vendor shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

- 4.4. Licenses; Materials. Vendor shall maintain in current status all federal, state, and local licenses and permits required for Vendor to perform the Services and operate its business. NBU has no obligation to provide 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 Vendor.
- 4.5. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, 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 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 VENDOR SET FORTH HEREIN SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**
- 4.6. Insurance. Vendor shall continuously during the Term comply with the following requirements regarding insurance:
- a. Insurer Qualifications. Without limiting any obligations or liabilities of Vendor, 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 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 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. 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 Vendor. 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. Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- i. Use of Subcontractors. 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, 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 Vendor. 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, 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. Evidence of such insurance shall be attached as Exhibit C. 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 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. 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. Vendor shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on Vendor's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by 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. Workers' Compensation and Employer's Liability Insurance. Vendor shall maintain Workers' Compensation insurance to cover 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.
- l. 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. Vendor represents and warrants that 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. Vendor further agrees that 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 Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Vendor, 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. 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. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. 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 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. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

- d. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, 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 2274.0103 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 2274 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.

- 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 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, “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. 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 Vendor. Upon termination for convenience, 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, Vendor may suspend work if Vendor reasonably determines that working conditions at the site (outside 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 Vendor that are materially interfering with the normal progress of the work. Vendor’s suspension of work hereunder shall be without prejudice to any other remedy of 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 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 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 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 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 Vendor shall be relieved of any subsequent obligation under this Agreement.

7. Confidentiality; Texas Public Information Act.

- 7.1. Confidentiality of Records. 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 Vendor's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Vendor's duties under this Agreement. Persons requesting such information should be immediately referred to NBU. Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of 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) Vendor 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 Vendor created by 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 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. 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, 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.

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 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 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 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 Vendor with non-exclusive, limited access to NBU's information technology infrastructure. Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all 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. 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. Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by 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 Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, 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, 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 Vendor in connection with this Agreement is believed to have been compromised or in the event of a cybersecurity event or breach, Vendor shall notify NBU immediately. **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. **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 Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify Vendor of such claim or suit, NBU's failure to so notify Vendor shall not diminish Vendor's indemnity obligations hereunder. Vendor shall have control of any such suit and NBU shall cooperate with Vendor in connection with its defense at the expense of Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if

Vendor believes that such Service or good is likely to become the subject of an infringement claim, 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. Vendor acknowledges that Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. Vendor shall not represent, either expressly or through implication, that 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 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 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. 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 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 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 Vendor any amount 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 Vendor any amount 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
Director of Water 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 Vendor:

Austin Armature Works, LP
496 Commercial Drive
Buda, Texas 78610

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 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 _____, 20____.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ian Taylor
Title: CEO

VENDOR:

AUSTIN ARMATURE WORKS, LP,
a Texas limited partnership

By: Clayton Tischler Digitally signed by Clayton Tischler
Date: 2023.03.17 08:38:41 -05'00'
Name: Clayton Tischler
Title: Executive Officer

Exhibit A – Scope of Services

The Vendor shall provide all labor, material, and equipment to monitor, maintain, and replace existing water and wastewater system facility pumps (“Pump Services”) and motor repair and maintenance services (“Motor Services”) at existing water and wastewater facilities throughout New Braunfels Utilities’ (“NBU”) system for predictive maintenance and planned and un-planned (emergency) services (the “Services”).

The Services are intended to be as needed to address planned service during the winter months and emergency repair throughout the year. Additionally, NBU may deviate from the requested materials as needed to meet the schedule and production needs of facilities.

The Vendor shall provide service in accordance with the following sections:

I. General Requirements

- a) NBU will work directly with the Vendor to establish a schedule for each material repair or order. The following are intended to establish a typical or baseline schedule for services:
 - i) Standard Repairs: Standard repairs are those considered to occur in a standard time frame and the Vendor shall make standard repairs within 40 business days or less of receipt of authorization from NBU. The Vendor shall provide a quote for repairs within 10 business days or less of receipt of repair request from NBU. The final repair report shall be submitted by the Vendor no more than 20 business days or less following the completion of repairs.
 - ii) Emergency/Expedited Repairs: Emergency repairs are those considered to occur under conditions that require an expedited repair and the Vendor shall make those repairs within 3 business days or less of receipt of authorization from NBU. The Vendor shall provide a quote for repairs within 48 hours or less of receipt of repair request. The final repair report shall be submitted by the Vendor within 10 business days or less following the completion of repairs.
- b) Emergency repair requirements:
 - i) Emergency repairs may require the Vendor to provide 24-hour services or repair work to meet the schedule and requirements of NBU. This request will be provided on an as needed basis and at the sole request of NBU.
 - ii) All requests between the months of May and September will be considered emergency repairs unless otherwise specified by NBU.
- c) Unit Responsibility and Coordination
 - i) The Vendor shall be responsible for the adequacy and compatibility of all pumping unit components including but not limited to the pump, couplings, motor and their compatibility.
 - ii) Any component of each complete pumping unit not provided by the Vendor shall be designed, fabricated, tested, and installed under the supervision of the Vendor by an individual experienced in the design of pumping equipment.

II. Pump Services

The Vendor shall perform Pump Services on the following:

1) Existing Water and Wastewater System Facility Pumps

- a) NBU generally has the following existing pump infrastructure:
 - i) Vertical Turbine Pump– Short Set
 - 1) Approximate Number of Pumps: 30 pumps
 - 2) Typical Pump Depth: Typical 20-30-foot depths
 - 3) Typical Horsepower Range: 30-200
 - 4) Typical Flow Rate Ranges: 300-2,500 GPM
 - 5) Anticipated Existing Pump Makes:
 - (a) SAMCO
 - (b) Byron Jackson
 - (c) Flowserve
 - (d) Peabody
 - (e) National
 - (f) SIM FLO
 - (g) Peerless
 - (h) Others
 - ii) Horizontal Split Case Pump
 - 1) Approximate Number of Pumps: 25 pumps
 - 2) Typical Horsepower Range: 25-150
 - 3) Typical Flow Rate Ranges: 100-2,000 GPM
 - 4) Anticipated Existing Pump Makes:
 - (a) Crane Deming (Most Common Make)
 - (b) Patterson

2) Services

- a) Services are anticipated to fall into the following types of service:
 - i) Planned Services:
 - 1) NBU estimates 10 pumps will be taken out of service for repair and evaluation during winter months. This number is not guaranteed, and the number of pumps to be serviced will be provided by NBU.
 - 2) Annual diagnostics services for all facility pumps.
 - 3) Supply of parts and replacement equipment to NBU Facilities
 - ii) Emergency Repairs and Replacements as needed.

3) Pump Annual Diagnostic Services

- a) For each pump diagnostic, the Vendor shall provide NBU with the results and any recommendations for repair work, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement, and/or machine needs within 10 days.
- b) Vendor shall complete the following for each pump:
 - i) performance testing for pumps;
 - ii) electrical diagnostics and power analysis;
 - iii) vibration and thermal analysis; and

- iv) diagnostic services will be planned with NBU for each pump on an annual basis, NBU may elect to have some pumps tested more frequently than once a year and some less or not at all.

4) Supply of Parts

- a) NBU at its discretion may elect to purchase and maintain inventory for common wear components, and critical replacement pumps from the Vendor, to be stored at NBU facilities for repair and replacement needs. Supply of inventory of parts is anticipated on a limited basis for NBU's most critical and common pumping infrastructure.

5) Repair Procedures

- a) Vendor shall disconnect motor and provide crane if necessary for removal of motor. NBU prefers that a licensed electrician performs this task.
- b) Vendor shall disassemble and remove pump and provide crane or equipment for removal of pump
 - i) Most NBU facilities do not have a bridge crane.
- c) For each repair, the Vendor shall provide NBU with the repair work scope and a tear down and inspection report, which is supported with photographs when appropriate, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement, and/or machine needs.
- d) Vendor shall indicate probable failure modes in the repair work scope and the final repair report. This report shall not include engineering analysis. No repairs shall be initiated without prior written authorization from NBU.
- e) Vendor shall provide projected completion and delivery dates with each repair estimate. Additionally, the Vendor should provide any recommendations/alternatives that may improve performance and longevity of the pumping system.
- f) Upon completion of each repair, the Vendor shall submit a final repair report with details as indicated above. The reports shall thoroughly document the work performed including, but not limited to, the following:
 - i) tear down report, including possible root causes of failures;
 - ii) description of all work performed;
 - iii) description of all parts installed;
 - iv) description of modified or repaired parts;
 - v) results of any testing performed;
 - vi) final balance reports;
 - vii) Manufacturer curves and tested curves of specific pump (if tested);
 - viii) final assembly dimensions;
 - ix) digital photographs of as-found conditions, post cleaning, during assembly and final assembly; and material certifications.
- g) All testing and repairs shall be performed at the Vendor's repair facility by competent and certified employees.
- h) All tools and test equipment necessary for the proper execution of this contract shall be a part of the Vendor's shop equipment. Vendor must have equipment such as but not limited to burn-out oven, balancing machine, and a large dipping vat.
- i) All repairs shall meet or exceed the OEM specifications for the pump manufacturer and suitable for the service type (i.e. potable, raw water, etc.).

- j) If an existing pump nameplate is illegible, the Vendor shall supply a new nameplate that will replace the original. New nameplates shall be made of corrosion resistant metal and have stamped or engraved lettering.
- k) The total cost of repair inclusive of labor, materials, and equipment generally should not exceed 60% of the cost for replacement of the pump. In the event the cost exceeds 60%, the Vendor shall note this and provide in addition to the repair quote an additional quote for a new pump for NBU's consideration.
- l) The Vendor shall record results and return to NBU in electronic format.

6) Pump Repair Requirements (Typical)

- a) Pumps shall be repaired in accordance with American Water Works Association ("AWWA") and Hydraulic Institute ("HI") requirements.
- b) Bearings shall be replaced with new bearings of equal or better quality as the original and the bearings shall match the original bearings size.
- c) Shaft shall be checked for straightness and repair/replace if necessary. If replacement is required, the shaft shall match the dimensions and length of existing shaft or a coupling shall be provided that is machined to mate the pump shaft to the motor shaft.
- d) All pumps shall be balanced in accordance with manufacturer and HI requirements.
- e) Pumps shall be repainted to match existing color unless otherwise specified by NBU.

7) Pump Replacement Requirements (Typical)

- a) Provide pumps in accordance with AWWA and HI requirements.
- b) Pump specifications will vary depending upon each requirement. The following is provided for typical requirements:
 - i) Bearing shall be selected to carry radial and thrust loads. Bearing life shall be designed to give a minimum of 100,000 hours at maximum load without replacement. Provide thrust bearing rated at 1.5 times the maximum thrust loads involved.
 - ii) Casing/Bowl shall be ASTM Cast Iron AL48-CL3, with designed cross section and thickness to withstand all stresses. Casing/Bowl shall be designed to a 30,000-psi tensile strength and withstand a hydrostatic test at 150% of shutoff head.
 - iii) Impellor shall be stainless steel or nickel-aluminum.
 - iv) Shafts shall be stainless steel.
 - v) Provide stainless or appropriate material wear rings.
 - vi) All pumps shall be tested in accordance with manufacturer and HI requirements.
 - vii) Provide mechanical seals manufactured by Chesterton or approved equal.
 - viii) Provide stainless steel hardware.
 - ix) Provide adequately sized coupling.
- c) Pumps shall be repainted to match existing color unless otherwise specified by NBU.

III. Motor Services

The Vendor shall perform the following Motor Services:

1) Existing Water and Wastewater System Motors

- a) NBU generally has the following motor infrastructure to be covered by this contract:

- i) Approximate number of horizontal and vertical motors: 250
- ii) Typical Horsepower Range: 25-250 HP
- iii) Typical Voltage: 480V, 3-Phase

2) Services

- a) Services are anticipated to fall into the following types of service:
 - i) Planned Services:
 - 1) NBU estimates 15 motors will be taken out of service for repair and evaluation annually. This number is not guaranteed, and the number of motors to be serviced will be provided by NBU.
 - 2) Supply of parts and replacement equipment to NBU Facilities
 - ii) Emergency Repairs and Replacements as needed.

3) Supply of Parts

- a) NBU at its discretion may elect to purchase and inventory for common wear components, and critical replacement motors from the Vendor, to be stored at NBU facilities for repair and replacement needs. Supply of inventory of parts is anticipated on a limited basis for NBU's most critical and common pumping infrastructure.

4) Repair Procedures

- a) Vendor shall disconnect motor and provide crane if necessary for removal of motor. A licensed electrician must perform this task.
- b) Vendor shall field test and inspect motors in accordance with Electrical Apparatus Service Association (EASA) requirements to include, but not limited to Megohmmeter and High-pot testing.
- c) For each repair, the Vendor shall provide NBU with the repair work scope and a tear down and inspection report, which is supported with photographs when appropriate, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement, and/or machine needs.
- d) Vendor shall indicate probable failure modes in the repair work scope and the final repair report. This report shall not include engineering analysis. No repairs shall be initiated without prior written authorization from NBU.
- e) Vendor shall provide projected completion and delivery dates with each repair estimate. Additionally, the Vendor shall provide recommendations/alternatives that may improve performance and longevity.
- f) Upon completion of each repair, the Vendor shall submit a final repair report with details as indicated above. The reports shall thoroughly document the work performed including, but not limited to, the following:
 - i) tear down report, including possible root causes of failures;
 - ii) description of all work performed;
 - iii) description of all parts installed;
 - iv) description of modified or repaired parts;
 - v) results of any testing performed;
 - vi) final balance reports;
 - vii) final assembly dimensions;

- viii) digital photographs of as-found conditions, post cleaning, during assembly and final assembly; and
- ix) material certifications.
- g) All testing and repairs shall be performed at the Vendor's repair facility by competent and certified employees.
- h) All tools and test equipment necessary for the proper execution of this contract shall be a part of the Vendor's shop equipment. Vendor must have equipment such as but not limited to burn-out oven, balancing machine, and a large dipping vat.
- i) All repairs shall meet or exceed the OEM specifications for the motor manufacturer and be suitable for the service/environment they will be use.
- j) If an existing motor nameplate is illegible, the Vendor shall provide a new nameplate that will replace the original. New nameplates shall be made of corrosion resistant metal and have stamped or engraved lettering.
- k) The total cost of repair inclusive of labor, materials, and equipment shall not exceed 60% of the cost for replacement of the motor. In the event the cost exceeds 60%, the Vendor shall provide a quote for a new motor.
- l) The Vendor shall record results and return to NBU in electronic format.

5) Motor Repair Requirements (Typical)

- a) Vendor shall repair motors in accordance with National Electrical Manufacturers Association ("NEMA") and Electrical Apparatus Service Association ("EASA") requirements.
- b) Motor rewinding shall be a random wound.
- c) Insulation shall be a minimum of Class H insulation unless otherwise amended by NBU.
- d) All leads shall be replaced with new leads.
- e) Bearings shall be replaced with new bearings of equal or better quality as the original and the bearings shall match the original bearings size. Oil shall be appropriate for applications for potable water and shall be a food grade oil.
- f) Shaft shall be checked for straightness and repair/replace if necessary. If replacement is required, the shaft shall match the dimensions and length of existing shaft or a coupling shall be provided that is machined to mate the motor shaft to the connecting shaft.
- g) All motors shall be dynamically balanced, with the rotor running at rated speed where practical.
- h) All motors shall have a vibration and circuit analysis test performed.
- i) Motors shall be repainted to match existing color unless otherwise specified by NBU.

6) Motor Replacement Requirements (Typical)

- a) Motor shall be a heavy-duty squirrel cage induction, premium efficiency type motor.
- b) Motor winding shall be random wound.
- c) Motors shall comply with NEMA and associated American National Standards Institute ("ANSI") and Institute of Electrical and Electronics Engineers ("IEEE") standards unless otherwise amended by NBU.
- d) All vertical turbine motors shall include a non-reverse ratchet to prevent reverse rotation of rotating elements.
- e) Vertical motor bearings shall be ball and oil lubricated. Oil shall be appropriate for applications for potable water.

- f) Insulation shall be a minimum of Class H insulation unless otherwise amended by NBU.
- g) Shafts and couplings shall be machined and/or extended to match existing shaft dimensions for proper connection to the connecting shaft.
- h) Motor to be inverter duty rated.

IV. NBU Responsibilities

a. Site Access: NBU will provide access to each site and assist the Vendor with accessing the equipment.

b. Pump/Motor Delivery and Pickup: In its sole discretion, NBU may elect to remove and deliver the pump or motor to the Vendor's facility for testing and repair.

c. Water Well BacT samples: NBU will collect any required bacteriological samples for analysis after pump or well repairs.

Exhibit B

Price List/ Payment Terms

NBU shall pay the Vendor for the Services and goods rendered under this Agreement Total Compensation not to exceed \$500,000 annually and \$2,500,000 for the duration of the Agreement.

Exhibit C

Evidence of Insurance

Group A

Ven

Austin Armature Works

Lonestar Armature

Field Service Rates

Field Service Technician	\$110/Reg Time	\$165/OT	\$75/hr In Shop; \$85/Hr In Field
Drive Controls Technician	\$150/Reg Time	\$225/OT	
Crane Truck	\$120/hr. onsite		\$85/hr; \$375/hr over 7000 lbs
Baker Motor Tester	\$250/per day		
Thermal Imaging Camera	\$250/per day		
Laser Allignment Tool	\$250/per day		
Welder	\$250/per day		
Alignment Shims	\$4.50/shim		
Diagnostic Service Cost			\$75/Hr
Pump Tear Down & Inspect			Included in Diagnostic
Machining Rates			\$125/Hr

Shop Rates

All Trades	\$95/Reg Time	\$135/OT
Rush Rate	\$150	

Subcontract Rates

Mark-up Rates	23% mark-up
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Other Rates

Parts Mark-up	25% mark-up
replacement Pump costs	20% mark-up

dors

Peerless Equipment

Weisinger Incorporated



\$115/Reg Time \$175/OT

\$280/hr; \$365/OT

\$1,000

\$2,000

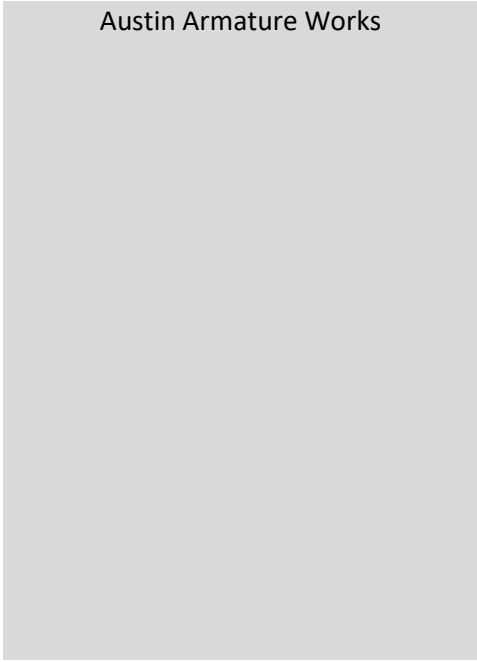
\$175/Reg Time \$240/OT

30% mark-up

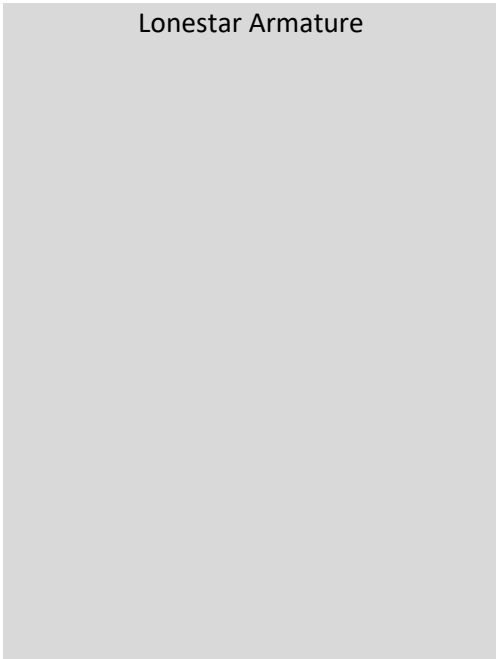
25% mark-up

Group B

- Diagnostic Service Cost
- Mobilization/Demobilization
- Pump Tear Down & Inspection
- Pump Removal
- Crane Rates
- Labor Rates
- Labor Rate - Overtime
- Machining Rates
- Parts Mark-up
- Well Video logs
- geophysical log
- Rehab Well Standard Rates
- Specialty Service Rates
- Travel/Delivery/Hauling
- Replacement Pump
- Other Items



Vendors



Lonestar Armature

Peerless Equipment
\$175
\$800
\$300
\$420/hr
cost + 1.30 % markup
\$125/hr
\$250/hr
\$175/hr
cost + 1.40 % markup
\$2,500
\$4,000
\$420/hr
cost + 1.35% markup
\$500 per round trip
cost + 1.35% markup
cost + 1.40% markup

Weisinger Incorporated

\$1150/EA

\$3000-\$5000/EA

\$2000/EA

varies - see price sheet

\$280/hr or Cost +20% (over 17 ton)

\$115/hr

multiplier - 1.35% or 1.65%

\$175/hr

cost + 30%

\$2400/EA

cost + 20%

\$480/hr

varies - see price sheet

\$280/hr

cost + 30%

cost + 20%

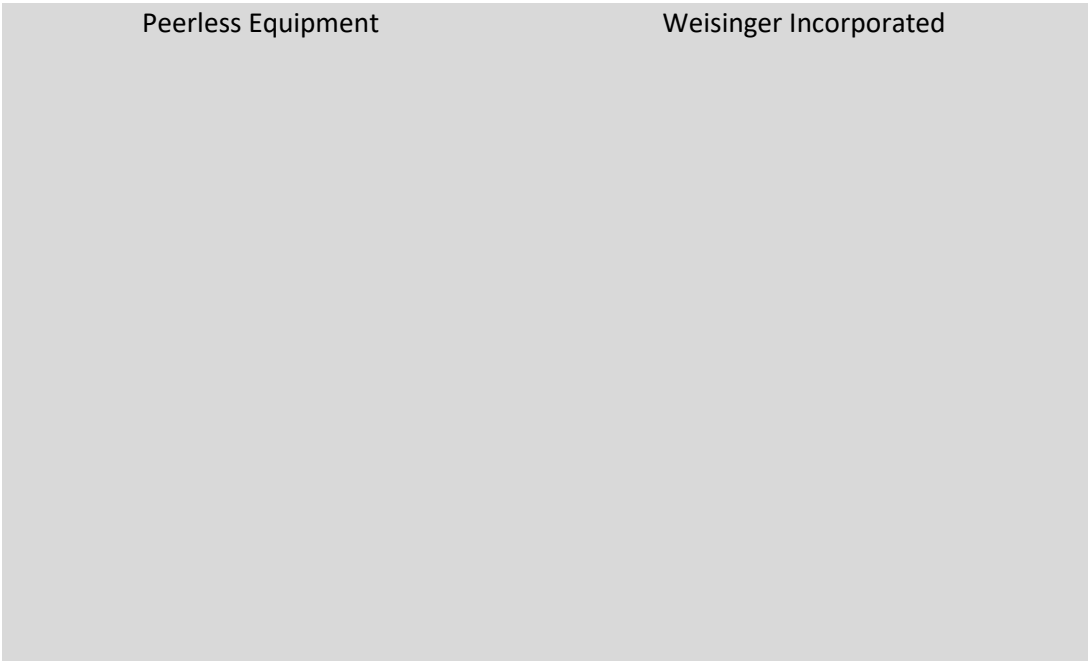
Group B

	Austin Armature Works	Lonestar Armature
Diagnostic Service Cost		\$75/hr
Motor Tear down & inspection		included in diagnostic service
mobilization and demobilization		\$85/hr
motor removal		\$85/hr
Crane Rates		\$75/hr \$375/hr over 7000 lbs
Labor Rates		\$75 hr In shop / \$85 hr In field
Labor Rate - Overtime		1.5X or 2X strait time
Machining Rates		\$125/hr
Parts Mark-up		25%
Travel/Delivery/Hauling		\$75/hr
Replacement Motor		25% mark up
Other Items		
Field Service Technician	\$110 Reg Time \$165 OT	
Drive Controls Tech	\$150 Reg Time \$225 OT	
Crane Truck	\$120/hr	
Baker Motor Tester	\$250/day	
Thermal Imaging Camera	\$250/day	
Laser Alignment Tool	\$250/day	
Welder	\$250/day	
Alignment Shims	\$4.50 Shim	
Shop Rates		
All Trades	\$95 Reg Time \$135 OT	
Rush Rate	\$150	
Subcontract Rates	cost + 23% markup	
Repair Material Rates	cost + 23% markup	
New Equipment Sold	cost + 23% markup	
Teco W & GE Motors	50% off Man. List price	

Vendors

Peerless Equipment

Weisinger Incorporated



EVALUATION REPORT

RFP #02659 - WATER & WASTEWATER PUMP AND MOTOR SERVICES

EXECUTIVE SUMMARY

On December 28, 2022, the Evaluation Committee (EC) evaluated the proposals submitted by four (4) firms in response to the Request for Proposals (“RFP”) for Water & Wastewater Pump and Motor Services in accordance with pre-established evaluation procedures. These firms that submitted a response are as follows:

Austin Armature Works
Lonestar Armature
Peerless Equipment
Weisinger Incorporated

The RFP was separated into three (3) different groups, which were as follows:

Group A: Water & Wastewater System Facility Pumps

Group B: Well Pump Diagnostic, Repair & Replacement

Group C: Motor Repair and Maintenance

Process Followed

The EC is comprised of NBU voting members assisted by Sean Mason (consultant) in an advisory, non-voting capacity. The EC has reviewed and evaluated the firms' responses and qualifications in accordance with the Evaluation Documents, which define policies and procedures to be followed in evaluating each proposal. The evaluation is based upon the following criteria:

- Firm’s Overall Experience and Experience with Similar Projects – 40 points
- Proposal Pricing – 35 points
- Project Approach and Response Time – 25 points

As indicated in the RFP, it is NBU’s intent to award this contract to multiple respondents for each Group.

Exhibit B details the rankings of each proposal.

SUMMARY OF FINDINGS

The evaluation resulted in the following ranking:

Group A:

Austin Armature Works – Rank 1 (tied)

Lonestar Armature – Rank 1 (tied)

Weisinger Incorporated – Rank 3

Group B:

Weisinger Incorporated – Rank 1

Peerless Equipment – Rank 2

Group C:

Austin Armature Works – Rank 1 (tied)

Lonestar Armature – Rank 1 (tied)

Overall these firms met or exceeded the RFP requirements due to their: overall firm experience in the industry, extensive employee training, and employee experience.

Pricing was competitive amongst all the firms. Weisinger Incorporated elected to sub-contract Group A to another vendor, which would increase cost and lead times.

Based on the evaluation above, the EC recommends the following multiple awards for each group:

Group A:

Austin Armature Works

Lonestar Armature

Group B:

Peerless Equipment

Weisinger Incorporated

Group C:

Austin Armature Works

Lonestar Armature



Meeting Date: March 30, 2023 **Agenda Type:** Consent Items for Action

From: Brent Lundmark **Reviewed by:** Michael Short, P.E.
 Water Treatment & Director of Water Services and
 Compliance Manager Compliance

Submitted by: Ryan Kelso **Approved by:** Ian Taylor
 Chief Operations Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Lonestar Armature, LLC for Water and Wastewater Systems Pump and Motor Repair, Maintenance, and Replacement Services

BACKGROUND

On November 7, 2022, New Braunfels Utilities (“NBU”) issued a request for proposals to award to one or more respondents for labor, material, and equipment to monitor, maintain, and replace existing water and wastewater system facility pumps (“Pump Services”) and motor repair and maintenance services (“Motor Services”) at various facilities throughout the NBU water and wastewater system for predictive maintenance and planned and un-planned services (the “Services”).

On December 2, 2022, NBU received three (3) proposals for the Services during the public solicitation process. NBU staff evaluated the proposals and determined two of the proposals to be the most advantageous to NBU considering the relative importance of price and the other evaluation factors included in the request for proposals. NBU staff recommends the selection of Austin Armature Works, LP (“Austin Armature”) and Lonestar Armature, LLC (“Lonestar Armature”) for the Services. NBU presented the services and goods agreement with Austin Armature as a separate agenda item.

NBU staff requests that the Board of Trustees approve the services and goods agreement with Lonestar Armature.

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

FINANCIAL IMPACT

The total financial impact of the agreement with Lonestar Armature is \$2,500,000 with a not to exceed amount of \$500,000 for the initial one-year term and \$500,000 for each of the four (4) additional one-year terms. The Agreement is budgeted between the Water Treatment & Compliance Operations and Maintenance budget (“O&M Budget”) and the Capital Improvement Projects Aging Infrastructure budget (“Capital Budget”) for fiscal year 2023 and will be budgeted in the O&M and Capital Budgets of fiscal year 2024 through fiscal year 2027.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

EXHIBITS

1. Contract with Lonestar Armature
2. Summary of Recommendation
3. Bid Tabulation

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 LONESTAR ARMATURE, LLC, a Texas limited liability company (the “Vendor” or “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 1, 2023, to March 31, 2024 (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 March 31, 2028

2. **Scope of Services, Purchases.**
 - 2.1. Scope of Services. 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, 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 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 Vendor can be paid under this Agreement for Services and goods.

 - 3.2. Billing Period. NBU shall pay 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 Vendor for any goods purchased in accordance with the terms stated therein. All invoices provided by 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 Vendor’s invoice, 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 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. 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, Vendor shall promptly furnish satisfactory proof of compliance to NBU.
- 4.2. Warranties.
- a. Performance Warranty. 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 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. 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. 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 Vendor's expense, in a manner acceptable to NBU. 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 Vendor shall replace such item and shall not charge NBU for such replacement.
- 4.3. Personnel. Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. 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, Vendor shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

- 4.4. Licenses; Materials. Vendor shall maintain in current status all federal, state, and local licenses and permits required for Vendor to perform the Services and operate its business. NBU has no obligation to provide 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 Vendor.
- 4.5. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, 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 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 VENDOR SET FORTH HEREIN SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**
- 4.6. Insurance. Vendor shall continuously during the Term comply with the following requirements regarding insurance:
- a. Insurer Qualifications. Without limiting any obligations or liabilities of Vendor, 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 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 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. 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 Vendor. 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. Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- i. Use of Subcontractors. 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, 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 Vendor. 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, 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. Evidence of such insurance shall be attached as Exhibit C. 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 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. 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. Vendor shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on Vendor's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by 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. Vendor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by Vendor, or anyone employed by 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 Vendor 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 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. Vendor shall maintain Workers' Compensation insurance to cover 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.
- l. 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. Vendor represents and warrants that 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. Vendor further agrees that 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 Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Vendor, 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. 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. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. 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 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. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

- d. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, 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 2274.0103 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 2274 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.

- 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 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, “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. 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 Vendor. Upon termination for convenience, 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, Vendor may suspend work if Vendor reasonably determines that working conditions at the site (outside 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 Vendor that are materially interfering with the normal progress of the work. Vendor's suspension of work hereunder shall be without prejudice to any other remedy of 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 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 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 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 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 Vendor shall be relieved of any subsequent obligation under this Agreement.

7. Confidentiality; Texas Public Information Act.

- 7.1. Confidentiality of Records. 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 Vendor's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Vendor's duties under this Agreement. Persons requesting such information should be immediately referred to NBU. Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of 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) Vendor 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 Vendor created by 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 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. 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, 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.

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 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 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 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 Vendor with non-exclusive, limited access to NBU's information technology infrastructure. Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all 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. 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. Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by 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 Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, 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, 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 Vendor in connection with this Agreement is believed to have been compromised or in the event of a

cybersecurity event or breach, Vendor shall notify NBU immediately. 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. 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 Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify Vendor of such claim or suit, NBU's failure to so notify Vendor shall not diminish Vendor's indemnity obligations hereunder. Vendor shall have control of any such suit and NBU shall cooperate with Vendor in connection with its defense at the expense of Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if Vendor believes that such Service or good is likely to become the subject of an infringement claim, 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. Vendor acknowledges that Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. Vendor shall not represent, either expressly or through implication, that 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 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 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. 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 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 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 Vendor any amount 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 Vendor any amount 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 Water 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 Vendor:

Lonestar Armature, LLC
 4754 Center Park Blvd.
 San Antonio, Texas 78218

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 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 _____, 20__.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ian Taylor
Title: CEO

VENDOR:

LONESTAR ARMATURE, LLC
a Texas limited liability company

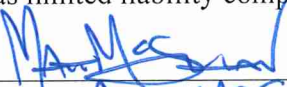
By: 
Name: MATT MCSHAN
Title: PRESIDENT

Exhibit A – Scope of Services

The Vendor shall provide all labor, material, and equipment to monitor, maintain, and replace existing water and wastewater system facility pumps (“Pump Services”) and motor repair and maintenance services (“Motor Services”) at existing water and wastewater facilities throughout New Braunfels Utilities’ (“NBU”) system for predictive maintenance and planned and un-planned (emergency) services (the “Services”).

The Services are intended to be as needed to address planned service during the winter months and emergency repair throughout the year. Additionally, NBU may deviate from the requested materials as needed to meet the schedule and production needs of facilities.

The Vendor shall provide service in accordance with the following sections:

I. General Requirements

- a) NBU will work directly with the Vendor to establish a schedule for each material repair or order. The following are intended to establish a typical or baseline schedule for services:
 - i) Standard Repairs: Standard repairs are those considered to occur in a standard time frame and the Vendor shall make standard repairs within 40 business days or less of receipt of authorization from NBU. The Vendor shall provide a quote for repairs within 10 business days or less of receipt of repair request from NBU. The final repair report shall be submitted by the Vendor no more than 20 business days or less following the completion of repairs.
 - ii) Emergency/Expedited Repairs: Emergency repairs are those considered to occur under conditions that require an expedited repair and the Vendor shall make those repairs within 3 business days or less of receipt of authorization from NBU. The Vendor shall provide a quote for repairs within 48 hours or less of receipt of repair request. The final repair report shall be submitted by the Vendor within 10 business days or less following the completion of repairs.
- b) Emergency repair requirements:
 - i) Emergency repairs may require the Vendor to provide 24-hour services or repair work to meet the schedule and requirements of NBU. This request will be provided on an as needed basis and at the sole request of NBU.
 - ii) All requests between the months of May and September will be considered emergency repairs unless otherwise specified by NBU.
- c) Unit Responsibility and Coordination
 - i) The Vendor shall be responsible for the adequacy and compatibility of all pumping unit components including but not limited to the pump, couplings, motor and their compatibility.
 - ii) Any component of each complete pumping unit not provided by the Vendor shall be designed, fabricated, tested, and installed under the supervision of the Vendor by an individual experienced in the design of pumping equipment.

II. Pump Services

The Vendor shall perform Pump Services on the following:

1) Existing Water and Wastewater System Facility Pumps

- i) NBU generally has the following existing pump infrastructure:
 - i) Vertical Turbine Pump– Short Set
 - 1) Approximate Number of Pumps: 30 pumps
 - 2) Typical Pump Depth: Typical 20-30-foot depths
 - 3) Typical Horsepower Range: 30-200
 - 4) Typical Flow Rate Ranges: 300-2,500 GPM
 - 5) Anticipated Existing Pump Makes:
 - (a) SAMCO
 - (b) Byron Jackson
 - (c) Flowserve
 - (d) Peabody
 - (e) National
 - (f) SIM FLO
 - (g) Peerless
 - (h) Others
 - ii) Horizontal Split Case Pump
 - 1) Approximate Number of Pumps: 25 pumps
 - 2) Typical Horsepower Range: 25-150
 - 3) Typical Flow Rate Ranges: 100-2,000 GPM
 - 4) Anticipated Existing Pump Makes:
 - (a) Crane Deming (Most Common Make)
 - (b) Patterson

2) Services

- i) Services are anticipated to fall into the following types of service:
 - i) Planned Services:
 - 1) NBU estimates 10 pumps will be taken out of service for repair and evaluation during winter months. This number is not guaranteed, and the number of pumps to be serviced will be provided by NBU.
 - 2) Annual diagnostics services for all facility pumps.
 - 3) Supply of parts and replacement equipment to NBU Facilities
 - ii) Emergency Repairs and Replacements as needed.

3) Pump Annual Diagnostic Services

- i) For each pump diagnostic, the Vendor shall provide NBU with the results and any recommendations for repair work, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement, and/or machine needs within 10 days.

- ii) Vendor shall complete the following for each pump:
 - i) performance testing for pumps;
 - ii) electrical diagnostics and power analysis;
 - iii) vibration and thermal analysis; and
 - iv) diagnostic services will be planned with NBU for each pump on an annual basis, NBU may elect to have some pumps tested more frequently than once a year and some less or not at all.

4) Supply of Parts

- i) NBU at its discretion may elect to purchase and maintain inventory for common wear components, and critical replacement pumps from the Vendor, to be stored at NBU facilities for repair and replacement needs. Supply of inventory of parts is anticipated on a limited basis for NBU's most critical and common pumping infrastructure.

5) Repair Procedures

- i) Vendor shall disconnect motor and provide crane if necessary for removal of motor. NBU prefers that a licensed electrician performs this task.
- ii) Vendor shall disassemble and remove pump and provide crane or equipment for removal of pump
 - i) Most NBU facilities do not have a bridge crane.
- iii) For each repair, the Vendor shall provide NBU with the repair work scope and a tear down and inspection report, which is supported with photographs when appropriate, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement, and/or machine needs.
- iv) Vendor shall indicate probable failure modes in the repair work scope and the final repair report. This report shall not include engineering analysis. No repairs shall be initiated without prior written authorization from NBU.
- v) Vendor shall provide projected completion and delivery dates with each repair estimate. Additionally, the Vendor should provide any recommendations/alternatives that may improve performance and longevity of the pumping system.
- vi) Upon completion of each repair, the Vendor shall submit a final repair report with details as indicated above. The reports shall thoroughly document the work performed including, but not limited to, the following:
 - i) tear down report, including possible root causes of failures;
 - ii) description of all work performed;
 - iii) description of all parts installed;
 - iv) description of modified or repaired parts;
 - v) results of any testing performed;
 - vi) final balance reports;
 - vii) Manufacturer curves and tested curves of specific pump (if tested);
 - viii) final assembly dimensions;
 - ix) digital photographs of as-found conditions, post cleaning, during assembly and final assembly; and material certifications.
- vii) All testing and repairs shall be performed at the Vendor's repair facility by competent and certified employees.

- viii) All tools and test equipment necessary for the proper execution of this contract shall be a part of the Vendor's shop equipment. Vendor must have equipment such as but not limited to burn-out oven, balancing machine, and a large dipping vat.
- ix) All repairs shall meet or exceed the OEM specifications for the pump manufacturer and suitable for the service type (i.e. potable, raw water, etc.).
- x) If an existing pump nameplate is illegible, the Vendor shall supply a new nameplate that will replace the original. New nameplates shall be made of corrosion resistant metal and have stamped or engraved lettering.
- xi) The total cost of repair inclusive of labor, materials, and equipment generally should not exceed 60% of the cost for replacement of the pump. In the event the cost exceeds 60%, the Vendor shall note this and provide in addition to the repair quote an additional quote for a new pump for NBU's consideration.
- xii) The Vendor shall record results and return to NBU in electronic format.

6) Pump Repair Requirements (Typical)

- i) Pumps shall be repaired in accordance with American Water Works Association ("AWWA") and Hydraulic Institute ("HI") requirements.
- ii) Bearings shall be replaced with new bearings of equal or better quality as the original and the bearings shall match the original bearings size.
- iii) Shaft shall be checked for straightness and repair/replace if necessary. If replacement is required, the shaft shall match the dimensions and length of existing shaft or a coupling shall be provided that is machined to mate the pump shaft to the motor shaft.
- iv) All pumps shall be balanced in accordance with manufacturer and HI requirements.
- v) Pumps shall be repainted to match existing color unless otherwise specified by NBU.

7) Pump Replacement Requirements (Typical)

- i) Provide pumps in accordance with AWWA and HI requirements.
- ii) Pump specifications will vary depending upon each requirement. The following is provided for typical requirements:
 - i) Bearing shall be selected to carry radial and thrust loads. Bearing life shall be designed to give a minimum of 100,000 hours at maximum load without replacement. Provide thrust bearing rated at 1.5 times the maximum thrust loads involved.
 - ii) Casing/Bowl shall be ASTM Cast Iron AL48-CL3, with designed cross section and thickness to withstand all stresses. Casing/Bowl shall be designed to a 30,000-psi tensile strength and withstand a hydrostatic test at 150% of shutoff head.
 - iii) Impellor shall be stainless steel or nickel-aluminum.
 - iv) Shafts shall be stainless steel.
 - v) Provide stainless or appropriate material wear rings.
 - vi) All pumps shall be tested in accordance with manufacturer and HI requirements.
 - vii) Provide mechanical seals manufactured by Chesterton or approved equal.
 - viii) Provide stainless steel hardware.
 - ix) Provide adequately sized coupling.
- iii) Pumps shall be repainted to match existing color unless otherwise specified by NBU.

III. Motor Services

The Vendor shall perform the following Motor Services:

1) Existing Water and Wastewater System Motors

- a) NBU generally has the following motor infrastructure to be covered by this contract:
 - i) Approximate number of horizontal and vertical motors: 250
 - ii) Typical Horsepower Range: 25-250 HP
 - iii) Typical Voltage: 480V, 3-Phase

2) Services

- a) Services are anticipated to fall into the following types of service:
 - i) Planned Services:
 - 1) NBU estimates 15 motors will be taken out of service for repair and evaluation annually. This number is not guaranteed, and the number of motors to be serviced will be provided by NBU.
 - 2) Supply of parts and replacement equipment to NBU Facilities
 - ii) Emergency Repairs and Replacements as needed.

3) Supply of Parts

- a) NBU at its discretion may elect to purchase and inventory for common wear components, and critical replacement motors from the Vendor, to be stored at NBU facilities for repair and replacement needs. Supply of inventory of parts is anticipated on a limited basis for NBU's most critical and common pumping infrastructure.

4) Repair Procedures

- a) Vendor shall disconnect motor and provide crane if necessary for removal of motor. A licensed electrician must perform this task.
- b) Vendor shall field test and inspect motors in accordance with Electrical Apparatus Service Association (EASA) requirements to include, but not limited to Megohmmeter and High-pot testing.
- c) For each repair, the Vendor shall provide NBU with the repair work scope and a tear down and inspection report, which is supported with photographs when appropriate, describing findings and providing a breakdown of necessary repairs categorized by parts, replacement, and/or machine needs.
- d) Vendor shall indicate probable failure modes in the repair work scope and the final repair report. This report shall not include engineering analysis. No repairs shall be initiated without prior written authorization from NBU.
- e) Vendor shall provide projected completion and delivery dates with each repair estimate. Additionally, the Vendor shall provide recommendations/alternatives that may improve performance and longevity.
- f) Upon completion of each repair, the Vendor shall submit a final repair report with details as indicated above. The reports shall thoroughly document the work performed including, but not limited to, the following:
 - i) tear down report, including possible root causes of failures;

- ii) description of all work performed;
 - iii) description of all parts installed;
 - iv) description of modified or repaired parts;
 - v) results of any testing performed;
 - vi) final balance reports;
 - vii) final assembly dimensions;
 - viii) digital photographs of as-found conditions, post cleaning, during assembly and final assembly; and
 - ix) material certifications.
- g) All testing and repairs shall be performed at the Vendor's repair facility by competent and certified employees.
 - h) All tools and test equipment necessary for the proper execution of this contract shall be a part of the Vendor's shop equipment. Vendor must have equipment such as but not limited to burn-out oven, balancing machine, and a large dipping vat.
 - i) All repairs shall meet or exceed the OEM specifications for the motor manufacturer and be suitable for the service/environment they will be use.
 - j) If an existing motor nameplate is illegible, the Vendor shall provide a new nameplate that will replace the original. New nameplates shall be made of corrosion resistant metal and have stamped or engraved lettering.
 - k) The total cost of repair inclusive of labor, materials, and equipment shall not exceed 60% of the cost for replacement of the motor. In the event the cost exceeds 60%, the Vendor shall provide a quote for a new motor.
 - l) The Vendor shall record results and return to NBU in electronic format.

5) Motor Repair Requirements (Typical)

- a) Vendor shall repair motors in accordance with National Electrical Manufacturers Association ("NEMA") and Electrical Apparatus Service Association ("EASA") requirements.
- b) Motor rewinding shall be a random wound.
- c) Insulation shall be a minimum of Class H insulation unless otherwise amended by NBU.
- d) All leads shall be replaced with new leads.
- e) Bearings shall be replaced with new bearings of equal or better quality as the original and the bearings shall match the original bearings size. Oil shall be appropriate for applications for potable water and shall be a food grade oil.
- f) Shaft shall be checked for straightness and repair/replace if necessary. If replacement is required, the shaft shall match the dimensions and length of existing shaft or a coupling shall be provided that is machined to mate the motor shaft to the connecting shaft.
- g) All motors shall be dynamically balanced, with the rotor running at rated speed where practical.
- h) All motors shall have a vibration and circuit analysis test performed.
- i) Motors shall be repainted to match existing color unless otherwise specified by NBU.

6) Motor Replacement Requirements

- a) Motor shall be a heavy-duty squirrel cage induction, premium efficiency type motor.
- b) Motor winding shall be random wound.

- c) Motors shall comply with NEMA and associated American National Standards Institute (“ANSI”) and Institute of Electrical and Electronics Engineers (“IEEE”) standards unless otherwise amended by NBU.
- d) All vertical turbine motors shall include a non-reverse ratchet to prevent reverse rotation of rotating elements.
- e) Vertical motor bearings shall be ball and oil lubricated. Oil shall be appropriate for applications for potable water.
- f) Insulation shall be a minimum of Class H insulation unless otherwise amended by NBU.
- g) Shafts and couplings shall be machined and/or extended to match existing shaft dimensions for proper connection to the connecting shaft.
- h) Motor to be inverter duty rated.

IV. NBU Responsibilities

a. Site Access: NBU will provide access to each site and assist the Vendor with accessing the equipment.

b. Pump/Motor Delivery and Pickup: In its sole discretion, NBU may elect to remove and deliver the pump or motor to Vendor’s facility for testing and repair.

c. Water Well BacT samples: NBU will collect any required bacteriological samples for analysis after pump or well repairs.

Exhibit B

Price List/ Payment Terms

NBU shall pay the Vendor for the Services and goods rendered under this Agreement Total Compensation not to exceed \$500,000 annually and \$2,500,000 for the duration of the Agreement.

Exhibit C

Evidence of Insurance

EVALUATION REPORT

RFP #02659 - WATER & WASTEWATER PUMP AND MOTOR SERVICES

EXECUTIVE SUMMARY

On December 28, 2022, the Evaluation Committee (EC) evaluated the proposals submitted by four (4) firms in response to the Request for Proposals (“RFP”) for Water & Wastewater Pump and Motor Services in accordance with pre-established evaluation procedures. These firms that submitted a response are as follows:

Austin Armature Works
Lonestar Armature
Peerless Equipment
Weisinger Incorporated

The RFP was separated into three (3) different groups, which were as follows:

Group A: Water & Wastewater System Facility Pumps

Group B: Well Pump Diagnostic, Repair & Replacement

Group C: Motor Repair and Maintenance

Process Followed

The EC is comprised of NBU voting members assisted by Sean Mason (consultant) in an advisory, non-voting capacity. The EC has reviewed and evaluated the firms' responses and qualifications in accordance with the Evaluation Documents, which define policies and procedures to be followed in evaluating each proposal. The evaluation is based upon the following criteria:

- Firm’s Overall Experience and Experience with Similar Projects – 40 points
- Proposal Pricing – 35 points
- Project Approach and Response Time – 25 points

As indicated in the RFP, it is NBU’s intent to award this contract to multiple respondents for each Group.

Exhibit B details the rankings of each proposal.

SUMMARY OF FINDINGS

The evaluation resulted in the following ranking:

Group A:

Austin Armature Works – Rank 1 (tied)

Lonestar Armature – Rank 1 (tied)

Weisinger Incorporated – Rank 3

Group B:

Weisinger Incorporated – Rank 1

Peerless Equipment – Rank 2

Group C:

Austin Armature Works – Rank 1 (tied)

Lonestar Armature – Rank 1 (tied)

Overall these firms met or exceeded the RFP requirements due to their: overall firm experience in the industry, extensive employee training, and employee experience.

Pricing was competitive amongst all the firms. Weisinger Incorporated elected to sub-contract Group A to another vendor, which would increase cost and lead times.

Based on the evaluation above, the EC recommends the following multiple awards for each group:

Group A:

Austin Armature Works

Lonestar Armature

Group B:

Peerless Equipment

Weisinger Incorporated

Group C:

Austin Armature Works

Lonestar Armature

Group A

Vendor

Austin Armature Works

Lonestar Armature

Field Service Rates

Field Service Technician	\$110/Reg Time	\$165/OT	\$75/hr In Shop; \$85/Hr In Field
Drive Controls Technician	\$150/Reg Time	\$225/OT	
Crane Truck	\$120/hr. onsite		\$85/hr; \$375/hr over 7000 lbs
Baker Motor Tester	\$250/per day		
Thermal Imaging Camera	\$250/per day		
Laser Allignment Tool	\$250/per day		
Welder	\$250/per day		
Alignment Shims	\$4.50/shim		
Diagnostic Service Cost			\$75/Hr
Pump Tear Down & Inspect			Included in Diagnostic
Machining Rates			\$125/Hr

Shop Rates

All Trades	\$95/Reg Time	\$135/OT
Rush Rate	\$150	

Subcontract Rates

Mark-up Rates	23% mark-up
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Other Rates

Parts Mark-up	25% mark-up
replacement Pump costs	20% mark-up

dors

Peerless Equipment

Weisinger Incorporated



\$115/Reg Time \$175/OT

\$280/hr; \$365/OT

\$1,000

\$2,000

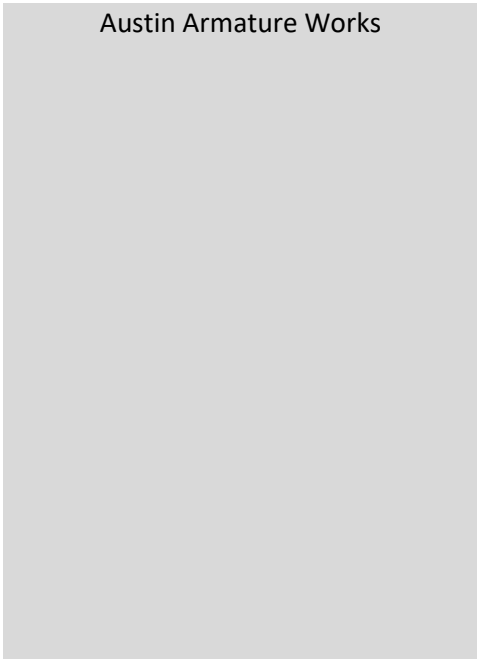
\$175/Reg Time \$240/OT

30% mark-up

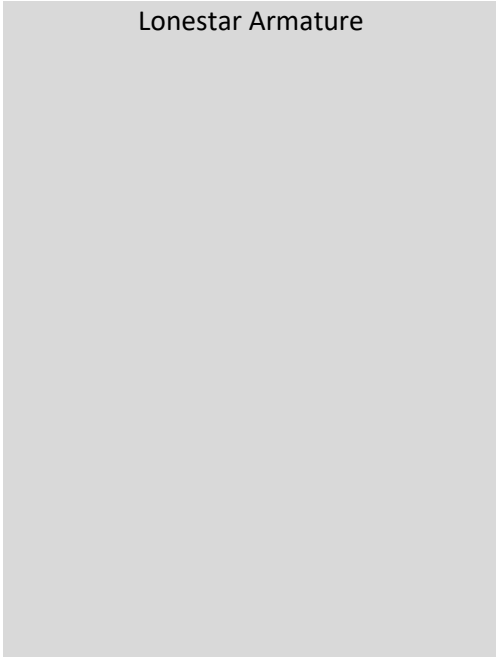
25% mark-up

Group B

- Diagnostic Service Cost
- Mobilization/Demobilization
- Pump Tear Down & Inspection
- Pump Removal
- Crane Rates
- Labor Rates
- Labor Rate - Overtime
- Machining Rates
- Parts Mark-up
- Well Video logs
- geophysical log
- Rehab Well Standard Rates
- Specialty Service Rates
- Travel/Delivery/Hauling
- Replacement Pump
- Other Items



Vendors



Lonestar Armature

Peerless Equipment
\$175
\$800
\$300
\$420/hr
cost + 1.30 % markup
\$125/hr
\$250/hr
\$175/hr
cost + 1.40 % markup
\$2,500
\$4,000
\$420/hr
cost + 1.35% markup
\$500 per round trip
cost + 1.35% markup
cost + 1.40% markup

Weisinger Incorporated

\$1150/EA

\$3000-\$5000/EA

\$2000/EA

varies - see price sheet

\$280/hr or Cost +20% (over 17 ton)

\$115/hr

multiplier - 1.35% or 1.65%

\$175/hr

cost + 30%

\$2400/EA

cost + 20%

\$480/hr

varies - see price sheet

\$280/hr

cost + 30%

cost + 20%

Group B

	Austin Armature Works	Lonestar Armature
Diagnostic Service Cost		\$75/hr
Motor Tear down & inspection		included in diagnostic service
mobilization and demobilization		\$85/hr
motor removal		\$85/hr
Crane Rates		\$75/hr \$375/hr over 7000 lbs
Labor Rates		\$75 hr In shop / \$85 hr In field
Labor Rate - Overtime		1.5X or 2X strait time
Machining Rates		\$125/hr
Parts Mark-up		25%
Travel/Delivery/Hauling		\$75/hr
Replacement Motor		25% mark up
Other Items		
Field Service Technician	\$110 Reg Time \$165 OT	
Drive Controls Tech	\$150 Reg Time \$225 OT	
Crane Truck	\$120/hr	
Baker Motor Tester	\$250/day	
Thermal Imaging Camera	\$250/day	
Laser Alignment Tool	\$250/day	
Welder	\$250/day	
Alignment Shims	\$4.50 Shim	
Shop Rates		
All Trades	\$95 Reg Time \$135 OT	
Rush Rate	\$150	
Subcontract Rates	cost + 23% markup	
Repair Material Rates	cost + 23% markup	
New Equipment Sold	cost + 23% markup	
Teco W & GE Motors	50% off Man. List price	

Vendors

Peerless Equipment

Weisinger Incorporated



FINANCIAL IMPACT

The total financial impact of the agreement with Harris is \$ 1,643,077.37.

Maintenance & Support		Amount
Year 1 - Software support and Maintenance	\$	163,506.34
Year 2 - Software support and Maintenance	\$	168,411.53
Year 3 - Software support and Maintenance	\$	173,463.88
Year 4 - Software support and Maintenance	\$	178,667.79
Year 5 - Software support and Maintenance	\$	184,027.83
5 Year Maintenance totals not to exceed	\$	868,077.37

New Services		Amount
CSR 7 – Web Client for Customer Service Representatives	\$	50,000.00
SilverBlaze Customer Portal	\$	85,000.00
SilverBlaze Mobile App	\$	55,000.00
Development Environment	\$	13,000.00
Support and Maintenance (5 Year estimate)	\$	197,500.00
Total New Services	\$	400,500.00

Optional Items		Amount
Self Service Kiosk	\$	65,000.00
SilverBlaze Portal for Commercial Customers	\$	20,000.00
Support and Maintenance (5 Year estimate)	\$	264,500.00
SmartVX – Customer Engagement module	\$	25,000.00
Total Optional Items	\$	374,500.00

Total Not to Exceed Amount	\$	1,643,077.37
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The cost of the support and maintenance agreement and the new software is included in the O&M and Capital budgets for the Data Strategy department.

LINK TO STRATEGIC PLAN

Maintain Organizational Reliability and Resiliency

EXHIBITS

1. Quote – NBU Northstar Maintenance 2023 - 2027
2. NBU – Harris Master Agreement



Harris Computer Systems ("Harris")
 1 Antares Dr., Suite 400, Ottawa, Ontario K2E 8C4
 Fax: (613) 226-3377

Software Maintenance Quotation
 For the Period January 01 2023 to
 December 31 2027

New Braunfels Utilities

Carlos Salas
 263 Main Plaza | New Braunfels, Texas 78130
csalas@nbutexas.com

NorthStar Maintenance	2023	2024	2025	2026	2027
AMR switched from CARE Maintenance	6,915.95	7,123.43	7,337.13	7,557.25	7,783.97
eDOCs Maintenance	2,113.20	2,176.60	2,241.90	2,309.15	2,378.43
NorthStar	65,982.50	67,961.98	70,000.84	72,100.86	74,263.89
mCARE	6,915.95	7,123.43	7,337.13	7,557.25	7,783.97
Test Server	5,002.41	5,152.48	5,307.06	5,466.27	5,630.26
Customer Connect	30,467.96	31,381.99	32,323.45	33,293.16	34,291.95
JIRA 1447941 Mex Modification Maintenance	578.38	595.73	613.61	632.01	650.98
JIRA 1434627 Mex Modification Maintenance	1,156.74	1,191.45	1,227.19	1,264.01	1,301.93
JIRA 1457617 mCARE AMI modification	578.38	595.73	613.61	632.01	650.98
NSAO 1085 Maintenance	462.70	476.59	490.88	505.61	520.78
Call 1523398 mCare Mod Maintenance	636.23	655.31	674.97	695.22	716.08
NS 35157 Silver Springs Interface Maintenance	3,881.30	3,997.74	4,117.68	4,241.21	4,368.44
NS 35157A Silver Springs Interface Maintenance	4,689.90	4,830.60	4,975.51	5,124.78	5,278.52
JIRA 37224 Maintenance	1,516.14	1,561.62	1,608.47	1,656.72	1,706.42
Call 2002830 Automated Service Order Maintenance	9,061.07	9,332.90	9,612.89	9,901.28	10,198.31
Call 2007944mCARE transfer mo maintenance	1,531.45	1,577.39	1,624.72	1,673.46	1,723.66
GUI Maintenance	4,681.70	4,822.15	4,966.82	5,115.82	5,269.30
Custom Workflow Call 2000446	4,003.78	4,123.89	4,247.61	4,375.03	4,506.29
Mass Meter Register Update Call 2017825	625.59	644.36	663.69	683.60	704.11
Call 2029854 - Create New Deposit Types	965.95	994.93	1,024.78	1,055.52	1,087.19
Automation Platform Maintenance	11,739.04	12,091.21	12,453.95	12,827.56	13,212.39
Annual Maintenance	163,506.34	168,411.53	173,463.88	178,667.79	184,027.83

NOTES:

2023 Annual Maintenance will be invoiced as follows:

January 01 to April 30th 2023 **\$54,502.11**
 May 01 to December 31 2023 **\$109,004.23**

5 Year Maintenance totals not to exceed \$868,077.37 for above noted coverage

Additional maintenance may be added to this agreement throughout the term as required. This agreement consists of product covered under maintenance at time of quotation.



Master Agreement
Software License, Subscription, Services, Support and
Maintenance, and Hosting Services Agreement

N. Harris Computer Corp.
1 Antares Drive, Ottawa,
Ontario, Canada, K2E 8C4

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Master Agreement Terms and Conditions

THIS SOFTWARE LICENSE, SERVICES, SUPPORT AND MAINTENANCE, AND HOSTING SERVICES AGREEMENT (the “Agreement”) made as of the ___ day of ___, _____ (the “Effective Date”).

BETWEEN: **N. HARRIS COMPUTER CORPORATION** (“Harris”)

- and -

New Braunfels Utilities (“Organization”)

WHEREAS, Harris wishes to grant the Organization a license to utilize certain Software; to provide certain Services related to said Software; and to enter into an agreement for the Support and Maintenance of said Software; and to provide certain Hosting Services to Organization; and

WHEREAS, the Organization wishes to acquire a license to utilize the Software; to obtain Services related to said Software; to acquire ongoing Support and Maintenance for said Software; and to obtain Hosting Services for said Software and its system;

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE I: INTERPRETATION

Section 1.1 Definitions

- 1.1.1 **“Annual Hosting Fees”** means any Annual Hosting Fees included in the SOW (Schedule “B”) to this Agreement.
- 1.1.2 **“Annual Subscription Fees”** means any annual subscription fees for Software licensed on a subscription basis as set out in Schedule “A” to this Agreement.
- 1.1.3 **“Completion of Services”** means that the Software is operational and performing in conformity with the specifications set out herein. Completion of Services will be deemed to have occurred on the date which the Organization commences using the Software as its predominant business system.
- 1.1.4 **“Named Users”** means the total number of Users who can access the Software at any one time as detailed in Schedule “A,” and further described in Article II.
- 1.1.5 **“Named User License”** means a license that restricts the total number of Users who can access the Software at any one time to the number detailed in Schedule “A”.
- 1.1.6 **“Confidential Information”** means the Software and all information or material that either party treats as confidential which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such

independent development can be established by evidence that would be acceptable to a court of competent jurisdiction. Confidential Information does not include any Customer Data or Data.

- 1.1.7 **“Customer Data.”** As between Organization and Harris, all Customer Data will remain the sole and exclusive property of Organization. Organization is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness and right to view and use the Customer Data and shall ensure that the Customer Data will not violate any applicable law or the terms of this Agreement. Organization consents to the storage of Customer Data in, and transfer of Customer Data into, the United States if Organization is located in the United States and in Canada if Organization is located in Canada.
- 1.1.8 **“Data”** means all, software (including machine images) text, audio, video or images that are transmitted, transferred, or created through Organization’s use of the Solution or Hosting Services [for processing, storage or hosting by the Hosting Services] or otherwise provided by Organization to Harris.
- 1.1.9 **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided.
- 1.1.10 **“Hosting Services”** means the services to be provided by or on behalf of Harris under this Agreement that includes hosting, monitoring, operating and maintaining the Software on hardware and related equipment and will permit Organization to use and access the Software via a method as determined solely by Harris. The Hosting Services shall also include storing all data entered and maintained by Users through use of the Hosting Services and the provision of updates, upgrades, and bug fixes related to support and maintenance of the Software.
- 1.1.11 **“License”** means the license rights granted to the Organization pursuant to Article II hereof and includes both a Named User License and a Site License.
- 1.1.12 **“Release”** means an Update and an Upgrade.
- 1.1.13 **“Service Provider Content”** means content such as software (including machine images), data, text, audio, video or images that Harris’s service provider or any of its affiliates make available in connection with the Hosting Services to allow access to and use of the Hosting Services, including APIs; WSDLs; documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by our personnel). Service Provider Content does not include the Hosting Services or other third-party software, data, text, audio, video or images made available to Organization in conjunction with the Hosting Services. Some Service Provider Content may be provided to Organization under a separate license, such as the Apache License, Version 2.0, or other open-source license.
- 1.1.14 **“Site”** means solely at the production environment described in Schedule “A”.
- 1.1.15 **“Site License”** means a license that restricts the Software such that it can reside in one production environment and a reasonable number of non-production environments.
- 1.1.16 **“Software”** means the software products that are listed in Schedule “A” and includes any Update(s) or Upgrade(s) that have been provided to Organization. Third Party Software is not included in the definition of Software.
- 1.1.17 **“Third Party Software”** means the third-party software product licensed to Organization by the applicable licensors as listed in Schedule “A” The terms and conditions for the third-party software are listed in Schedule “E”. Future Releases of the software may require alternate third-party software to be licensed by Organization, which will be subject to a third-party license agreement between Organization and the relevant third-party software licensor. In such case Schedule “A” shall be amended to add any such third-party software and it shall be deemed “Third Party Software” for the purposes of this Agreement.
- 1.1.18 **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality

or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).

- 1.1.19 **“Upgrade”** is a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is typically designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).
- 1.1.20 **“User”** means any employee of Organization or any of Organization’s agents who are authorized by Harris pursuant to this Agreement to have access to the Software.

Harris currently uses AWS as an additional service provider that acts both as a hosting facility and provides additional third-party software support to Harris. The following additional words and expressions have the following meanings. Organization acknowledges and agrees that such defined terms may change in the event that Harris changes the third-party service provider in accordance with Section 2.6:

- 1.1.21 **“AWS”** means Amazon Web Services, Inc. Amazon Web Services and AWS are trademarks of Amazon.com, Inc. or its affiliates in the United States and/or other countries. Please see <http://aws.amazon.com>.
- 1.1.22 **“AWS Content”** means software (including machine images), data, text, audio, video, or images that AWS or Harris makes available related to the Hosting Services or on the AWS Site to allow access and use of the Hosting Services, including APIs; WSDLs; sample code; software libraries; command line tools; proofs of concept, templates, and other related technology. AWS Content does not include the Hosting Services or Third-Party Content. Some AWS Content may be provided to Organization under a separate license, such as the Apache License, Version 2.0, which will be identified to Organization in the notice file or on the download page, in which case that license will govern Organization’s use of that AWS Content.
- 1.1.23 **“AWS Site”** means <http://aws.amazon.com> (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.
- 1.1.24 **“Third Party Content”** means data, software (including machine images), text, audio, video or images of a third party other than AWS made available on [AWS Marketplace or on developer forums, sample code repositories], public data repositories, community focused areas of AWS Site, or any other part of the AWS Site that allows third parties to make available software, products, or data.

Section 1.2 **Currency**

All references to currency in this Agreement and the related Schedules refer to U.S. Dollars.

Section 1.3 **Schedules**

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement and are incorporated herein by reference:

- Schedule “A” – Description of Software
- Schedule “B” – Statement of Work (“SOW”) with attached
 - Fees & Payment Schedule
- Schedule “C” – Sample Change Order Form

- Schedule “D” – Standard Support and Maintenance Guidelines
- Schedule “E” – Third Party Terms and Conditions
- Schedule “F” – Hosting Services Availability
- Schedule “G” – Security Standards

ARTICLE II: SOFTWARE LICENSES

Section 2.1 Grant of Licenses

- 2.1.1 **Harris Software is licensed, not sold.** Software under this Agreement may be licensed perpetually or on a subscription basis, as indicated and designated on Schedule “A.”
- 2.1.1.1 **Perpetual Licenses.** For Software licensed to Organization on a perpetual basis, as indicated on Schedule “A,” and subject to the terms and conditions of this Agreement, including without limitation the payment of the License Fees, Harris hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format for the number of Named Users specified in Schedule “A” (the “License”). This License does not apply to Third Party Software, which are licensed pursuant to their terms.
- 2.1.1.2 **Subscription Licenses.** For Software licensed to Organization on a subscription basis, as indicated in Schedule “A,” and subject to the terms and conditions of this Agreement including without limitation the payment of the Subscription Fees on an ongoing basis, Harris hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format on the Hosting Site and for the number of Named Users specified in Schedule “A” (the “License”). All Releases installed by Organization are subject to this License. This License and the other terms and conditions related to this License do not apply to Third Party Software except as this Subscription Agreement may state otherwise.
- 2.1.2 Any Software furnished by Harris in machine-readable form may be copied in whole or in part by Organization for use on the Organization’s platform and operating system environment which is operating the Software (“Designated Computer System”), whether hosted or on premises. This environment can be accessed by Users can be from any internal or external computer terminal. To the extent that any temporary files associated with the Software are created during such use on such terminals, those temporary files are permitted under this License but only for such time that the temporary files are actually required. Organization agrees that the original copy of all Software furnished by Harris and all copies thereof made by Organization are and at all times remain the sole property of Harris.
- 2.1.3 Any License granted under this Agreement permits the Organization to: (i) use the Software for its reasonable business purposes including performance testing, disaster recovery, disaster testing, training, archival and backup, and (ii) use, copy and modify the Documentation for the purpose of creating and using training materials relating to the Software which may include flow diagrams, system operation schematics, and/or screen shots. Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section so long as any such independent contractors are bound by obligations of confidentiality and have been approved by Harris in its sole discretion in advance.
- 2.1.4 The Organization may duplicate Documentation for permitted uses so long as all required proprietary markings are retained on all duplicated copies.
- 2.1.5 Software is licensed to the Organization on multiple levels. The Software is licensed on a “Named User License” and “Site License” basis as set forth in Schedule “A”.

- (i) Named User License permits the Organization to use the Software on the Designated Computer System (including all environments such as training, disaster recovery, etc.) provided that the number of Users who may be simultaneously using the Software is limited to the number of Named Users specified for such Software on Schedule "A". A User is further defined as anyone authorized by the Organization who is logged onto the Software, regardless of the type of interface (i.e. graphical user interface or browser user interface).
- (ii) A Site License permits the Organization to use the Software on the Designated Computer System in one (1) production environment and a reasonable number of non-production environments for the purposes of disaster recovery, disaster testing, training, archival and backup. Organization requires a separate Site License for each production environment into which the Software or any portion thereof is read in machine-readable form.

Organization may purchase additional licenses to use the Software as necessary at Harris' then current prices and terms.

- 2.1.6 As between Harris and Organization, Harris reserves all rights, title and interest in and to the Software not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.
- 2.1.7 Subject to the terms and conditions of this Agreement, including without limitation, payment by Organization of the Annual Hosting Fees, Harris hereby grants to Organization a personal, non-exclusive, non-transferable limited right, during any Term for which Annual Hosting Fees are paid, to allow Users to access and use the Hosting Services solely in connection with its use of the Software together with any further restrictions as detailed in this Agreement.
- 2.1.8 Subject to the terms and conditions of the Agreement, Organization grants to Harris and its service provider a world-wide, non-exclusive, royalty-free license to access the Customer Data for the purpose of performing the Hosting Services or as necessary to comply with the law or a binding order of a government body. Access to the Data shall only be by Harris's and its service provider's employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, Harris may not access the Customer Data for any other purpose without the express written consent of Organization. Access to Customer Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law or a binding order of a government body. Unless it would violate the law or a binding order of a government body, Harris will give Organization written notice and a copy of any legal requirement or order referred to requiring such disclosure.
- 2.1.9 Organization grants to Harris a world-wide, non-exclusive, royalty-free license to aggregate or compile Customer Data with the customer data of other customers using the Hosting Services so long as such aggregation or compilation omits any data that would enable the identification of Customer, its clients or any individual, company or organization ("Aggregated Data"). Harris shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Organization grants Harris the right to access Data to provide feedback to Organization concerning its use of the Hosting Services.

Section 2.2 **Term**

- 2.2.1 **Term of License of Software.** This Agreement commences on the Effective Date.
 - 2.2.1.1 For any Software License(s) identified on Schedule "A" as perpetually licensed and licensed pursuant to Article 2.1.1.1 is perpetual and of indefinite duration and annual support and maintenance for the license must be renewed and kept current in order to receive product updates, security updates, and bug fixes.

2.2.1.2 For any Software identified on Schedule “A” as licensed on a subscription basis and licensed pursuant to Article 2.1.1.2, unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year (the “Initial Term”). After the Initial Term, the Agreement shall be automatically renewed for successive one (1) year periods (each a “Renewal Term”) subject to Harris’s then-current price structure and any modifications to the terms and conditions of this Agreement made by Harris upon written notice to Organization to reflect Harris’s then current version of this Agreement unless either party provides written notice to the other party of its intention not to renew within ninety (90) days of the end of the then current term; Harris shall provide prior written notice of any price increase at least one hundred and twenty (120) days prior to the end of the then current term, in order to allow Organization to opt out of any increases. The Initial Term and Renewal Term(s) shall collectively be referred to as the “Term”. The License is subject to further restrictions as required under the Hosting Services provisions of this Agreement and the payment of any applicable fees as set forth in Schedule “B.”

2.2.2 **Term of Services.** The term for delivery of Services hereunder shall be as set forth in any SOW appended hereto or entered into between the parties hereafter.

2.2.3 **Term of Support and Maintenance.** The initial term for services provided, pursuant to Article IV hereinafter, shall be for one year beginning on the due date, as detailed in the SOW (Schedule “B”). Thereafter, the Support and Maintenance provisions of this Article IV shall automatically renew annually, unless terminated by either party upon giving to the other not less than ninety (90) days’ notice in writing prior to the end of the initial term or any subsequent anniversary of such date. Organization shall pay the Support and Maintenance Fee in advance for each such one-year term and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Support and Maintenance Fee for the then applicable one-year term. Harris shall neither refund any Support and Maintenance Fees nor any Billable Fees if the Support and Maintenance provisions of this Agreement are terminated.

2.2.4 **Term of Hosting Services.** The initial term for hosting services shall be for one year beginning on the date fees are due, as detailed in the SOW (Schedule “B”). Thereafter, the Hosting Services license shall automatically renew annually, unless terminated by either party upon giving to the other not less than ninety (90) days’ notice in writing prior to the end of the initial term or any subsequent anniversary of such date. The Initial Term and any Renewal Terms shall be collectively referred to as the “Term”. Organization shall pay the Annual Hosting Fees in advance for each such one-year term and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Annual Hosting Fees for the then applicable one-year term. Harris shall not refund any Hosting Services Fees paid under any circumstances. Hosting services are licensed and provided during periods for which Annual Hosting Fees have been paid.

Section 2.3 Restrictions on Use

2.3.1 Organization shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) use the Software for any purpose other than in connection with Organization’s primary business or operations; (ii) disassemble, decompile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivative works of the Software; (iv) rent, lease, lend, or use the Software for time-sharing or bureau use or to publish or host the Software for others to use; or (v) take any actions that

would cause the Software to become subject to any open source or quasi-open source license agreement.

2.3.2 The Software and related materials supplied by Harris are protected by copyright, trade secret, trademark, and other intellectual property laws. The Software may not be resold or licensed by Organization. Any rights not expressly granted herein are reserved. Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by Harris.

2.3.3 **Restrictions Specific to Any Hosting Services Purchased**

- (a) Organization may not give away, rent, lease or otherwise sell, re-sell, sublicense, distribute or transfer the rights granted under this Agreement or otherwise use the Hosting Services or any part thereof except as expressly permitted by this Agreement without the prior written consent of Harris. Organization otherwise agrees to abide by the terms of any applicable acceptable use policy of any third party provider as updated by Harris from time to time: the applicable acceptable use policy in place as of the effective date of this Agreement is: <https://aws.amazon.com/aup/>. Harris shall notify Organization in writing if the third party provider is updated and provide Organization a copy of any additional applicable acceptable use policies of any such third party provider.
- b. Organization may not modify, translate, adapt, alter, or create derivative works of the Documentation or Service Provider Content; however, Organization may duplicate Documentation and Service Provider Content, at no additional charge, for Organization's internal use so long as all required proprietary markings are retained on all duplicated copies.
- c. No third party, other than duly authorized agents or employees of Organization authorized pursuant to Article 2 hereunder, shall have access to or use of the Hosting Services.
- d. Organization shall not copy, frame or mirror any part or content of the Hosting Services or Service Provider Content, other than copying or framing on Organization's own intranets or otherwise for Organization's own internal business purposes.
- e. Organization shall not access the Hosting Services in order to (i) build a competitive product or service; (ii) copy any features, functionality or graphics of the Software; or (iii) knowingly allow access to any competitor of Harris.
- f. The Organization shall not transmit, upload, post, display, distribute, store or otherwise publish, through use of the Hosting Services, any content, data, material or information that: (i) contains a software virus, Trojan horse, worm, time bombs, cancelbots or other harmful or deleterious computer code, files, programs or content that may damage, adversely affect any hardware or software, or that intercepts or misappropriates any system, program, data or information; (ii) is threatening, defamatory, libelous, harassing, abusive, profane, is an invasion of privacy, offensive, obscene, harmful or otherwise objectionable (including without limitation content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts); (iii) infringes, misappropriates or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property, proprietary right or other rights of any third party; (iv) violates any law, statute, ordinance or regulation, or that may be harmful to Harris or its service provider's operations or reputation (and shall not perform any activities that are illegal, fraudulent or may result in any of the foregoing); or (v) includes unsolicited bulk e-mails, or other messages, promotions, advertisements or solicitations ("spam") and Organization shall not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission.

- g. Organization shall not interfere with, attempt to gain unauthorized access to, disrupt or violate the security or integrity of any device, computer, communication system, software application, account, data, the Hosting Services or networks connected to the system used to provide the Hosting Services or use the Hosting Services in any way that would provide harm to it or impair anyone else's use of it. Examples include, without limitation, attempting to probe scan, or test the vulnerability of a system or breach any security or authentication measures used by a system, monitoring of data or traffic on a system without permission, falsification of origin, forging TCP-IP packet headers, e-mail headers, or any part of message describing its origin or route (use of aliases and anonymous remailers are not prohibited by this provision). Additional prohibited activities include:
- i. Monitoring or Crawling. Monitoring or crawling of a system that impairs or disrupts the system being monitored or crawled.
 - ii. Denial of Service (DoS). Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.
 - iii. Intentional Interference. Interfering with the proper functioning of any system, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
 - iv. Operation of Certain Network Hosting Services. Operating network Hosting Services like open proxies, open mail relays, or open recursive domain name servers.
 - v. Avoiding System Restrictions. Using manual or electronic means to avoid any use limitations placed on a system, such as access and storage restrictions.
- h. Organization shall not provide the results of using the Hosting Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis to any third party.
- i. Organization will not or will not attempt to modify, distribute, alter, tamper with, repair or otherwise create derivative works of any Service Provider Content included in the Hosting Services.
- j. Organization will not access the Service Provider Content or the Hosting Services in a way intended to avoid incurring fees or exceeding usage limits or quotas.'
- k. Organization will not collect replies to messages sent from another internet service provider if those messages violate the restrictions in this Section or the acceptable use policy of that provider.
- l. Harris and/or its service provider may report any activity that they suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Such reporting may include disclosing appropriate Organization information. Harris and/or its service provider also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of the terms of this Section 2.3.3. If Organization becomes aware of any violation of this Section 2.3.3, it agrees to immediately notify Harris and provide assistance, as requested to stop or remedy the violation.
- m. Harris may immediately suspend, restrict or limit Organization's access to all or any portion of the Hosting Services if Harris determines:
- i. That Organization's or any of its Users' use of the Hosting Services
 - (a) poses a security risk to the Hosting Service or any third party,

- (b) poses any risk of any kind or nature to Harris’s or its service provider’s business or other customers;
- (c) could adversely impact Harris’s or its service provider’s systems, network, the Hosting Services or the systems or data of any other customer,
- (d) could subject Harris, its service provider or their respective affiliates or any third party to liability, or
- (e) could be fraudulent;
- ii. Organization or any User is in breach of this Agreement;
- iii. Organization is in breach of its payment obligations for the Annual Hosting Fees; or
- iv. Organization has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Organization’s assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding,
- n. Harris will use reasonable efforts to notify Organization of the suspension, restriction or limitation to Organization’s access to the Hosting Services. In addition to and without limiting the foregoing, Harris reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Organization in connection with its use of the Hosting Services that Harris determines, in its reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to Harris or its service provider’s network, business or other customers. In the event that Harris suspends Organization’s right to access or use all or any portion of the Hosting Services for a material breach of this Agreement by Organization, Organization remains responsible for all Hosting Fees incurred during the period of suspension and will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

Section 2.4 Ownership of Software and Confidential Information

- 2.4.1 The Organization acknowledges that the Software contains proprietary information and Confidential Information that is the sole property of Harris.
- 2.4.2 The Organization will take reasonable care to safeguard the Software, and at least the same care as it takes to safeguard its own similar Confidential Information.

Section 2.5 Ownership and Disposition of Documents

- 2.5.1 The parties agree that no materials or documents are being created for Organization by Harris under this Agreement. All materials and documents which were developed or prepared by Harris for general use and which are not the copyright of any other party or publicly available, including educational materials, remain the sole property of Harris.
- 2.5.2 Where the Organization requests custom materials or documents, the parties shall enter into a separate written agreement which shall include a duly executed statement of work and provisions for the license or ownership of said custom materials.

Section 2.6 Third Party Software

- 2.6.1 Harris may distribute to Organization the Third-Party Software which is described as Third Party Software in Schedule “A”. Organization shall pay for the Third-Party Software through Harris in the amount of the purchase price(s) listed along with the License Fees attached to Schedule “B”, the SOW.

Harris and/or the Third-Party Software manufacturer(s) will provide Organization with one copy of the then current user Documentation for use with the Third Party Software.

- 2.6.2 It is acknowledged by the parties hereto that the Third-Party Software provided to Organization pursuant to this Agreement was developed and delivered to Harris by one or more Third Party software companies. As such, the Third-Party Software is licensed to Organization by the applicable licensor listed in Schedule "A" and subject to the terms and conditions of the applicable license agreement for such Third-Party Software. Harris makes no warranties, express or implied, with respect to the Third-Party Software, including, without limitation, their merchantability or fitness for a particular purpose and Harris accepts no liability of any kind whatsoever with respect to the Third-Party Software. Any warranty Organization has with respect to the Third-Party Software shall be solely provided by the Third-Party Software licensor.
- 2.6.3 Organization agrees that it shall not permit any third party to have access to the Third Party Software during the term of this Agreement and that the restrictions as set out in Section 2.3 and the confidentiality obligations set out herein shall equally apply to the Third Party Software, subject to any specific permissions that are provided in the license provided by the third party licensor to the Organization.
- 2.6.4 Organization acknowledges that IBM's relevant standard licensing and use terms, as amended by IBM from time to time, apply to its use of IBM Cognos and that Organization is bound by such licensing and use terms and such terms are included in Schedule "E". The standard licensing and use terms shall include anything described as a "Licensing Information Document" by IBM and all licensing files and NOTICE files that are included with the IBM Cognos software or as may be supplied by IBM to Organization from time to time. To the extent that the terms in the Licensing Information Document or similar type documents provided by IBM differ from those in Schedule "E", the terms in the Licensing Information Document shall take precedence;
- (a) All such licenses are a restricted license, which means that the IBM Cognos software may only be used with the Software.

ARTICLE III: SERVICES

Section 3.1 Harris' Services

In order to achieve the Completion of Services, Harris agrees, subject to the terms and conditions of this Agreement, to perform the following services (the "Services") for the Organization in accordance with the relevant Statement of Work:

- 3.1.1 Oversee and implement the conversion from the Organization's existing software applications to Harris' Software.
- 3.1.2 Install the Software and perform necessary setup and configuration operations.
- 3.1.3 Provide training.
- (i) In any training class exceeding ten (10) people, Organization may be assessed an additional charge for additional instructor(s).
- (ii) Organization shall provide copies of the training manuals required for the training classes to each participant either by photocopy or electronic duplication. Each copy is subject to the restrictions and obligations contained in this Agreement.
- (iii) On-line reference Documentation is delivered with each release. Organization may print or copy this Documentation solely for its internal use.

(iv) Cancellation of any on-site Services by Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Services. Organization will be billed for any non-recoverable direct costs incurred by Harris that result from a cancellation by Organization with fourteen (14) days or less of scheduled on-site Services. Additionally, Organization hereby acknowledges that cancellation of on-site Services means that such on-site Services will be rescheduled as Harris's then current schedule permits. Harris is not responsible for any delay in Organization's project resulting from Organization's cancellation of Services. If upon Harris arrival, the Organization has not completed required tasks for such visit, then the Organization will be billed 100% of the on-site fee and scheduled on-site Services may be cancelled at Harris' discretion. If additional Services are required because the Organization was not adequately prepared, Harris will provide a Change Order to the Organization for said Services.

3.1.4 The Statement of Work describes in greater detail the Services, the method by which the Services shall be performed and other obligations on the part of the two parties. To the extent that the Statement of Work more explicitly details the Services or the obligations of a party, then those details shall prevail over any other document that is less explicit. Any warranties or representations on the part of Harris in the Statement of Work are not binding on Harris and are merely provided for informational purposes; the only warranties and representations provided by Harris in respect of the Services and this Agreement are found in Article V.

Section 3.2 Performance by Harris

3.2.1 Manner of Performance -- Harris shall perform the Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in their performance.

3.2.2 Harris' Discretion -- Harris shall determine in its sole discretion the manner and means by which the Services shall be performed. Harris will consult with the Organization on its methodology, manner and means.

3.2.3 Conduct on Organization's Premises -- The Services shall be performed with the Organization's full cooperation as agreed, whether on the premises of the Organization or at an alternative location. When working on the Organization's premises, Harris personnel shall observe the Organization's administrative and ethics codes relating to the security, access or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information.

3.2.4 Inquiries by Organization -- Harris shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.

3.2.5 Independence -- As an independent consultant, Organization retains Harris and its employees and agents on an independent contractor basis and not as an employee.

3.2.6 Coordination of Services -- Harris agrees to coordinate with Organization staff in the performance of Services and to be available for consultation at all reasonable times.

Section 3.3 Performance by Organization

3.3.1 Cooperation by Organization: The Organization acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Organization and its staff and agrees to cooperate fully with Harris to achieve the Completion of Services expeditiously.

3.3.2 Project Manager: The Organization shall designate a project manager to facilitate the successful implementation.

3.3.3 Passwords. Organization agrees to comply with all Harris security policies and procedures as provided to it and amended from time to time. Organization and its Users shall be responsible for keeping any

and all passwords, user ID's, log-in credentials and private keys assigned to its Users secret and confidential. User ID's, passwords, login-in credentials and private keys are for Organization's internal use only and Organization may not sell, transfer or sublicense them to any other entity or person except that Organization may disclose its private key to its agents performing work on its behalf. Organization agrees to notify Harris in writing if it believes that a password has been stolen or might otherwise be misused. Organization agrees to notify Harris immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Organization.

- 3.3.4 Users. The Organization is responsible for: (i) the actions of Users using the Hosting Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Harris from time to time for Users; and (iii) informing Harris of any information about Users' actions that may affect either the Hosting Services or third party data contained in or used by the Hosting Services, or Harris's ability to provide the Hosting Services as contemplated by this Agreement.
- 3.3.5 Compliance with Laws. Organization represents and warrants to Harris that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including but not limited to, those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.
- 3.3.6 Additional Organization Obligations:
- (i) For any on premises solutions, Organization shall install all Updates within a reasonable time after notification of their availability. However, any fix or correction designated as "critical" by Harris shall be implemented by Organization within thirty (30) days of such notification.
 - (ii) Organization shall notify Harris of suspected defects in any of the Software supplied by Harris. Organization shall provide, upon Harris request, additional data to reproduce the environment in which such defect occurred.
 - (iii) Organization shall allow the use of online diagnostics on the Software supplied to Organization as requested by Harris. Organization shall provide to Harris, at Organization's expense, access to the Designated Computer System via the Organization's firewall to communications software (e.g. PC Anywhere, WebEx, Web Demo).
 - (iv) Organization personnel shall be educated and trained in the proper use of the Software in accordance with applicable Harris manuals and instructions.
 - (v) Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause and despite anything in this Agreement or the Statement of Work to the contrary, Harris is absolved from any requirements regarding the backup of any data. Organization shall provide Harris with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
 - (vi) Organization shall not permit any third party to have direct access to or provide services in relation to the Software or any Third-Party Software without Harris' prior written consent.
 - (vii) Organization shall have the sole responsibility for:
 - (a) the performance of any tests it deems necessary prior to the use of the Software (for on premises and hosted solutions);
 - (b) assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods (on premises solutions only);
 - (c) implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction (on premises solutions only); and

- (d) timely upgrade and keeping current all third-party license releases and/or Software products to meet the requirements of the Software (on premises solutions only).

Section 3.4 Harris Obligations Specific to Any Hosting Services Purchased

- 3.4.1 Harris shall provide all facilities, equipment, and software required to make the Hosting Services available. Harris shall have the right to manage all resources used in providing the Hosting Services, as Harris deems appropriate.
- 3.4.2 Harris shall use commercially reasonable efforts to make the Hosting Services available to Users twenty-four (24) hours per day, seven (7) days per week; subject to the terms further defined in Schedule "F". Harris's liability to Organization, in the unlikely event that said Hosting Services becomes unavailable in violation of Schedule "F", shall be limited to a service credit equal to a pro-rata amount of the corresponding monthly Hosting Fee as outlined in Schedule "B"; said pro-rata amount calculated by dividing the period of unavailability by the total possible available hours in the given month. Any request for credit must be made of Harris within 15 days of the Service Interruption.
- 3.4.3 Harris reserves the right to have reasonable additional User acceptance criteria that may be applied to Users prior to their ability to have access to the Hosting Services. Harris shall inform Organization of such criteria but Harris shall be free to implement such criteria at any time without prior written warning to the Organization and/or to Users. Where Users do not accept such and/or agree to such criteria, Harris reserves its rights to not grant to such Users access to the Hosting Services. Harris reserves its rights to restrict access to the Hosting Services to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Software Hosting Services.
- 3.4.4 Harris shall provide installation, configuration, system administration and maintenance of the facilities and equipment and software required to operate and ensure availability of the Software. Organization, not Harris, shall be responsible for creating and maintaining all User account information and for performing all other application-level system administration functions that are available within the Software. All of these shall form part of the Technical Services.
- 3.4.5 Organization acknowledges that in order to provide the Hosting Services Harris may be required to purchase access to the Third-Party Components. Organization further acknowledges that the availability of such Third-Party Components is based solely on the best information available to Harris and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by Harris to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of Harris' control, then (a) Harris shall not be in breach hereof or otherwise liable for any failure or inability to provide the Hosting Services as a result of such unavailability of any Third Party Components; and (b) Harris may in its reasonable discretion modify, change or replace the applicable Third Party Components and otherwise attempt to mitigate the impact of the such unavailability of Third Party Components including the right to revise the Hosting Services Fee component of the Annual Subscription Fee.

Section 3.5 Organization Obligations Related to Any Hosting Services Purchased

- 3.5.1 Organization Equipment. Organization agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all

equipment, hardware, network, Internet or direct telecommunications connections and software applications (e.g. web browser) at Organization's facilities required for Users to access and use the Hosting Services. Harris shall not be responsible for the operation of any Internet, network or other communication Hosting Services. Organization further acknowledges that access to and the operation of the Hosting Services requires Organization's and Users' hardware to be of sufficient quality, condition and repair, and Organization agrees to and/or to ensure that Users' maintain their applicable hardware in the appropriate quality, condition and repair at its sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Hosting Services related to any Professional Hosting Services supplied by Harris.

- 3.5.2 Users. The Organization is responsible for: (i) the actions of Users using the Hosting Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Harris from time to time for Users; and (iii) informing Harris of any information about Users' actions that may affect either the Hosting Services or third party data contained in or used by the Hosting Services, or Harris's ability to provide the Hosting Services as contemplated by this Agreement.
- 3.5.3 Compliance with Laws. Organization represents and warrants to Harris that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including but not limited to, those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.

Section 3.6 Data Security Provisions Related to Any Hosting Services Purchased

- 3.6.1 Data Security. Organization is solely responsible for ensuring that (i) Organization's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to Harris's servers; and (iii) Data is encrypted. Some content or Data may be subject to governmental regulations or may require security measures beyond those specified by Harris for an offering as set out in Schedule "G." Organization will not input or provide such content or Data unless Harris has first agreed in writing to implement additional required security measures.
- 3.6.2 HARRIS AND ITS SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. HARRIS AND ITS SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF ORGANIZATION'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND HARRIS SHALL NOT BE RESPONSIBLE FOR ANY USE BY ORGANIZATION OR ANY USER OF ORGANIZATION'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION. FURTHER, HARRIS DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY SERVICE PROVIDERS.

Section 3.7 Additional Hosting Provisions if Hosting Services Are Purchased

- 3.7.1 Harris currently uses AWS as an additional service provider that acts both as a hosting facility and provides additional third-party software support to Harris. The Organization acknowledges that Harris may change the third-party service provider at any time with written notice to the Organization. The Organization further acknowledges that the third-party service provider may require that the Organization agree to certain additional terms in order for Harris to allow Organization and its Users to have access to the Solution on the third-party provider's hosting platform. Harris may, from time to

time, alter the hosting facility service provider by providing written notice to the Organization. Additionally, with respect to the current third-party service provider, the Organization must agree to the following policies (“Policies”) as a condition precedent to using the Hosting Services which shall form an integral part of this Agreement. Organization agrees that its Users must also agree to such Policies, as applicable to Users:

3.7.1.1 “Acceptable Use Policy” means the policy located at <http://aws.amazon.com/aup> (and any successor or related locations designated by AWS), as it may be updated by AWS from time to time.

3.7.1.2 “Service Terms” means the rights and restrictions for particular Services located at <http://aws.amazon.com/serviceterms> (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.

- 3.7.2 The third-party service provider may change or discontinue any of the services that form part of the Hosting Services, from time to time. If Harris receives prior notice from the third-party service provider, Provider will provide prior written notice to Organization if AWS decides to discontinue a service that forms part of the Hosting Services. Harris will not be required to provide notice to Organization under this Section 2.6(b) if the discontinuation is necessary for Harris or its third-party service provider to address an emergency or threat to the security or integrity of Harris or its third-party service provider, respond to claims, litigation, or loss of license rights related to third-party intellectual property rights, or comply with the law or requests of a government entity.
- 3.7.3 Where a different third-party provider provides such services then alternate policies and terms will apply to Organization’s use of the Hosting and Technical Services which terms the Organization will need agree with as a condition precedent of using the Hosting and Technical Services from a time provided by Harris to the Organization.
- 3.7.4 Lastly, if the Organization requires information related to the third-party provider’s capabilities, accreditations, and other information regarding a third-party provider, the Organization must request such information directly from Harris. Harris will make diligent efforts to request that the third party provider provide such information for the Organization but ultimately, Harris is not obligated to provide any such information to the Organization either (i) where the third party provider refuses to provide the information to Harris or (ii) where the Organization refuses to agree to terms that the third party provider has requested from the Organization prior to providing the information either directly or indirectly through Harris (such terms, for example, an NDA).

Section 3.8 Restrictions on Use

- 3.8.1 Neither Organization nor any User may use the Hosting Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Organization nor any User may, or may attempt to (a) modify, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Hosting Services (except to the extent AWS Content included in the Hosting Services is provided to Organization under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Hosting Services or apply any other process or procedure to derive the source code of any software included in the Hosting Services, (c) access or use the Hosting Services in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Hosting Services.

Section 3.9 Suspension of Access and Use Rights

3.9.1 Harris may temporarily limit (in full or in part, as set forth in this Section 2.8) Organization's or any User's right to access or use the Hosting Services upon written notice to Organization (which will be reasonable prior notice unless Harris reasonably believes immediate limitation is necessary) if Harris or its third party service provider reasonably determines that Organization's or a User's use of the Hosting Services poses a security risk or threat to the function of the Hosting Services, or poses a security or liability risk or threat to Harris, AWS, either of their affiliates or any third party. Harris will only limit Organization's right to access or use the instances, data or portions of the Hosting Services that caused the security or liability risk or threat. Harris will restore Organization's access and use rights promptly after Organization has resolved the issue giving rise to the limitation. Organization remains responsible for all fees and charges for the Hosting Services and Technical Services during the period of limitation.

ARTICLE IV: SUPPORT AND MAINTENANCE

Section 4.1 Delivery of Support Services

- 4.1.1 Method of Delivery. Harris shall provide software support via telephone and electronic transmission, with site visits only when necessary. The support services will be provided during the hours of operation as described in Schedule "D" hereto, effective on the date support services fees are due, as detailed in the SOW (Schedule "B"). Such services may be modified at Harris' sole discretion, with written notice to the Organization. Organization will establish auto remote access procedures compatible with Harris' current practices.
- 4.1.2 Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by Harris in providing the services pursuant to this Support and Maintenance Agreement shall at all times remain with Harris, and Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement.
- 4.1.3 Source Code Escrow. Harris maintains an escrow agreement with a third party under which is placed the source code for each major release of its Software. Organization may be added as a beneficiary to the escrow agreement by completing a standard beneficiary enrollment form and paying the annual beneficiary fee. Organization will be responsible for maintaining your ongoing status as a beneficiary, including payment of the then-current annual beneficiary fees. Release of source code for the Harris Software is strictly governed by the terms of the escrow agreement. No escrow in Third Party Software is provided.
- 4.1.4 Harris shall have the right to terminate ongoing Support and Maintenance pursuant to this Agreement immediately if:
- i) Organization attempts to assign this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with this Agreement; or
 - ii) Organization has not paid an invoice within ninety (90) days of the start of a renewal term.

ARTICLE V: REPRESENTATIONS AND WARRANTIES

Section 5.1 Warranty of Performance

5.1.1 Software Warranty. The Software will substantially perform as described in the Documentation for a period of ninety (90) days from the Completion of Services if the Software is used in accordance with the Documentation, the terms of this Agreement and where the Organization has the Required Programs

and the hardware meets the requirements. The Organization's sole recourse in the event the Software does not conform to the Documentation is the repair and replacement of the Software.

- 5.1.2 Hosting Services Warranty. During the duration of this Agreement, Harris warrants to Organization that the Hosting Services will perform substantially in accordance with the published user guides for the Hosting Services located at <http://aws.amazon.com/documentation> (and any successor or related locations designated by AWS), as such user guides may be updated by AWS from time to time.
- 5.1.3 In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by Harris, provided Organization has ongoing Support and Maintenance with Harris pursuant to Article IV of this Agreement, Harris will make reasonable commercial efforts to provide Organization with a correction or suitable workaround in accordance with the terms of Article IV. Harris reserves the right to correct any defects about which it is made aware and to produce in its sole discretion Releases at a time of Harris' own choosing.
- 5.1.4 Harris warrants that services performed pursuant to this Agreement will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks.

Section 5.2 Exclusions to Warranty

Harris shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of Harris, including:

- 5.2.1 where the installation, integration, modification or enhancement of the Software was not done by Harris or its authorized agent, or where Organization has taken any action which is prohibited by the Documentation or this Agreement;
- 5.2.2 any use or combination of the Software with any software, equipment or services not supplied by or on behalf of Harris;
- 5.2.3 user error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted herein;
- 5.2.4 Organization's failure to install a new Update necessary to cure an error or bug, for security or legislative compliance purposes or for such other reasons as Harris may determine in its sole discretion; or
- 5.2.5 Any other event of force majeure.

Section 5.3 No Other Warranties

TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOFTWARE IS LICENSED AND ALL OTHER MATERIALS AND SERVICES (INCLUDING ANY HOSTING SERVICES) ARE PROVIDED TO THE ORGANIZATION "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.

HARRIS, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

HARRIS DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL OPERATE ERROR FREE OR IN THE COMBINATIONS SELECTED, THAT IT SHALL MEET ANY OR ALL OF THE ORGANIZATION'S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

WITHOUT LIMITING THE FOREGOING, HARRIS DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD-PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM. HARRIS AND ITS SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF HARRIS.

Section 5.4 Required Programs and Hardware

- 5.4.1 The Organization acknowledges that the use of the Software may require that the Organization obtain and install additional required software programs (the “**Required Programs**”), as detailed in the attached Schedule “A”. The Organization agrees that the acquisition of the Required Programs (including the cost for future updates) shall be at its sole cost and that the cost thereof is not included in the fees herein.
- 5.4.2 Organization’s hardware shall be maintained in sufficient quality, condition and repair at Organization’s sole cost and expense to support the Software licensed and supported herein. If Harris determines that Organization’s hardware is not of sufficient quality, condition and repair, Harris shall so notify Organization, and Organization will use reasonable efforts to remedy any hardware deficiencies within thirty (30) days.
- 5.4.3 Organization shall provide no less than one hundred eight (180) days’ written notice where the Organization anticipates changing any of the third party software or hardware products in use on the Designated Computer System so that Harris may assess whether the Software will function with the different software or hardware. Where Harris determines that the Software may not function with the alternative software or hardware then any upgrade by Organization to the software or hardware will be at Organization’s sole risk. Harris and Organization may be required to enter into a Statement of Work document subject to additional fees in order to make this determination.

ARTICLE VI: FEES AND PAYMENT

Section 6.1 Fees and Payments for Licenses

- 6.1.1 The Organization agrees to pay Harris total License fees detailed in Schedule “B” (the “License Fees”), which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule is outlined in the attached Schedule “B”. The License is subject to the full payment of the License fees. All payments for License fees are non-refundable.
- 6.1.2 Except for any aspect of the License Fee which is payable on the Effective Date, during the term of this Agreement, Organization shall have thirty (30) days after the date outlined in the payment schedule in Schedule “B” to pay Harris the applicable License Fee.

Section 6.2 Fees and Payments for Services and Subscription Licenses

- 6.2.1 The Organization agrees to pay Harris total fees as delineated in the SOW (Schedule “B”). The fee structure and payment schedule for Services are outlined in the SOW (Schedule “B”). All payments for Services are non-refundable.
- 6.2.2 Annual Subscription for Subscription Licenses
- 6.2.1.1 The Organization agrees to pay Harris the Annual Subscription Fees, which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule are outlined in the SOW (Schedule “B”). The License is subject to the full payment of the Annual Subscription Fees in accordance with the payment terms set out in SOW (Schedule “B”).
- 6.2.1.2 The Annual Subscription Fee will be billed annually in advance beginning as set forth in the SOW (Schedule “B”) and thereafter on the anniversary or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Annual Subscription Fee to its fiscal year or any other period it may request, then Harris will issue a prorated invoice for the portion of the year remaining during the initial term. Harris may change the Annual Maintenance Fee from time to time in relation to each renewal term, but Organization shall only be billed once per year.
- 6.2.2 The Organization agrees to reimburse Harris for its travel, lodging, per diem and other out of pocket expenses as set out in the attachment to the SOW (Schedule “B”).
- 6.2.3 During the term of this Agreement, Harris shall, from time to time, deliver invoices to Organization. Each invoice is due and payable in accordance with Texas Government Code Chapter 2251.
- 6.2.4 In the event Organization fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies Harris has under this Agreement or otherwise, Harris shall have the option to suspend or terminate all Services under this Agreement. Suspension or termination of any such Services shall not relieve the Organization of its obligation to pay its outstanding invoices, including any late charges.
- 6.2.5 Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax Harris may be required to collect or pay upon the delivery of the Services described in this Agreement shall be paid by Organization and are excluded from the prices listed in the SOW (Schedule “B”) and such sums (including the payment of the taxes) shall be payable upon receipt of invoice. Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. Organization warrants that there are no additional county/city/municipal style taxes that apply to any of the Services, Support Services or Licenses or that are in relation to income taxes payable by Harris employees.
- 6.2.6 Change Orders. For proposed changes to the Services defined by this Agreement that do not materially impact the scope of either party's work effort required under this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof. Any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute. A sample Change Order is presented in Schedule “C”.

Section 6.3 Fees and Payments for Support and Maintenance and Any Hosting Services

- 6.3.1 In consideration for the support services provided hereunder, Organization shall pay the “Support and Maintenance Fee” and the “Annual Hosting Fees” as detailed in the SOW (Schedule “B”). The Support

and Maintenance and Annual Hosting Fees will be billed annually in advance on the due date, as detailed in the SOW (Schedule "B"), and thereafter on the anniversary of this date or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Support and Maintenance Fee and Annual Hosting Fees to its fiscal year or any other period it may request, then Harris will issue a prorated invoice for the portion of the year remaining during the initial term. Harris may change the Support and Maintenance Fee and Hosting Services Fees prior to each renewal term, but Organization shall only be billed once per year.

- 6.3.2 In addition to the Support and Maintenance Fee, Organization shall reimburse Harris for its direct expenses in providing support services ("Billable Fees") pursuant to this Agreement which include:
- (i) its direct travel expenses which are excluded from the total fees amount described in the Statement of Work, including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees;
 - (ii) courier services, photocopying, faxing and reproduction, all reasonable travel costs (hotel and airfare) including a travel time rate of \$75.00 per hour;
 - (iii) a per diem rate of \$70.00 for weekdays and a \$140.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided); and
 - (iv) a mileage charge based on the current U.S. Internal Revenue Service recommended rate per mile.

Harris may update its reimbursement policies and rates related to the Billable Fees from time to time, in which case such updated policies shall apply for purposes of this Agreement, provided that such updated reimbursement policies must generally apply to all clients of Harris.

- 6.3.3 Harris shall supply all Upgrades to Organization at no additional charge other than the payment of ongoing Support and Maintenance Fee. Upgrades may require additional services to be performed by Harris outside of the scope of those services provided by Harris, including additional training not covered by this Agreement and professional services for the installation and implementation of the Upgrade that will be subject to the Harris then-prevailing policies, terms and Billable Fees related to pricing and hourly rates. All such services shall be performed subject to a newly negotiated Statement of Work that will be subject to the terms of this Agreement.
- 6.3.4 All Updates of the Software and all those services listed in the Statement of Work which are included as part of Organization's Software support will be made available to Organization at no additional charge other than the payment of the Support and Maintenance Fee.
- 6.3.5 All payments for Support and Maintenance and Annual Hosting Fees shall be net of any taxes, tariffs or other governmental charges. Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax Harris may be required to collect or pay upon the sale, use or delivery of support and maintenance services shall be paid by Organization and such sums shall be due and payable to Harris upon receipt of an invoice therefore. Any taxes levied in relation to the services required for a Release shall be paid by Organization.

Section 6.4 Piggyback Procurement

The Organization reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the Organization's state as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. This is conditioned upon mutual agreement of all parties pursuant to

special requirements, which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this proposal and will provide usage information, which may be requested. A copy of the contract pricing and the proposal requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own Agreement with Harris, and this Agreement shall be binding only upon the principals signing such an Agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any Agreement shall be the responsibility of the participating jurisdiction or agency that entered into that Agreement. Disputes must be resolved solely between the participating agency and Harris. Organization does not assume any responsibility other than to obtain pricing for the specifications provided.

ARTICLE VII: REMEDIES, LIABILITY AND INDEMNITY

Section 7.1 Remedies and Liability

- 7.1.1 Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done prior to said termination.
- 7.1.2 The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris' liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
- (i) EXCEPT FOR DAMAGES ARISING OUT OF HARRIS' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.3 OR CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF HARRIS, BOTH PARTIES AGREE THAT HARRIS' ENTIRE LIABILITY (UNDER CONTRACT OR IN TORT INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO OR ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE FEES PAID TO HARRIS BY THE ORGANIZATION UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE TIME THAT THE CLAIM AROSE.
 - (ii) IN ADDITION TO THE FOREGOING, EXCEPT FOR CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF HARRIS, HARRIS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ORGANIZATION HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
 - (iii) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.

Section 7.2 Intent

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person

released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

Section 7.3 Intellectual Property Indemnity

- 7.3.1 In the event there is a third party claim against Organization alleging that Organization's use of the Software in accordance with this Agreement constitutes an infringement of a Canadian or United States' patent, copyright, trademark or trade secret or other intellectual property that is valid and enforceable in Organization's jurisdiction, Harris shall, at its expense, defend and indemnify Organization and pay any final judgment (including all damages awarded against Organization) against Organization or settlement agreed to by Harris on Organization's behalf. This indemnity is only effective where (i) Organization has not made any material admissions either prior to or after providing notice to Harris of the applicable claim except with Harris' prior written consent, (ii) Harris has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; (iii) Organization reasonably assists and provides information to Harris throughout the action or proceeding, and (iv) Organization has not modified the Software in any material manner except with the prior written consent of Harris.
- 7.3.2 Harris' liability for any claims under this Section 7.3 shall be reduced to the extent such claim arises from;
- (i) alterations or modifications to the Software by Organization in any manner whatsoever except with the prior written consent of Harris;
 - (ii) combination, integration or use of the Software with software, hardware or other materials not approved by Harris where such claim would not have arisen but for such combination, integration or use;
 - (iii) use of the Software other than in compliance with this Agreement;
 - (iv) compliance with the Organization's written instructions or specifications; or
 - (v) use of the Software after notice from Harris that it should cease due to possible infringement.
- 7.3.4 The foregoing states Harris' entire liability, and the Organization's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trademark, trade secret or other intellectual property and property interest rights relating to the Software, or any part thereof or use thereof.
- 7.3.3 Organization may, at Organization's sole cost and expense, retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances related to the proceeding.
- 7.3.4 The indemnity provisions of this Section 7.3 shall not apply to Third Party Software and Harris shall have the right to substitute the licensor of the Third-Party Software to perform Harris' obligations hereunder.

Section 7.4 Remedies

Where remedies are expressly afforded by this Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the parties arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.

ARTICLE VIII: GENERAL

Section 8.1 Confidentiality

8.1.1 To the extent allowable by law and in accordance with opinions issued by the Attorney General of the State of Texas and requirements of the Texas Public Information Act, the parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential Information of the other party (i) to its agents, service providers, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who are bound by non-disclosure obligations at least as protective of the other party's Confidential Information as this Agreement, or (ii) to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure sufficient to allow the disclosing party the opportunity to apply for a protective order or other restriction regarding such disclosure and shall comply with any applicable protective order or equivalent. To the extent allowable by law and in accordance with opinions issued by the Attorney General of the State of Texas and requirements of the Texas Public Information Act, the parties each agree to hold the other party's Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party. All Confidential Information will remain the exclusive property of the owner.

Section 8.2 Termination

- 8.2.1 If either party should fail to comply with its obligations under this Agreement, the other party must notify the breaching party in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the breaching party fails to
- (i) issue a written notice disputing the alleged default within such thirty (30) day period; or
 - (ii) to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, this will constitute an "Event of Default" and the other party may terminate this Agreement effective upon written notice to the other party to that effect.
- 8.2.2 If Organization has failed to pay the license fees in accordance with Article VI, then Harris shall have the right to terminate the license rights granted herein and this Agreement effective 30 days after written notice to Organization.
- 8.2.3 Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party:
- (i) becomes insolvent;
 - (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favorably to the subject party within ninety (90) days of commencement thereof; or
 - (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

Section 8.3 Procedure on Termination

- 8.3.1 If this Agreement is terminated prior to the Completion of Services, then within thirty (30) days following such termination, the Organization shall either return to Harris or delete the Software from all of its locations (except as required under any statute related to retention requirements) and shall certify in writing that all of the Organization's copies of the Software have either been returned to Harris or deleted.
- 8.3.2 If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.
- 8.3.3 Except as otherwise set forth in this Agreement, all warranties related to the Software terminate upon the termination of this Agreement.
- 8.3.5 Termination Provisions Specific to Hosting Services. In the event of termination or expiration of Hosting Services pursuant this Agreement:
- (a) All rights to use the Hosting Services granted to Harris in this Agreement shall immediately terminate and Organization will immediately cease to perform or provide said Hosting Services.
 - (b) Organization will pay all amounts due under this Agreement for the Hosting Services up to and through the date of termination.
 - (c) Harris will furnish the Organization with a copy of Organization's Customer Data in a format to be mutually agreed upon between the parties in writing (typically a .csv file). The anticipated time to provide a copy of the Customer Data are one to two days and will be billed at Harris's then current daily rate. Upon receipt of notice from Organization confirming receipt of the Customer Data, Harris shall destroy all copies of the Customer Data and delete all Customer Data on the database and an Officer of Harris shall certify the destruction and deletion to the Organization. Subject to any legal requirement that Harris must retain a copy of the Customer Data, Harris shall not delete the Customer Data for 90 days from the date of termination except: (i) where Harris has provided the Customer Data to Harris pursuant to this Subsection; or (ii) where it has received written instructions from Organization to delete the Data. Following 90 days from the date of termination if Organization has not communicated with Harris regarding the Customer Data, Harris shall have the right to delete all Customer Data at any time as either required by law or as determined by Harris in its sole discretion. Notwithstanding the foregoing, Harris shall be permitted to delete all Customer Data without providing notification to Organization and Harris shall not be required to adhere to the time frames detailed above where Harris is required by law to delete such Customer Data.
 - (d) Upon termination, Organization shall return to Harris or at Harris's option purge or destroy all copies of any Confidential Information of Harris or the third party service provider including AWS Content (other than publicly available information on the AWS Site) in its possession or under its control (except as required under any statute or legislation related to retention requirements), and provide a duly authorized certificate of an officer of Organization confirming same within thirty (30) days.

Section 8.4 Mediation

The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a

mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorney's fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Notwithstanding the foregoing, nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

Section 8.5 Addresses for Notice

Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered personally or mailed by prepaid registered post. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or, if mailed, on the third business day following the date of mailing, and addressed, in the case of Harris, to:

N. HARRIS COMPUTER CORPORATION
 Address: 1 Antares Drive, Suite 400, Ottawa, Ontario K2E 8C4
 Attention: Leah McCallum, EVP NorthStar
 Phone: 613-519-8709
 Email: lmccallum@harriscomputer.com

and in the case of the Organization, to:

NEW BRAUNFELS UTILITIES
 Address: 263 Main Plaza, New Braunfels, TX 78130
 Attention: Greg Brown, Chief Technology Officer
 Phone: 830.629.8413
 Email: gbrown@nbutexas.com

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 8.5.

Section 8.6 Assignment

Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, and sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

Section 8.7 Reorganizations

The Organization acknowledges that the License, Services, and Support Fees set out in this Agreement has been established on the basis of the structure of the Organization as of the Effective Date. To the extent that the

Organization amalgamates, consolidates or undergoes any corporate reorganization or transition (a “Reorganization”), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to add additional Named Users or sites, Harris shall be entitled to receive, and the Organization shall pay, an additional License, Support or other fee based on the then prevailing License, Support and other Harris fee schedule in effect. The provisions of this Section 8.7 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 8.7 shall not apply where the Organization undergoes a Reorganization involving only other organizations that already have a valid License to use the same Software.

Section 8.8 **Entire Agreement**

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. There are no other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Harris by any of its employees or agents, or contained in any sales materials or brochures. This Agreement may not be modified except by an amendment signed by an authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by or on behalf of the Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by Harris, with such provisions being deemed deleted. The parties have both had the opportunity to review this Agreement with counsel, and this Agreement shall not be construed in favor of or against either Party on account of drafting.

Section 8.9 **Section Headings**

Section and other headings in this Agreement are for reference purposes only and do not describe, interpret, define or limit the scope or extent of any provision hereof.

Section 8.10 **Governing Law**

This Agreement together with the Policies which are incorporated herein by reference shall be governed by the laws of the state of Texas without reference to the conflicts of law principles thereof. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) does not apply to this Agreement. Venue for any claims arising from or related to this Agreement shall be in the federal court for the Western District of Texas; provided, however, that if subject matter jurisdiction is improper in said federal court, it shall be had in the state courts for Comal County, Texas.

Section 8.11 **[RESERVED]**

Section 8.12 **Invalidity**

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant. Any such invalid provision or covenant shall be deemed modified to the extent necessary in order to render it valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

Section 8.13 **Waiver**

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under this Agreement or by law despite such forbearance or notice.

Section 8.14 **Counterparts**

This Agreement may be executed in counterparts (whether by facsimile, via emailed PDF or otherwise), each of which shall constitute an original and all of which shall constitute one Agreement.

Section 8.15 **Further Assurances**

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate this Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary.

Section 8.16 **Allocation of Risk**

Organization acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement are fundamental elements of the basis of bargain between Organization and Harris and set forth an allocation of risk reflected in the fees and payments due hereunder.

Section 8.17 **Relationship**

The parties are and shall remain independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between them. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is in law responsible.

Section 8.18 **Trade Compliance**

In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Organization is solely responsible for compliance with applicable laws related to the manner in which Organization chooses to use the Hosting Services, including (i) Organization's transfer and processing of Data, (ii) the provision of Data to Users, and (iii) specifying the AWS region in which any of the foregoing occur. Organization represents that Organization and the entities that own or control Organization, and the financial institutions used to pay Provider under this Agreement, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.

Section 8.19 **U.S. Government End-Users**

The Software (i) was developed exclusively at private expense; (ii) is a trade secret of Harris for the purposes of the Freedom of Information Act; (iii) is “commercial computer software” subject to limited utilization (Restricted Rights); and (iv) including all copies of the Software, in all respects is and shall remain proprietary to Harris or its licensors. Use, duplication or disclosure by the U.S. Government or any person or entity acting on its behalf is subject to restrictions for software developed exclusively at private expense as set forth in: (i) for the DoD, the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or 252.227.7014 or any successor clause, and (ii) for all government agencies, the Commercial Computer Software – Restricted Rights clause at FAR 52.227-19 or any successor clause. The U.S. Government must refrain from changing or removing any insignia or lettering from the Software or from producing copies of the Software and manuals (except one copy of the Software for backup purposes). Use of the Software shall be limited to the facility for which it was acquired. All other U.S. Government personnel using the Software are hereby on notice that use of the Software is subject to restrictions that are the same as, or similar to, those specified above. The manufacturer/owner is N. Harris Computer Corporation, 1 Antares Drive, Suite 400, Ottawa, ON K2E 8C4.

Section 8.20 Language

The parties confirm that it is their wish that this Agreement, as well as all other documents relating to this Agreement, including notices, be drawn up in English only.

Section 8.21 Force Majeure

No default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.

Section 8.22 Survival

The following sections and articles shall survive the termination or expiration of this Agreement: Article II, Article V, Article VII, and Article VIII and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

N. HARRIS COMPUTER CORPORATION

Per:

Name:

Title:

Date:

NEW BRAUNFELS UTILITIES

Per:

Name: Ian Taylor

Title: CEO

Date:

Schedule "A" - Description of Software

Please refer to the Statement of Work (SOW) provided under separate cover.

Schedule “B” – Statement of Work (“SOW”)

Please refer to the Statement of Work (SOW) provided under separate cover.

Schedule "C" – Sample Change Order Form

NORTHSTAR IMPLEMENTATION PROJECT - CHANGE ORDER REQUEST FORM

ORGANIZATION NAME: NEW BRAUNFELS UTILITIES

Vendor: NorthStar Utilities Solutions; a Division of Harris Computer Systems

Date:

Change Order Number:

Project Description: NBU, NorthStar CIS Implementation

Requested By:

Scope of Change Requested:

Assumptions and Other Requirements:

Payment Terms:

Start Date:

Cost Impact:

A signature below will serve as authorization to proceed with this change order. Please sign and return to NSProjectManager@northstarutilities.com

Approval (signature and date):

Organization Approval _____

Organization Project Manager _____

NorthStar Utilities Solutions Project Manager _____

Change is **Approved** **Denied** **Date** _____

Schedule “D” – Standard Support and Maintenance Guidelines

Help Desk Hours

Standard hours are from 8:00 am to 8:00 pm EST Monday through Friday, excluding designated statutory holidays. Customer requested Support is available outside of standard hours and is billable on an hourly basis (minimum number of hours will apply) at a rate of \$338/hr. Weekend assistance is available and must be scheduled in advance (and is billable on an hourly basis with a minimum number of hours that apply).

Holiday Schedule

NorthStar Support Services will be closed on the Canadian and US statutory holidays below. Support will be available on all Canadian statutory holidays when there is no US corresponding statutory holiday.

New Year’s Eve	Early Closure
New Year’s Day	Closed
Labor Day	Closed
Christmas Eve	Early Closure
Christmas Day	Closed
Boxing Day	Early Closure

Customer Care Program

- Technical Support Bulletins
- Communication on new products and services
- Dedicated Customer Support Account Lead as first point of contact as required
- Participation in Regional User Group Meetings
- Participation in NorthStar Webinars
- Opportunity to take part in validation and focus groups
- Opportunity to take part in Harris Annual Customer Conference

“Software for Life” Guarantee

- Support on existing Harris software applications for life
 - Products reach the end of their product life cycle for a number of reasons. These reasons include market demands, technology innovation and development driving changes, or the products simply mature over time and are replaced by functionally richer technology. If NorthStar determines a product to be end of support we will ensure the existing product software license grants access to new platforms within the same product class.
- Software transferability and cost effective upgrades

TeamSupport Access 24/7

- Open new tickets
- View open/closed tickets for your organization
- Post Screen Recordings and Video Recordings to tickets
- View Knowledge Base Articles

- View Product Information
- Report on Ticket Metrics
- Find out the latest NorthStar News; Events; Product Releases

Ticket Priorities

In an effort to assign our resources to incoming tickets as effectively as possible, NorthStar has identified four types of ticket priorities P0, P1, P2 and P3.

PRIORITY 0 - PRODUCTION DOWN
<i>Deemed by NorthStar Team to be Extremely High Priority (Production Only)</i>
Production Down
Complete loss of service
PRIORITY 1 - BUSINESS CRITICAL
<i>Deemed by NorthStar Team to be of high priority as NO workaround exists</i>
Performance issue impacting critical processes
No workaround exists
Examples: Inability to create bills
PRIORITY 2 - MEDIUM TO HIGH BUSINESS IMPACT
<i>Deemed by NorthStar Team to be important; however, workarounds are available</i>
State of Degraded Performance
Workaround exists.
Examples: usability issues; non-critical performance issue; calculation issues
PRIORITY 3 - MINIMAL BUSINESS IMPACT/REQUESTS
<i>Deemed by NorthStar Team to be more general/cosmetic in nature OR Scheduled</i>
Minimal Business Impact
General Product Issues/Questions/Aesthetic Issues/Formatting Issues/Questions on Documentation
Enhancement Requests/Requests for Statement of Work/To be Scheduled items

NOTE: NorthStar reserves the right to reclassify the priority level at any time if we reasonably believe the classification is incorrect.

Response Times

Response times will vary and are dependent on the priority of the call. We do our best to ensure that we deal with incoming cases in the order that they are received; however, cases will be escalated based on the urgency of the issue reported.

NorthStar’s standard response times are as follows:

Priority 0	Response within 2 business hours
Priority 1	Response within 4 business hours
Priority 2	Response within 8 business hours
Priority 3	Response within 24 hours

Standard Software Releases and Updates

- Defect corrections
- Planned enhancements
- Payroll regulated changes (additional charges may apply)
- Participation in BETA program
- Release notes
- State, Province and/or Federal mandated changes (additional charges apply)

Scheduled Assistance for Updates During Regular Business Hours

- Additional charges apply outside of regular business hours.
- Charges may apply depending on scope of work.

Third Party Support

Standard Third Party Support and Maintenance Services are provided, for those clients with maintenance on 3rd party products, based on the descriptions below. NorthStar provides 1st line support for all 3rd party products listed below and will escalate to the vendor if required. Please note that 3rd party installations & preventative maintenance services are not included as part of your maintenance unless otherwise indicated below.

Microsoft SQL Server

- Initial SQL Server installation & configuration
- Establish database connections to NorthStar database
- Limited troubleshooting and/or repair of database related issues

4Js (3rd Party graphical user interface software)

- Entitlement to new GUI software releases
- Installation and configuration for test and live NorthStar environments
- Limited troubleshooting and/or repair of database related issues

BitStew (As part of the CustomerConnect web portal)

- Installation & configuration for test and live CustomerConnect environments

IBM Cognos (as part of the Reports Anywhere reporting solutions)

- Initial installation & configuration of IBM Cognos for use with Reports Anywhere
- Set up of IBM Cognos license/establishment of connections with the NorthStar software
- Limited assistance in utilizing embedded report writer functionality.
- Updates to IBM Cognos data model which reflect changes in NorthStar database schema due to upgrades
- Limited assistance in locating information within the IBM Cognos data model
- Assistance with existing reports

NOTE: NorthStar recommends Microsoft SQL Server and supports Microsoft supported versions of the SQL database. Those versions of SQL Server that are no longer supported by Microsoft should no longer be considered supported by NorthStar.

Billable Support Services

The list below are deemed to be out of scope from our standard Annual Maintenance and Support Agreement. These items may be optionally available as billable services and includes, but may not be limited to;

- Post Go-Live Training
- Post Go-Live Project management
- Form creation and redesign
- Handheld interface of new interface, setups and changes
- Setup of new services or changes to services (PAP, ACH, etc)
- File imports and exports and interfaces to other applications
- Refresh backups, restores, setting up test areas
- Setup of new printers, printer setup changes
- Custom modifications (reports bills, forms, reversal of customizations)
- Setting up additional companies/agencies/tokens/general ledgers
- Data conversions and global modification to setup table data
- Database maintenance, repairs and optimization (unless specifically listed as a Support deliverable)
- Extended hardware and operating system support
- Upgrades and support of third party software
- Installations and re-installations (workstations, servers)
- Creation of Test databases and environments

NOTE: Modifications to data in the NorthStar database via non-sanctioned NorthStar solutions or partner solutions are strictly prohibited and not supported.

Test Databases & Environments

NorthStar recommends that customers maintain an independent Test environment for testing purposes. This allows customers the opportunity to test fixes, modifications, new business processes and/or scenarios without risking any potentially unwanted changes to the Production (Live) environment. The creation of additional Test databases & environments is a billable service, if performed by NorthStar Support post Go-Live.

Connection Information

1. Direct Tunnel
2. VPN - Example:
 - a. Cisco Any Connect
 - b. Microsoft VPN
 - c. FortiClient
 - d. SonicWall Net Extender
 - e. Bomgar
 - f. Global Protect
 - g. Zywall
3. Web:
 - a. Citrix
 - b. Bomgar Web
 - c. Beyond Trust
 - d. CyberArk
4. Customer controlled connections:
 - a. WebEx
 - b. GoToMyPC

How to Contact Us

Existing customers can login to our Customer Hub at:

<https://northstarutilitiesolutions.na2.teamsupport.com/login/user>

Contacts for Escalations

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Standard Technical Services for Hosted Environments

Service	Activity	Description	Frequency
Database	Logging Management	This is the required management of the transaction log space.	Scheduled
Database	Temporary Space Management	This service is to ensure that the MS SQL Server temporary space has the adequate resources as the system is used and the database grows in size.	Scheduled
Database	Backup Routine Management	This service is to ensure that the appropriate drives & files are backed up accordingly in the event restores or recovery is required.	Scheduled
Database	Backup Routine Confirmation	This service is to provide notifications on the success and failure of the database backup routines.	Scheduled
Database	Index Defragmentation	This is a weekly rebuild off all of the indexes to manage database fragmentation to prevent performance issues.	Weekly
Database	Integrity Validation	This routine checks the validation of table & index consistency, system catalogs, and allocated structures. The routine will attempt to repair any issues discovered.	Weekly
Database	Statistic Updates	The update statistics plan will ensure that metrics on the data count and distribution within a column or columns used by the database optimizer are kept up to date for query efficiency.	Weekly
Database	Patch Management	As MS SQL patches are released by Microsoft they will be reviewed and applied as required.	Monthly
Database	Recovery	In the event the database has to be restored or recovered Harris will perform the necessary tasks.	As Required
Database	Test Database Refresh	Refreshing Test environment	Quarterly

Database	Archive/Purge	Configure a new archive database and put processes in place to archive application information into this new database. As of a user defined date.	Up to Semi-Annually
Operating System	Patch Management	As MS Server patches are released by Microsoft they will be reviewed and applied as required.	Monthly
Operating System	File System Maintenance	This task is to manage the file system to ensure system drives do not become full and have appropriate resources allocated.	Weekly
Operating System	Printer Administration on the TM Server	As new servers are added within your physical location they will need to be added or managed on the Terminal Server within the hosted environment..	As Required
Operating System	Backup Routine Management	This service is to ensure that the appropriate drives & files are being backed up accordingly in the event restores or recovery is required.	Scheduled
Operating System	Backup Routine Confirmation	This service is to provide notifications on the success/failure of the system backup outlines	Scheduled
Operating System	Backup Routine Validation	This routine will be a manual extraction and review of the backup files for validation of content and an integrity check on the files	Monthly
Administration	Logging, Monitoring, and Trending Administration	Provide the platform to supply service and component- level monitoring for applications and service. We will provide end user experience monitoring of a service as well as component layer monitoring, log aggregation, and alerting services tailored to your specific needs.	As Required

Schedule “E” – Third Party Software Licenses and Third Party Software Terms

THIRD PARTY SOFTWARE LICENSES FOR COGNOS

For the purposes of this Agreement, “Third Party Software” is considered to be the IBM/Cognos (“Cognos”_ sold by NorthStar as OEM partner of IBM/Cognos and which is further defined below.

COGNOS END-USER LICENSE TERMS

IMPORTANT READ CAREFULLY: You have installed, accessed or downloaded a Cognos software product (“Software”). Your use of this product is governed by the following terms. You can agree to those terms by clicking on the boxes indicated below. If you do not agree with them, click on the appropriate box.

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11. APPLICABLE LAW - This Agreement, and any matters relating to it, will be governed, construed and interpreted in accordance with the local laws applicable where you are located.

If you have any questions regarding this License or the Software, please contact the Cognos office nearest you.

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Cognos Incorporated
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Cognos Limited
Westerly Point, Market Street, Bracknell, Berkshire RG12 1QB, U.K.
Cognos Pty. Limited
110 Pacific Highway, 3rd Floor, St. Leonards, NSW 2065, Australia

Schedule “F” – Service Availability

Availability and Uptime Objectives:

Availability of the Software Hosting Services is defined as when the Software Hosting Services are operational and accessible via a public internet connection. NorthStar shall strive to make the Software Hosting Services available 100% of the time. However, the Software Hosting Services may be unavailable during certain downtimes. NorthStar shall not be responsible for any failure to make the Software Hosting Services available under the following circumstances:

- i. Routine scheduled downtime: Periods of time for the purpose of conducting routine system maintenance. In such event, NorthStar shall use commercially reasonable efforts to provide Customer with a minimum of three (3) business days prior to any period of scheduled downtime, and shall use commercially reasonable efforts to limit any such routine system maintenance to weekends between the hours of midnight and 6 AM ET.
- ii. Emergencies: NorthStar reserves the right to suspend the Software Hosting Services and Customer’s access to the Software Hosting Services in the event of an emergency or other non-routine maintenance event wherein it is deemed appropriate by NorthStar, without prior notice to Customer, to address a critical system issue. In such event, NorthStar will use commercially reasonable efforts to notify Customer of such suspended access as soon as possible and to restore access the system as soon as practically feasible.
- iii. Customer’s network infrastructure: Customer’s network infrastructure (equipment, software or other technology) is failing or causing the Software Service to be unavailable. This includes Customer’s connection to the Internet or an Internet failure beyond the control of NorthStar.
- iv. A breach of the Agreement by Customer, its employees, subcontractors or agents (“Customer Representatives”).
- v. An error or the negligence or intentional acts or omissions of Customer Representatives or Users.
- vi. Unforeseen capacity increases based on changes in Customer’s business processes or methods.
- vii. Any other force majeure event, as set out in Section 8.21 of the Agreement.

Schedule “G” – Security

1. Without limiting your obligations under the Agreement, NorthStar shall store and process data in accordance with industry standard practices.
2. Response to Legal Orders, Demands or Requests for data.
 - a. Where permitted by law NorthStar shall:
 - i. Promptly notify the Customer of any subpoenas, warrants, or other legal orders, demands or requests received by NorthStar seeking Data;
 - ii. Consult with the Customer regarding its response;
 - iii. Cooperate with the Customer’s reasonable requests, at Customer’s expense, in connection with efforts by the Customer to intervene and quash or modify the legal order, demand or request; and
 - iv. Upon the Customer’s request, provide the Customer with a copy of its response.
 - b. If the Customer receives a subpoena, warrant, or other legal order, demand (“requests”) or request seeking Data maintained by NorthStar, Customer will promptly provide a copy of the request to NorthStar. NorthStar will, where permitted by law, promptly supply Customer with copies of records or information required for the Customer to respond, and will cooperate with Customer’s reasonable requests, and at Customer’s expense, in connection with its response.

- Any Statewide Proportionate Retirement System

FINANCIAL IMPACT

If adopted, NBU's contribution rate and liabilities will not be immediately affected. NBU's rate and liabilities will only be impacted as current and future employees apply for the credit and the credit is reflected in the valuation data. Generally, the rate impact is minimal (less than 0.05%) because employees that retire sooner have smaller benefits.

LINK TO STRATEGIC PLAN

People and Culture

EXHIBITS

1. Resolution #2023-166

R-2023-166

A RESOLUTION AUTHORIZING AND ALLOWING, UNDER THE ACT GOVERNING THE TEXAS MUNICIPAL RETIREMENT SYSTEM, RESTRICTED PRIOR SERVICE CREDIT TO EMPLOYEES WHO ARE MEMBERS OF THE SYSTEM FOR SERVICE PREVIOUSLY PERFORMED FOR VARIOUS OTHER PUBLIC ENTITIES FOR WHICH THEY HAVE NOT RECEIVED CREDITED SERVICE

WHEREAS, New Braunfels Utilities ("NBU") is a member of the Texas Municipal Retirement System ("TMRS");

WHEREAS, NBU does not currently provide employees with restricted prior service credit for service previously performed for other public entities;

WHEREAS, the Board of Trustees of NBU desires to authorize restricted prior service credit for NBU employees with credit for previously performed service with other public entities; and

WHEREAS, the Board of Trustees of NBU desires for this Resolution to serve as an official action of the Board of Trustees to satisfy the requirements of Texas Government Code Section 853.305.

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

SECTION 1. Authorization of Restricted Prior Service Credit.

(a) On the terms and conditions set out in Section 853.305 of Subtitle G, Title 8, Texas Government Code, as amended (which Subtitle is referred to as the "TMRS Act"), each member of the Texas Municipal Retirement System (the "System") who is now or who becomes an employee of New Braunfels Utilities shall receive restricted prior service credit for service previously performed as an employee of any of the entities described in TMRS Act Section 853.305 provided that (1) the person does not otherwise have credited service in the System for that service, and (2) the service meets the requirements of TMRS Act Section 853.305.

(b) The service credit granted by this resolution may be used only to satisfy length-of-service requirements for retirement eligibility, has no monetary value in computing the annuity payments allowable to the member, and may not be used in other computations, including computation of Updated Service Credits.

(c) A System member seeking to establish restricted prior service credit under this resolution must take the action required under TMRS Act Section 853.305 while still a System member.

(d) The NBU Human Resources Manager shall serve as the clerk of NBU for purposes of verifying restricted prior service credit under TMRS Act Section 853.305.

SECTION 2. This resolution shall become effective on March 31, 2023.

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.

Passed, approved, and adopted, this the 30th day of March, 2023.

Dr. Judith Dykes-Hoffmann
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ian Taylor
Secretary to the Board
New Braunfels Utilities



Meeting Date: March 30, 2023 **Agenda Type:** Action Items

From: Kimberly Huffman **Reviewed by:** Dawn Schriewer
Accounting Manager Chief Financial Officer

Submitted by: Dawn Schriewer **Approved by:** Ian Taylor
Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Approval of the Fiscal Year 2024 Budget and Five Year Operating Plan

BACKGROUND

NBU’s Proposed Budget and Financial Operating Plan (“FOP”) for fiscal years 2024-2028 was presented at the Budget Workshop that was held on March 27, 2023. The proposed Budget and FOP has not been modified from the material that was presented at the Budget Workshop. The fiscal year 2024 Budget and FOP include the following assumptions: incorporates a growth model that averages out to a 4.9% growth rate for the combined lines of businesses across the five years; inclusion of capital contributions from the Mayfair development; the addition of 34 new personnel positions for fiscal years 2024 and 2025, and 21 new positions in fiscal years 2026, 2027, and 2028; and an inflation factor for personnel and non-personnel expenses for all years of the plan due to rising costs. Additionally, the plan includes a modified plan for filling the Power Stabilization Fund to a target balance of \$95M by fiscal year 2028 based on a statistical analysis conducted by The Energy Authority. The budget plan includes acting on recommendations from the cost of service study with a target to have electric capital at 50% cash funded by fiscal year 2027, and ensure water revenues are increased enough for a positive net available for capital funding.

FINANCIAL IMPACT

For fiscal year 2024, Net Revenues Available for Capital Expenditures are projected to be \$21.1 Million, which is a \$32.7 Million change from the FY23 budget of \$(11.6) Million. Projected capital expenditures for fiscal year 2024 are estimated to be \$211.6 Million, which is a \$76.3 Million increase from the fiscal year 2023 budget. This is mostly due to shifting out major capital projects like the main headquarters. Overall, the \$211.6 Million funding requirement due to the items above will be provided as follows:

- Utilization of NBU’s Commercial Paper Program of \$74.8 Million
- New Bond Issuance of \$50.4 Million
- Impact fees of \$16.8 Million
- Contribution in Aid of Construction and Grants of \$16.8 Million
- Texas Water Development Board Funding of \$29.8 Million
- Revenue and excess funds of \$23.0 Million

The five-year fiscal year 2024 FOP incorporates the following preliminary service revenue requirements:

- Electric revenue requirements of 4.8% effective August 1, 2023. Requirements of 5.9% effective August 1, 2024, 4.6% effective August 1, 2025, 3.8% effective August 1, 2026, and 1.2% effective August 1, 2027.
- Water revenue requirements of 9.1% effective August 1, 2023, 13.4% effective August 1, 2024, 13.6% effective August 1, 2025, 11.8% effective August 1, 2026 and 2027.
- Wastewater revenue requirements of 7.3% effective August 1, 2023 and 2024, and 7.7% effective August 1, 2025, 2026 and 2027.

Over the projected five fiscal years, capital expenditures are estimated to total \$1,003.3 Million, while total borrowings are estimated to be \$586.6 Million. NBU's projected Debt Service Coverage ratio in the last year of the FOP (FY28) is estimated to be 2.86x. NBU's Debt to Capitalization ratio is estimated to decrease from 54% (FY 2027 of FY 2023-2027 FOP) to 53% (FY 2027 of FY 2024-2028 FOP).

- The fiscal year 2024 Budget and FOP advances NBU's goal of maintaining a capital plan that will proactively meet the demands of growth in the New Braunfels area. The projections reflect NBU's continued commitment to be fiscally responsible and control costs. If approved, the FOP would be effective for fiscal year 2024 beginning on August 1, 2023.

LINK TO STRATEGIC PLAN

Customers and Community

Financial Excellence

EXHIBITS

None

Simultaneously to the RAC, NBU staff and consultants were conducting the 2022-2023 Cost of Service Study. Staff worked vigorously to finalize the Fiscal Year 2024 Budget and Financial Operating Plan in order to incorporate the results of the cost of service and RAC processes. The ultimate deliverable for FNI is a report on the findings of the cost of service study, including an overview of the RAC process and feedback, which is attached as Exhibit 1.

NBU staff requests that the Board of Trustees accept the report as presented.

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

1. Electric, Water and Wastewater Utility Revenues, Revenue Requirements, Cost of Service and Rates – Final Report Prepared by Freese and Nichols, Inc. and NewGen Strategies and Solutions, LLC
March 2023
2. Acknowledgement Letter



Innovative approaches
Practical results
Outstanding service

ELECTRIC, WATER AND WASTEWATER UTILITY REVENUES, REVENUE REQUIREMENTS, COST-OF-SERVICE AND RATES

Prepared for:

New Braunfels Utilities

MARCH 2023

Prepared by:

FREESE AND NICHOLS, INC.
10431 Morado Circle, Suite 300
Austin, Texas 78759
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Richardson, TX 75080

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EXECUTIVE SUMMARY

In February of 2021, New Braunfels Utilities (“NBU”) engaged Freese and Nichols, Inc. (“FNI”) and subconsultant NewGen Strategies and Solutions, LLC (“NewGen”), to conduct a Cost-of-Service and Rate Design Study (“Study”), including facilitating a Rate Advisory Committee. The purpose of the Rate Advisory Committee was to provide feedback to NBU and its consultants regarding the proposed fiscal year (“FY”) 2024-2025 rate design from the viewpoint of the constituency each member represented. This work was done in preparation of developing a rate plan for FY 2024 and FY 2025.

NBU most recently analyzed rates as part of a three-year rate plan that was approved by the New Braunfels City Council (City Council) in October 2020, with rate design changes in effect from November 2020 to August 2023. The rate plan was in response to essential capital improvements to support the renewal of the existing system and growth in the NBU service territory. As with the last rate plan, the capital program is the main driver behind increased revenue requirements for FY 2024 and FY 2025. The increases are represented in Table ES-1.

Table ES-1: Sources of Increases in Revenue Requirements

Expenditure	Electric	Water	Wastewater
Capital	67%	84%	87%
Personnel	<1%	7%	4%
Other O&M	32%	9%	19%

Table ES-2 summarizes the cost of capital projects for each utility through the next four years. Figures ES-1, ES-2, and ES-3 show the sources of capital funding for the Electric, Water, and Wastewater Utilities, respectively. The figures demonstrate the heavy reliance on new debt funding to meet capital expenditure needs.

Table ES-2: Capital Projects Expenditures⁽¹⁾

Description	FY 2024	FY 2025	FY 2026	FY 2027
Electric	\$43,542,000	\$50,703,000	\$57,017,000	\$40,601,000
Water	87,607,000	53,394,000	61,254,000	81,252,000
Wastewater	80,437,000	129,474,000	109,703,000	34,022,000
Total Capital Projects	\$211,586,000	\$233,571,000	\$227,974,000	\$155,875,000

(1) Totals may differ due to rounding

Figure ES-1 Electric Capital Funding Sources (FY 2024)

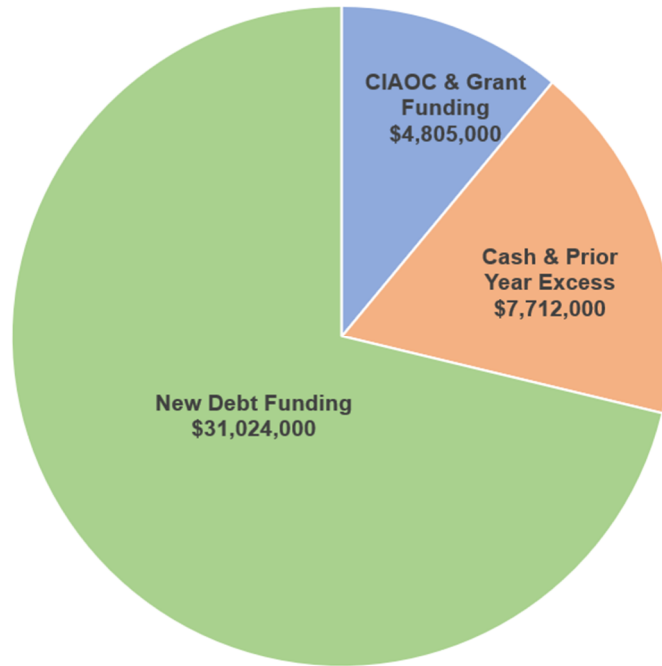
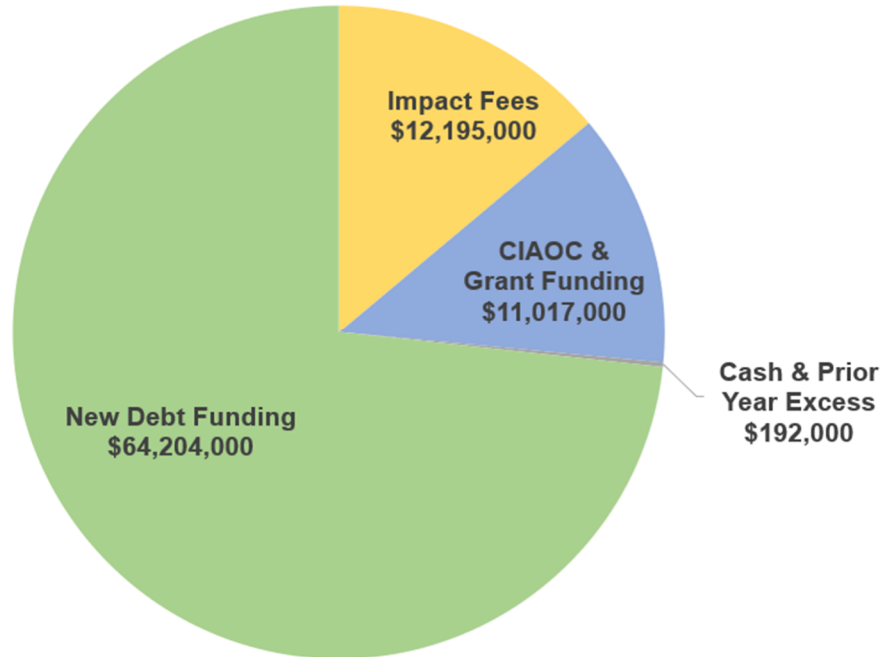
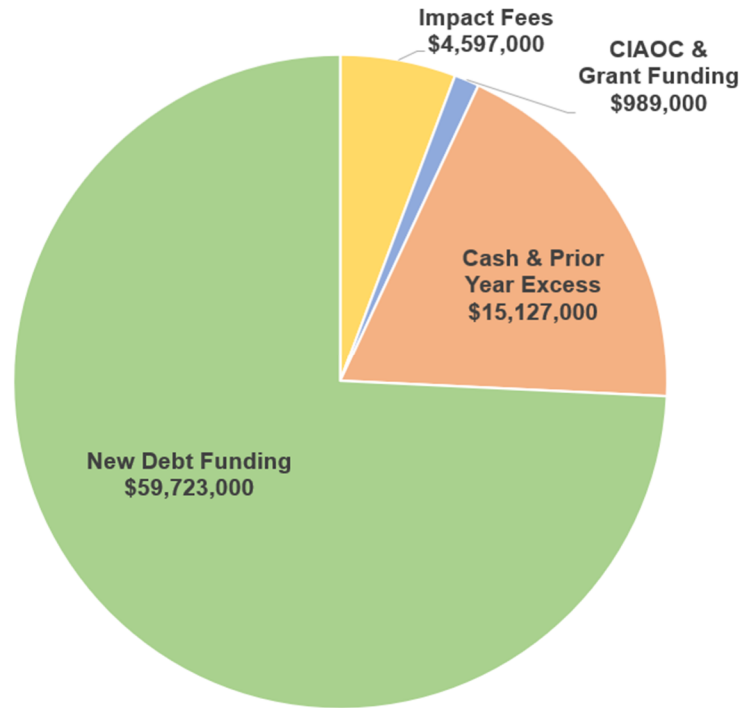


Figure ES-2 Water Capital Funding Sources (FY 2024)



(1) New debt funding consists of both revenue bonds and Texas Water Development Board bonds

Figure ES-3: Wastewater Capital Funding Sources (FY 2024)



Revenue Requirements

FNI first forecasted system revenues by utility. Total Electric Utility sales revenues under existing base rates are forecast to increase from \$169 million in FY 2024 to \$178 million in FY 2027, representing an approximate 1.2% annual growth rate in revenues. Sales revenues from FY 2024 to FY 2027 increase from \$57.4 million to \$90.4 million and \$44.7 million to \$57.4 million for the Water Utility and Wastewater Utility, respectively.

Based on a forecast of revenues under existing rates and revenue requirements for each utility for FY 2024 through FY 2027, FNI recommends a series of rate increases for the utilities. The overall revenue adjustments required to recover the forecasted revenue deficiencies for the utilities are as shown in Table ES-3. The forecasted revenue deficiencies, and subsequent rate adjustments needed, as shown in Table ES-3 are considered the *minimum levels required* to maintain prudent financial operations of NBU, appropriate debt service coverage ratios, and adequate reserve fund levels. The resulting rate adjustments allow the electric utility to transition from entirely debt funding capital projects to an approximate 50/50 debt to cash funding ratio over the next five years that aligns the electric utility with NBU policies and goals and industry best practices.

Table ES-3: Required Revenue Adjustments to Recover Deficits

Utility	FY 2024	FY 2025	FY 2026	FY 2027
Electric	4.8%	5.9%	4.6%	3.8%
Water	9.1%	13.4%	13.6%	11.8%
Wastewater	7.3%	7.3%	7.7%	7.7%

Cost-of-Service

The purpose of a cost-of-service (“COS”) analysis is to allocate revenue requirements to customer classes based upon the costs to serve each class individually. The identification of the proportionate cost responsibility for each class guides the development of fair and equitable rates.

The COS serves to provide a baseline for rate making. However, the COS itself is not the only factor to consider when establishing cost recovery. In addition to COS, alternative factors considered include the following:

- I. Full cost recovery of revenue requirements
- II. Simple and easy to understand rates
- III. Stability of revenue streams
- IV. Appropriate pricing signals
- V. Customer acceptance
- VI. Equitability
- VII. Legally acceptable and defensible

Tables ES-4, ES-5, and ES-6 show the cost-of-service results for the electric, water and wastewater systems, respectively.

Table ES-4: Electric Cost-of-Service Results

Customer Class	Allocated Test Year COS	Test Year Rate Revenues	Revenue Over/(Under)	% Increase of Existing Rate Revenues for Full Cost Recovery
Residential	\$91,775,510	\$78,309,104	(\$13,466,406)	17.2%
Small Business	9,739,917	8,471,099	(1,268,818)	15.0%
Large Business	51,125,637	43,521,515	(7,604,122)	17.5%
Large Power	14,336,047	12,587,396	(1,748,651)	13.9%
Transmission	37,747,765	39,199,588	1,451,823	-3.7%
Lighting ⁽¹⁾	364,728	375,137	10,409	-2.8%
Total	\$205,089,604	\$182,463,839	(\$22,625,765)	12.4%

(1) Includes lighting athletic fields (LAF), area lighting (AL), and highway lighting (HL) classes

Table ES-5: Water Cost-of-Service Results

Customer Class	Allocated Test Year COS	Test Year Rate Revenues	Revenue Over/(Under) Recovery	% Increase of Existing Rate Revenues for Full Cost Recovery
Residential	\$23,664,604	\$16,731,661	(\$6,932,943)	41.4%
Residential Irrigation	7,516,023	8,730,193	1,214,170	-13.9%
Commercial	7,102,474	7,973,137	870,663	-10.9%
Commercial Irrigation	2,372,621	3,428,546	1,055,925	-30.8%
Multi-Unit Residential 2-4	214,798	253,438	38,640	-15.2%
Multi-Unit Residential 5+	1,566,563	2,669,655	1,103,092	-41.3%
Commercial - Re-Use Water	127,980	73,448	(54,532)	74.2%
Other Sales	1,989,754	1,734,996	(254,758)	14.7%
Total	\$44,554,817	\$41,595,075	(\$2,959,742)	7.1%

Table ES-6: Wastewater Cost-of-Service Results

Customer Class	Allocated Test Year COS	Test Year Rate Revenues	Revenue Over/(Under) Recovery	% Increase of Existing Rate Revenues for Full Cost Recovery
Residential	\$23,518,324	\$21,075,553	(\$2,442,771)	11.6%
Commercial	12,162,439	12,497,352	334,913	-2.7%
Multi-Unit Residential 2-4	197,359	196,224	(1,135)	0.6%
Multi-Unit Residential 5+	4,217,293	4,121,666	(95,627)	2.3%
Total	\$40,095,415	\$37,890,795	(\$2,204,620)	5.8%

Recommendations

FNI recommends the following for each Utility to maintain financial strength and stability.

Electric

- Implement two-year rate plan.
 - FY 2024: 4.8% average system rate revenues increase
 - FY 2025: 5.9% average system rate revenues increase
- Move to a balanced 50/50 debt and rate funded capital program to reduce cost of debt and maintain financial strength and stability for NBU.
- Phase in increases over next five years to achieve 50/50 goal ratio (gradualism).
- Implement consistent rate increases across classes (e.g., no customer classes are getting significantly larger rate increases than others).

Water

- Implement two-year rate plan.
 - FY 2024: 9.1% average system rate revenues increase
 - FY 2025: 13.4% average system rate revenues increase
- Remove on-peak/off-peak differential from existing rate structure.
- Split Commercial class into Small General Service (SGS) and Large General Service (LGS)
- Move higher usage customers into the LGS class.
- Modify usage tiers in Residential, SGS, and Irrigation classes to more accurately reflect class usage.
- Create additional tier in Residential class to allow for savings by low-usage customers.

Wastewater

- Implement two-year rate plan.
 - FY 2024: 7.3% average system rate revenues increase
 - FY 2025: 7.3% average system rate revenues increase
- No changes to customer classifications are recommended.

While the proposed rate increases did serve to move the customer classes to more closely align with the results of the COS analysis, FNI did not attempt to match 100% of the COS revenue recovery.

Table ES-7 shows a comparison of bills for an average Residential customer under the proposed rates with those under existing rates. The average monthly bill is for a residential customer using 1,200 kWh of electricity, 6,000 gallons of water and sewer usage of 4,600 gallons.

Table ES-7: Comparison of Average Residential Customer Monthly Water Bill Under Existing and Proposed Rates

	Current	FY 2024	FY 2025
Electric ⁽¹⁾	\$137.12	\$145.63	\$153.93
Year-over-year ("YOY") % Change		6.2%	5.7%
Water	27.56	36.53	38.10
YOY % Change		32.5%	4.3%
Wastewater	57.28	63.30	69.94
YOY % Change		10.5%	10.5%
Total Customer Bill	\$221.96	\$245.46	\$261.97
YOY % Change		10.6%	6.7%

(1) Uses five-year average for PCRA

1.0 INTRODUCTION

In February of 2021, New Braunfels Utilities (“NBU”) engaged Freese and Nichols, Inc. (“FNI”) and subconsultant NewGen Strategies and Solutions, LLC (“NewGen”), to conduct a Cost-of-Service and Rate Design Study (“Study”), including facilitating a Rate Advisory Committee. In total, NBU provides electric, water, and wastewater services to approximately 127,000 customers across those three lines of business. NBU annually reviews its rates as part of its comprehensive budget process; however, on a periodic basis, NBU may request an outside consultant to complete a rate study, including a cost-of-service analysis. NBU most recently analyzed rates as part of a three-year rate plan that was approved by the New Braunfels City Council (“City Council”) in October 2020, with rate design changes in effect from November 2020 to August 2023. The rate plan was in response to essential capital improvements to support the renewal of the existing system and growth in the NBU service territory. NBU’s fiscal year (“FY”) begins each August 1 and ends each July 31 of the following year.

In preparation for the FY 2024 through FY 2025 rate plan, NBU opted to engage a professional to perform a comprehensive cost-of-service analysis and rate design study. Additionally, NBU established a Rate Advisory Committee to provide feedback to NBU and its consultants regarding the proposed FY 2024-2025 rate design.

1.1 SCOPE

The scope of work consists of conducting a comprehensive rate study of the Water, Wastewater, and Electric Utilities (“Utilities”) and includes a financial projection of the utilities for the four-year period from FY 2024 through FY 2027, a cost-of-service analysis, and rate recommendations for each utility. Key components of the study include:

- I. Forecast each utility and total NBU revenues and revenue requirements for FY 2024 – FY 2027 to determine the overall adequacy of existing rates to support each utility’s operating and capital needs while maintaining prudent cash reserves over the four-year period.
- II. Prepare a class cost-of-service analysis for each utility to identify appropriate revenue levels for each class of service.
- III. Recommend revised rates and rate schedules that reflect cost-of-service considerations and practical rate implementation constraints.

- IV. Upon completion of the FY 2024 budgeting process, update the models to determine the revenue requirement needs to support each utility system through the newly budgeted four-year time period.
- V. Provide information and conduct presentations to facilitate discussions about rate design with NBU staff, the Rate Advisory Committee, and NBU Board of Trustees.

1.2 PURPOSE OF STUDY

The purpose of this study is to evaluate the adequacy of NBU's existing rate charges for utility service and to recommend fair and equitable adjustments to the rates, if deemed necessary. A utility rate study is designed to encompass three principal steps, each intended to answer questions typically asked by the utility's Board, City Council, and executive leadership. These steps are as follows:

- I. Revenue Requirements – How much revenue does the utility need to meet forecasted costs?
- II. Cost-of-Service – What is each customer class's equitable share of the utility revenue?
- III. Rate Design – How should rates be adjusted to reflect cost-of-service and remain sensitive to customer rate impacts?

NBU's overarching goal to keep each utility self-supported (i.e., no inter-utility subsidies) and maintain appropriate reserve funds was incorporated into each of these steps.

1.3 REVENUE/REVENUE REQUIREMENTS

FNI uses the cash basis approach of determining revenue requirements for municipal utilities as a guide in recommending overall rate adjustments. The cash basis approach is an accepted industry method for municipal utility rate and bond financing studies and is used by NBU to forecast financial operations. For purposes of this study, FNI used budgeted information and the latest "known and measurable" data to project NBU's future revenues and expenses. FNI utilized FY 2024 as the first year of projections, which is known as the "Test Year". FNI based the rest of its projections from the Test Year, once established.

Operation and Maintenance ("O&M") expenses in the forecast period are based on the FY 2024 budget. O&M expenses are escalated annually for labor and benefit categories and non-labor

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related expenses. Specific cost components, including Purchased Power and Purchased Water are calculated separately based on the projection of future needs, and input from NBU staff. The Capital Improvement Plan (“CIP”) is based on the FY 2024 budgets for the utilities and reflects the largest component of the annual revenue requirements. The CIP is funded through various sources, including budgeted cash funding, debt funding, grant funding, impact fees, and developer contributions.

Table 1-1 summarizes the cost of capital projects for each utility through the next four years. Tables 1-2, 1-3, and 1-4 show the sources of capital funding for the Electric, Water, and Wastewater Utilities, respectively. The tables demonstrate the heavy reliance on new debt funding to meet capital expenditure needs.

Table 1-1: Capital Projects Expenditures

Description	FY 2024	FY 2025	FY 2026	FY 2027
Electric	\$43,452,000	\$50,703,000	\$57,017,000	\$40,601,000
Water	87,607,376	53,394,845	61,254,363	81,252,001
Wastewater	80,437,090	129,474,155	109,703,320	34,021,828
Total Capital Projects	\$211,496,466	\$233,572,000	\$227,974,683	\$155,874,829

Note: Totals may differ due to rounding

Table 1-2: Electric Capital Funding Sources

Description	FY 2024	FY 2025	FY 2026	FY 2027
CIAOC & Grant Funding	\$4,805,000	\$6,226,000	\$5,367,000	\$6,900,000
Cash & Prior Year Excess	7,712,000	12,885,000	15,758,000	16,558,000
New Debt Funded	31,024,000	31,593,000	35,892,000	17,144,000
Electric Total Funding Sources	\$43,541,000	\$50,704,000	\$57,017,000	\$40,602,000

Note: Totals may differ due to rounding

Table 1-3: Water Capital Funding Sources

Description	FY 2024	FY 2025	FY 2026	FY 2027
Impact Fees	\$12,195,000	\$16,535,000	\$22,850,000	\$21,925,000
CIAOC & Grant Funding	11,017,000	1,418,000	993,000	2,410,000
Cash & Prior Year Excess	192,000	2,039,000	2,729,000	824,000
New Debt Funded	64,204,000	33,403,000	34,683,000	56,093,000
Water Total Funding Sources	\$87,608,000	\$53,395,000	\$61,255,000	\$81,252,000

Note: Totals may differ due to rounding

Table 1-4: Wastewater Capital Funding Sources

Description	FY 2024	FY 2025	FY 2026	FY 2027
Impact Fees	\$4,597,000	\$6,730,000	\$8,070,000	\$3,692,000
CIAOC & Grant Funding	989,000	37,802,000	22,705,000	4,547,000
Cash & Prior Year Excess	15,127,000	13,827,000	9,752,000	7,306,000
New Debt Funded	59,723,000	71,115,000	69,176,000	18,477,000
Wastewater Total Funding Sources	\$80,436,000	\$129,474,000	\$109,703,000	\$34,022,000

Note: Totals may differ due to rounding

After NBU has paid all O&M expenses and debt service, NBU makes an annual discretionary transfer of revenue to the City. The transfer is based upon a percentage of a rolling three-year average of electric, water, and wastewater operating revenues. The rolling three years is comprised of the previous two fiscal year revenues and an estimated revenue from the current fiscal year.

NBU maintains an operating reserve fund with appropriate reserve levels to maintain liquidity and prepare for system volatility, outside of significant volatility in the Electric Reliability Council of Texas (“ERCOT”) energy market. This volatility includes items such as typical variations in fuel costs, seasonality of revenues, under collection of projected revenues, and unexpected expenses or capital needs. The operating reserve fund is targeted at 120 days of O&M expenses. In addition to the operating reserve fund, NBU has identified a need for and created a Power Stabilization Fund (“PSF”), which is a separate reserve account to address significant volatility in the ERCOT energy market, extreme weather or market events, and the ability to mitigate dramatic increases in generation cost recovery rates. At the present time, NBU projects to fully fund the PSF within a six-year period.

1.4 FORECAST DEFICITS UNDER EXISTING RATES

Annual revenue deficits under the existing rate plan will begin to erode NBU’s reserve fund balances and lessen its ability to complete its CIP, as shown in Table 1-5. Under the currently effective rates, a negative cumulative fund balance is forecasted beginning in FY 2024 and increases to a \$29.4 million deficit in FY 2027 for the electric system, \$47.7 million for the water system, and \$16.8 million for the wastewater system. The main driver behind the negative balances for the NBU utility system is the CIP.

Table 1-5: Annual Revenue Deficits by Utility

Utility	FY 2024	FY 2025	FY 2026	FY 2027
Electric Utility	(\$3,438,573)	(\$6,732,699)	(\$7,925,946)	(\$11,344,141)
Water Utility	(2,959,742)	(10,821,575)	(14,948,313)	(19,000,384)
Wastewater Utility	(\$2,204,620)	(\$3,583,472)	(\$4,262,850)	(\$6,719,513)

1.5 COST-OF-SERVICE AND RATE DESIGN

The purpose of the cost-of-service (“COS”) analysis is to allocate Test Year revenue requirements to customer classes based upon the costs to serve each class individually. This process provides a measure of the proportionate share of cost responsibility for each class and provides a guide for developing fair and equitable rates. The Test Year revenue requirements reflect all costs required to address operations, maintenance, and capital needs of the utilities. The COS and rate design process includes five major steps. The steps are as follows:

- I. **Determination of the Revenue Requirement** – This first step examines the utility’s financial needs and determines the amount of revenue that must be generated from rates. For municipal utilities, the revenue requirement is determined on a “cash basis” approach. A “cash basis” analysis examines the cash obligations of the utility such as O&M expenses, debt service, cash-funded capital projects, and City Transfers. Rates are set such that the utility can pay its bills on an annual basis going forward.
- II. **Functionalization and Sub-Functionalization of Costs** – The revenue requirement is then assigned to the function or sub-function of the utility. These functions will vary depending on the type of utility. Electric utilities like NBU, typically have power supply, transmission, distribution, and customer services functions. The power supply sub-function includes purchased power from contracts or the ERCOT market. Distribution sub-

functions may include billing and collections, customer service, and meter reading. Water utility functions include source of water supply, pump stations, water treatment, transmission and distribution, and fire protection. Wastewater utility functions include lift stations, wastewater treatment, and collection systems. Water and Wastewater utilities often include customer services functions as well.

- III. **Classification of Costs** – Once costs are functionalized, costs are then classified based on their underlying nature. The determination of fixed versus variable costs is of particular importance when classifying costs. Fixed costs remain a financial obligation of the utility regardless of the amount of energy used, water sold, or wastewater treated. Variable costs fluctuate based on system requirements. Further, fixed and variable costs are associated with utility requirements to meet customer demand and customer service needs.
- IV. **Allocation of Costs** – Once costs are classified, costs are allocated to the various customer classes. Allocation factors align with cost classification. Therefore, demand-related costs are allocated on measures of class demand, such as class contribution to the system coincident peak (“CP”), which is when the utility’s system-wide customer demand is the highest. Allocation factors are based on energy or water consumed by customers. Customer allocation factors are based on the number of customers.
- V. **Rate Design** – The final step is rates design, which translates COS results into rates for each customer class.

2.0 RATE ADVISORY COMMITTEE

In October 2021, the NBU Board directed its staff to assemble a Rate Advisory Committee (“RAC”) to review NBU’s rate structure and provide feedback to the Board for the 2022-2023 COS and Rate Design Study.

2.1 PURPOSE, BASIS AND ROLE

Members of the RAC used the 2022-2023 COS and Rate Design Study to understand the utility business, understand and provide insights, perspectives, and feedback to NBU Management and Board of Trustees about the rate design for water, wastewater, and electricity utility services. The RAC worked with NBU staff, FNI, and NewGen to develop the RAC’s feedback regarding the rate design.

The RAC feedback and insights focused on NBU’s rate structures, cost recovery from customers, and integration of community values while considering industry standards and NBU’s financial health and stability. FNI and NewGen presented information to NBU staff and the RAC about the process of rate development, including traditional rate setting issues, methodologies, and rate strategies being used throughout the utility industry.

The role of the RAC was to review, discuss, and analyze rate design alternatives with FNI, NewGen, and NBU staff. Each RAC member represented a constituency and facilitated the flow of ideas and concerns from the community to NBU staff and the Board of Trustees.

2.2 MEMBERSHIP

Members of the RAC reflected a balanced representation of the NBU service area. RAC members were selected from throughout the service territories. The NBU Board of Trustees appointed 18 RAC members. Of the 18 members, City Council nominated seven members and NBU nominated 11 members. The RAC membership included members from the following segments of the community:

- I. City council districts within the NBU service area
- II. Healthcare, recreational/seasonal/tourism, manufacturing, large retail, small business, school district, non-profit/affordable housing, developer/builder, and multifamily residential

To qualify, members were:

- I. Nominated by a member of City Council
- II. A customer, property owner or business owner, and/or representative in one of NBU’s service territories
- III. Representatives of business or civic organizations located within NBU’s service territories

Table 2-1 shows the RAC nominees by City Council and the NBU Board.

Table 2-1: RAC Members

CITY COUNCIL NOMINATIONS	
Mayor Rusty Brockman	District 4 - Lawrence Spradley
Dr. Les Shephard	Dr. Michael Patrick Harrington
District 1 - Shane Hines	District 5 - Jason Hurta
Stuart Blythin	Bobby Avary
District 2 - Justin Meadows	District 6 - James Blakey
Justin Meadows	Stuart Hansmann
District 3 - Harry Bowers	
Mark Hampton	
NBU BOARD NOMINATIONS	
Industrial	School District
Jimmy Rabon Cemex	Dr. Cade Smith New Braunfels Independent School District
Healthcare	Non-Profit
David Glazener Christus Santa Rosa	Jonathan Packer Greater New Braunfels Chamber of Commerce
Recreational/Seasonal/Tourism	Non-Profit
Darren Hill Schlitterbahn	Alice Jewell McKenna Foundation
Manufacturing	Develop/Builder
Alan Luke CGT	Chip Mills SouthStar Communities
Large Retail	Multifamily Residential
Chris Snider Texas Tito’s	Kate Gideon The Augusta at Gruene
Small Business	
Ian Perez Raba Kistner	

2.3 RAC MEETINGS

Since its conception, the RAC has held nine public meetings and a public rates forum. During these meetings, the RAC discussed an overview of NBU's water, wastewater, and electric systems; NBU's revenues, revenue requirements, and projected operating results for the water, wastewater, and electric utilities; NBU capital project funding; the electric energy market and ERCOT; NBU bond ratings and target ratios; cost-of-service results for the water, wastewater, and electric utilities; and recommended rate structures for the water, wastewater, and electric utilities.

2.4 RAC SUBCOMMITTEES

The RAC identified seven key policy areas integral to the rate design process as a basis for making its recommendations to NBU staff and the NBU Board. The RAC formed a subcommittee for each policy area. Each subcommittee was tasked with reaching out to and meeting with specific customer segments in the community to gain public feedback regarding its respective policy area. The seven key policy areas are as follows:

- I. Low/Fixed Income Customers
- II. Equity and Fairness in Rate Making
- III. Conservation and Renewables
- IV. Revenue Sufficiency
- V. Accommodating Growth
- VI. Utility Financial Stability and Strength
- VII. Simple to Understand and Easy to Implement

Each subcommittee provided recommendations to NBU staff, FNI, and NewGen based on the concerns of their representative customers. NBU was able to incorporate many of the recommendations outlined below into the proposed rate designs. Recommendations unable to be incorporated in this rate plan will be evaluated in the future.

2.5 LOW/FIXED INCOME CUSTOMERS

2.5.1 Subcommittee Recommendations

- I. The cost of NBU services should be equitably assessed across customer classes.

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- II. Deposits, fees, and penalties should be reflective of the true cost of the activity or service. However, NBU should consider the financial strain on low/fixed income customers, which are disproportionately impacted by deposits/fees/penalties and benchmark to other community-owned utilities.
- III. NBU internal programs and external support of nonprofits should model the value of helping neighbors.
- IV. Levels of NBU financial support of low and fixed-income customers should increase proportionately as rates increase.

2.5.2 Implementation

- I. Costs were assessed by customer class and any revenue requirements needed were allocated appropriately.
- II. New low water tier was created to help customers control costs.
- III. NBU has increased contribution to the Utility Bill Assistance Program for its upcoming five-year operating plan (FY 2024-FY 2028) by approximately 5.3% per year, compared to projected bill increases of approximately 5.3% on average.

2.5.3 Future Consideration

- I. Review of fees as they relate to scaling based on income level
- II. Additional support of nonprofits

2.6 EQUITY AND FAIRNESS IN RATE MAKING

2.6.1 Subcommittee Recommendations

- I. Rates may not always align with cost-of-service results.
- II. Consider sub-classes to recognize unique challenges.
- III. Cross-subsidization between classes should prioritize and encourage sustainable practices and conservation.
- IV. Gradualism should be implemented through a transparent process that includes community perspective.
- V. Consider forming a Community Advisory Board (“CAB”) to enrich community input and vet issues.

2.6.2 Implementation

- I. NBU moved toward establishing rates that would match the customer classes with the results of the cost-of-service through the use of gradualism. However, they were also very cognizant of any undue burdens that might be placed on individual customer classes. This move was discussed openly at the public RAC meetings.
- II. NBU split up the Commercial water customers and moved the larger usage customers to the Large Commercial class. This was done to keep from penalizing those customers using water primarily in the course of their business, and not as discretionary usage (i.e., hospitals).
- III. Per the RAC's recommendation, NBU has strengthened its conservation pricing signals through the water rates and tier structures to encourage sustainable practices.

2.6.3 Future Consideration

- I. NBU's Board will continue to consider forming community advisory boards to vet important issues that directly impact their community through utility practices.

2.7 CONSERVATION AND RENEWABLES

2.7.1 Subcommittee Recommendations

- I. Promote the adoption of Distributed Energy Resources ("DER") by removing barriers to entry and improving communication and customer experience.
- II. Target 50% renewable energy.
- III. Monitor electric vehicle adoption and plan for future rate options.
- IV. Consider variable, tiered and/or time-based rates.
- V. Revise essential use volume and strengthen water conservation pricing signals by increasing irrigation rates and fines.
- VI. Establish a clear position on these issues that align with the customer base and educate the public.

2.7.2 Implementation

- I. NBU has revised the essential use water tier, as well as other tiers, for both residential and irrigation use in order to strengthen conservation pricing signals.
- II. NBU is working with solar installers and incorporating best practices, to improve the customer experience for rooftop solar and other DER installations.
- III. NBU will conduct a study of potential impacts under a variety of electric vehicle adoption scenarios.

2.7.3 Future Consideration

- I. In FY 2024, NBU will update its power supply Integrated Resource Plan, which will utilize community input to evaluate affordability, volatility mitigation, sharing of renewables, time of use rates as a resource, strategies for DER (solar, battery storage, microgrids, electric vehicles, etc.) and related topics and strategies.
- II. In FY 2024, NBU will develop a Distributed Energy Roadmap, which will provide comprehensive program designs that will help NBU achieve their targets and provide best practice programs, pricing signals, incentives, educational materials, and resources to customers.
- III. NBU will be reviewing and providing recommended adjustments to the City of New Braunfels Drought Ordinance to include fines or surcharges for violation of watering restriction rules.

2.8 REVENUE SUFFICIENCY

2.8.1 Subcommittee Recommendations

- I. Consider internal and external economic headwinds and how an increase in rates will impact the community at large.
- II. Pursue operational efficiencies and evaluate the proper level of reserves.
- III. Consider all expenses/fees related to development.

2.8.2 Implementation

- I. The new rate design is within the “mid-range” category of the Fitch affordability benchmark and in the “strongest” category for fixed base charge recovery.

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- II. With respect to operating efficiently and controlling revenue requirements, NBU's recent nationwide workforce study showed that NBU is currently operating very lean with a 31% shortfall in full time employees.
- III. NBU is in the process of evaluating all fees across the company to ensure they are covering costs. The Water and Wastewater fee review is complete. Over the next 12 months, the remainder of the fees will be evaluated and placed on a review schedule to be approved by the Board of Trustees annually with the budget.
- IV. Prior to the study, electric capital was being funded 100% with debt. The proposed design incorporates a portion to be funded by cash, which will be in alignment with NBU's Board approved financial policy and rating agency expectations.

2.8.3 Future Consideration

- I. When looking at the policy area of Revenue Sufficiency, no future considerations were identified by the RAC.

2.9 ACCOMMODATING GROWTH

2.9.1 Subcommittee Recommendations

- I. NBU needs to be a partner with the development community.
- II. NBU needs to maintain staffing levels sufficient to keep pace with growth and consistently meet published review timelines, utility availability requests and other items required for developers to complete projects.
- III. Growth costs should be shared between growth customers and existing customers.
- IV. NBU should not subsidize utility rates for economic development.

2.9.2 Implementation

- I. NBU's Board of Trustees and the City Council have voted to assess the maximum allowable water and wastewater impact fee allowed by the Local Government Code Ch. 395, which governs the impact fee process for the state of Texas.
- II. NBU does not have an economic development rate subsidization, but relies on the City Council, through the New Braunfels Economic Development Corporation ("EDC"), to provide incentives.

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- III. NBU is an active participant in the Chamber of Commerce, the New Braunfels Economic Development Foundation (“EDCF”) and the Economic Advisory Committee and helped create the community’s current Economic Development Strategic Plan.

2.9.3 Future Consideration

- I. Over the next two months, NBU staff will be working with the Board of Trustees to establish Key Performance Indicators (“KPI”) and corresponding Levels of Service across the organization to include development related processes (review time, etc.) and provide proper resources to meet those KPIs through the budget, which will be incorporated in the final rate design.

2.10 UTILITY FINANCIAL STABILITY & STRENGTH

2.10.1 Subcommittee Recommendations

- I. A significant reserve is necessary, and beneficial to the community, and should be well defined in policy.
- II. Reserve amounts need to consider the balance of the community needs and NBU’s financial stability and should have a well-defined policy surrounding it.
- III. Consider funding reserve amounts in the non-peak energy season when rates should be lower to minimize additional burdens placed on the ratepayers. By funding the reserves in the non-peak energy season, the customer bills will be closer to what their bills would be in the peak energy season, and they would experience less bill variability throughout the year.

2.10.2 Implementation

- I. NBU has reserves in place that are established, used and refilled in accordance with credit rating criteria, NBU Board of Trustees policies and NBU’s Enterprise Risk Management requirements.
- II. NBU’s Power Stabilization Fund is being evaluated, using a risk-based analysis, by a third party to inform the proper target fund balances. The analysis will consider the past performance of the ERCOT market and will also contemplate changes

currently being made by the Public Utility Commission of Texas and the Texas Legislature. This work will be complete in time for the final rate design in April 2023.

2.10.3 Future Consideration

- I. NBU is evaluating the impact of delaying reserve collections during non-peak energy seasons in the development of its FY 2024 budget.

2.11 SIMPLE TO UNDERSTAND AND EASY TO IMPLEMENT

2.11.1 Subcommittee Recommendations

The bill should have the following characteristics:

- I. Detailed and easy to understand, graphically pleasing, concise, and comprehensive
- II. Transparent (definition of rates and terms)
- III. Searchable – by customer, if interested
- IV. Multi-platform (dimensionality)
- V. Proactive (crisis communications)

2.11.2 Implementation

- I. NBU revised its bill design in November 2022 to eliminate confusion that incorporated many of these recommendations.
- II. NBU eliminated the On-Peak/Off-Peak water rate differential with the rate design recommendations. The analysis showed that peak rates were not having an impact on water conservation but were creating unneeded complexity.
- III. NBU now has a Rate Breakdown page on its website and is forecasting and communicating electric rates on a quarterly basis across multiple platforms.
- IV. NBU is in the process of upgrading its customer interface in FY 2024, which will improve its functionality to include searchability and multi-platform, including a mobile app.

2.11.3 Future Consideration

- I. There are a number of other bill design recommendations that NBU will be working to incorporate.
- II. NBU will continue to evaluate communication effectiveness.

3.0 ELECTRIC UTILITY

In March of 2022, NewGen was retained to perform an Electric COS and Rate Design Study (“Electric Study”) for NBU as a subconsultant to FNI. As part of the Electric Study, NewGen’s Project Team was requested to forecast revenue requirements and rates from FY 2024 through FY 2027 (Study Period). NBU’s fiscal year runs from August 1 through July 31. All data contained in this report represents the NBU fiscal year unless otherwise stated. This report describes the COS analysis performed for the Electric Utility and recommends rates charged to the electric customers.

The analysis performed by NewGen was designed to consider the foreseeable, known, and measurable adjustments during the Study Period. The goal was to construct a financial planning tool for NBU to gain an understanding of the key issues and required rate, debt, and capital decisions facing the Electric Utility over the Study Period. A critical benefit of the financial planning tool is quantifying the impacts of decisions being made today regarding debt issuances and rate changes required in the future. As with any forecast, assumptions were made and NBU should note that the actual expenses and revenues generated each year may differ from the projected expenses and revenues outlined in this report due to unforeseen changes, such as system growth and inflation.

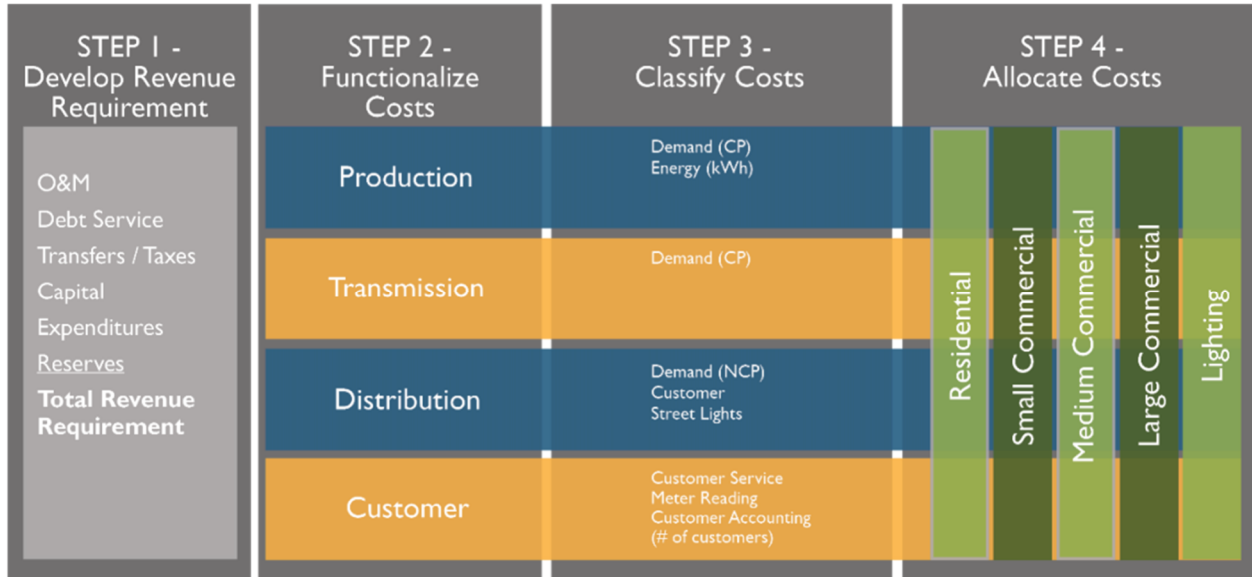
The Electric Utility served an average of 52,000 retail electric customers with a system peak of 336 megawatts (“MW”) in 2022. The service area is approximately 160 square miles with 625 miles of overhead distribution and 406 miles of underground distribution. The transmission system has 11 substations. During FY 2022, NBU purchased approximately 1,825,000 megawatt-hours (“MWh”) of electricity to deliver to retail customers.

NBU is primarily an energy delivery utility purchasing essentially all power supply services from the ERCOT energy and transmission market. NBU then passes these power supply purchases and transmission costs to its customers without any additional costs or margin.

NBU anticipates spending approximately \$225 million for capital improvements over the next five years for the electric system, as detailed in the FY 2024 Electric System Budget. These capital expenditures include additional substations and system extensions for system growth, aging infrastructure replacements, and allocated support services such as the new NBU headquarters building. Capital expenditures will be primarily funded from rate revenues, customer contributions, and long-term debt.

Four key steps were followed during the Electric Utility COS process and are depicted in Figure 3-1. The subsequent sections provide details on each step of the process.

Figure 3-1: Typical Cost-of-Service Process



3.1 REVENUE REQUIREMENTS

Developing the Test Year Revenue Requirement is the first step in the COS and rate design process, as shown in Figure 3-1. The Test Year Revenue Requirement for the Electric Utility was based on the average expenses for the FY 2024 – FY 2027 Study Period with adjustments for unusual or one-time expenses, the CIP, existing debt amortization schedules, projected debt issuances, and forecasted escalation assumptions and factors. NewGen developed a five-year financial forecast for the Study Period. The average revenue requirement for the five-year Study Period was used as the Test Year Revenue Requirement and represented all costs that must be recovered through the Electric Utility’s rates. The Test Year Revenue Requirement serves as a basis for determining the overall level of revenue recovery and provides a foundation for the COS analysis.

3.1.1 Financial Forecast

The financial forecast includes projections of revenues, expenses, capital spending, debt service, and changes in reserves over the four-year Study Period (FY 2024–FY 2027). To develop the financial forecast, NewGen utilized NBU’s five-year forecast, load forecast documents, records of operation, customer billing data, FY 2022 audited financials, and other detailed information and

data compiled and provided by NBU's management and staff. NBU provided the FY 2021 and year to date ("YTD") FY 2022 detailed expenses by their audited chart of accounts which were used to provide a detailed cost center and account level detail based on the NBU summary level financial forecast. NewGen provided this detailed account level forecast for the five-year period which reconciles with the NBU summary forecast. This was then used to develop a Test Year Revenue Requirement which is used throughout the COS.

3.1.2 Projected Energy Requirements

The Electric Utility's forecasted electric consumption is a key driver in projections of expenses and revenues. The load forecast was provided by NBU staff and came from the FY 2024 Master Budget. The forecasted retail electric consumption predicts an average energy growth rate of approximately 4% per year over the Study Period. The projected growth is higher in the first two years of the forecast at 5% to 6.5% per year, then declines to 3% in the later years. The average or Test Year retail sales were 1.9 million MWh.

3.1.3 Operations and Maintenance Expenses

The first step in developing the revenue requirement forecast was the creation of the base year O&M expenses. NBU's historical data provides Electric Utility O&M expenses based on five electric operations and maintenance categories. These categories include purchased power, engineering, distribution, substations, and administrative and general. The FY 2022 and FY 2023 YTD expenses provided further detailed O&M expense accounts within each of the categories. In discussions with NBU staff, NewGen proportionally allocated the detailed accounts within the projected base year in the financial forecast for financial projections. The FY 2022 actual data provided the level of account detail needed to properly allocate O&M expenses. This improves the ability to evaluate specific account impacts and cost drivers for the total operations expense and revenue requirement. Furthermore, allocated detailed accounts used to create the Test Year data align with NBU's electric operations forecast.

Based on the FY 2022 YTD expenses and projected year-end totals from NBU, NewGen forecasted the O&M costs for the Study Period. These forecast O&M expenses in addition to the projected other expenses/revenues (including interest income, capital contributions, miscellaneous revenues, and sales to other utilities), CIP, debt service projections, and City Transfer supported the development of the Test Year Revenue Requirement. The Test Year

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Revenue Requirement for the Study Period includes all costs required to operate the utility and ensure financial stability.

3.1.3.1. O&M Forecast Account Detail

Table 3-1 below summarizes the five forecasted electric O&M categories included in the O&M expenses. The average five-year O&M expenses were used in the Test Year Revenue Requirement.

Table 3-1: Forecasted Electric O&M Categories

	FY 2024	FY 2025	FY 2026	FY 2027	Average Five-Year
Purchased Power	\$136,116,216	\$152,408,632	\$149,056,823	\$151,158,285	\$148,757,862
Engineering	1,088,853	1,329,870	1,582,186	1,815,394	1,522,971
Distribution	7,923,254	9,257,628	10,412,588	11,354,208	10,298,493
Substations	1,720,845	2,117,021	2,568,135	454,132	1,473,411
Administrative & General	11,959,611	11,706,000	13,434,000	15,143,000	13,824,122
Total	\$158,808,779	\$176,819,151	\$177,053,732	\$179,925,019	\$175,876,859

3.1.3.2. Power Supply Expenses

Power supply expenses are the largest portion of the total O&M expenses and are associated with market purchases, purchased power agreements, and spot market purchases to balance NBU's need to meet load. Additional power supply expenses include contributions to the power stabilization reserve fund and administration directly associated with purchased power management. Table 3-2 summarizes the total purchased power expenses. Because NBU cannot control those costs outside of its hedging program, it formed a power stabilization fund to prepare for and mitigate volatility and large costs impacts of the ERCOT market. These costs were based on the data available to NewGen and/or projections of historical costs of the contract(s).

Table 3-2: Purchased Power Detailed Costs

	FY 2024	FY 2025	FY 2026	FY 2027	Average Five-Year
Purchased Power					
LCRA Transmission	\$25,674,908	\$28,117,236	\$24,637,445	\$25,341,801	\$24,954,879
GBRA energy	213,599	213,599	250,561	257,725	229,817
ERCOT	1,218,142	1,284,604	1,422,757	1,463,432	1,320,362
Waste Management	1,707,996	1,736,904	2,024,538	2,082,417	1,855,548
Generation	105,581,267	99,856,057	105,232,462	108,240,936	101,723,924
ERCOT Uplift/Misc. Charges	36,000	36,000	37,116	38,267	36,677
QSE Fees	210,000	210,000	214,410	218,913	215,065
Subtotal	134,641,912	131,454,400	133,819,289	137,643,491	130,336,272
Power Supply					
Power Stabilization	15,000,000	15,000,000	15,000,000	15,000,000	16,000,000
Administration	2,766,720	2,602,422	2,338,996	2,405,865	2,421,592
Subtotal	17,766,720	17,602,422	17,338,996	17,405,865	18,421,592
Total	\$152,408,632	\$149,056,822	\$151,158,285	\$155,049,356	\$148,757,864

3.1.3.3. Non-Power Supply Expenses

Non-power supply expense accounts, including engineering, distribution, substations, and administration, were projected according to the electric operations FY 2024 Master Budget.

3.1.3.4. Transfer to the City General Fund (“City Transfer”)

As detailed in the FY 2022 Comprehensive Annual Financial Report, the City Transfer is an intergovernmental expense authorized, and approved annually, by the Board to transfer payments from NBU to the City’s General Fund:

“The calculation is based on a rolling three-year average of electric, water, and sewer operating revenues. The formula percentage is 7.45% for electric, 4.35% for water, and 4.35% for wastewater. The amount is limited to income before extraordinary items less bond principal and any future bond reserve or contingency requirements. These monies can be transferred only if such funds are available after meeting the needs of properly operating and maintaining the system and

*fulfilling all bonded debt requirements.” - FY 2022 NBU Comprehensive Annual
Financial Report*

Note that revenue from purchased power and purchased water is excluded. The City Transfer for the Test Year is \$9,499,107 which is an average of the five-year Study Period.

3.1.3.5. Debt Service

The debt service represents existing and projected debt service. The existing debt service within the Study Period and Test Year Revenue Requirement includes the Series 2004 Capital Appreciation Bond, Series 2015 Revenue Bond, Series 2016 Revenue and Refunding Bond, Series 2018 Revenue Bond, Series 2020 Revenue Refunding Bond, Series 2021 Revenue Refunding Bond, Series 2022 Revenue Refunding Bonds, and Series 2022A Revenue Bonds amortization schedules as provided by NBU.

NewGen revised NBU's originally projected debt service and debt issuances associated with the Electric Utility based on the revised and refined customer contributions to capital. The electric CIP is fully debt funded over the five-year period, and minimal so no CIP is funded from rate revenues or cash. New debt service includes projected bond issuances totaling \$158 million over the five-year Study Period. Table 3-3 summarizes the projected debt service by year for the Electric Utility.

Table 3-3: Electric Debt Service

	FY 2024	FY 2025	FY 2026	FY 2027	Five-Year Average ⁽¹⁾
Existing	\$3,601,854	\$3,559,390	\$3,546,591	\$3,534,307	\$4,288,688
Future	2,113,878	4,266,389	6,711,879	7,879,912	4,194,412
Total	\$5,715,732	\$7,825,779	\$10,258,470	\$11,414,219	\$8,483,100

(1) includes FY 2023 in five-year average (\$7,201,301 existing, \$0 new)

3.1.3.6. Other Income and Expenses

Other income and expenses represent miscellaneous non-operating revenues or expenses and net to provide \$8.0 million (non-rate revenues) in the Test Year. This category includes uncollectible customer accounts, interest income, transmission lease agreements, and miscellaneous revenues (e.g., late fees, connection fees, leased property). These net revenues of \$8.0 million reduce the overall Test Year Revenue Requirement. There is also a need to marginally increase the cash reserves to account for increasing operating costs; thus, there is \$2,872,125 in contribution to reserve expenses in the Test Year Revenue Requirement.

3.1.4 Total Electric Revenue Requirements

There are two primary revenue requirement methodologies employed in the utility industry: the cash basis and the utility basis. The primary differences between the cash basis and the utility basis involve the treatment of depreciation, return on invested capital, and debt service. The cash basis, which is the most common method used by municipalities, includes debt service but excludes depreciation and return on invested capital in the revenue requirement determination. The cash basis focuses on meeting the cash demands of the utility. The utility basis, most commonly used by private or for-profit utilities, includes depreciation and return on invested capital, but excludes debt service from the revenue requirement determination.

In this COS analysis, the Project Team utilized the cash basis as it follows the traditional cash-oriented budgeting practices frequently used by government entities. In addition, the cash basis is generally easier to explain to customers since it attempts to match revenue and expenditures.

NewGen developed the Test Year Revenue Requirement for the five-year Study Period including all costs required to operate the utility and ensure financial stability for the Electric Utility. The revenue requirement for each year of the Study Period is shown below. The Test Year Revenue Requirement of \$205,089,604 is the annual revenue requirement and is shown in Table 3-4. Please note, NewGen made a known and measurable adjustment to increase the capital paid from current earnings or capital funded from cash from \$0 in the NBU financial forecast to an average of \$4.2 million per year in the Test Year Revenue Requirement. This reflects the target of 50% of electric-specific capital projects funded by cash by the end of the five-year Study Period. The current rates do not adequately recover the total operating and capital costs by approximately \$21.6 million per year.

Table 3-4: Test Year Electric Revenue Requirement ⁽¹⁾

	FY 2024	FY 2025	FY 2026	FY 2027	Five-Year Average ⁽¹⁾
O&M Expenses ⁽²⁾	\$176,819,151	\$177,053,732	\$179,925,020	\$186,777,614	\$175,883,697
City Transfer	9,475,184	9,435,080	9,771,214	10,019,624	9,499,107
Debt Service ⁽³⁾	5,715,732	7,825,779	10,258,470	11,414,219	8,483,100
Capital Paid from Current Earnings	14,939,275	14,939,275	14,939,275	14,939,275	14,939,275
Contribution to (from) Reserves ⁽⁴⁾	3,424,000	3,485,000	3,623,000	3,765,000	2,872,125
Other Expenses/(Income) ⁽⁵⁾	(7,473,941)	(8,053,853)	(8,716,672)	-7,816,672	(7,636,303)
Revenue Requirement	\$202,899,400	\$204,685,013	\$209,800,307	\$219,099,059	\$205,089,604
Test Year Projected Revenues ⁽⁶⁾					\$182,463,840
Over (Under) Recovery of Costs					(\$22,625,764)
Over (Under) Recovery of Costs					-12.4%

(1) Note the total amounts shown in the table may not properly add as shown due to rounding

(2) includes FY 2023 in five-year average

(3) O&M Expenses exclude non-cash related items such as depreciation.

(4) Debt service reflects the annual total principal and interest payments associated with current and expected new debt financing.

(5) No contributions from cash reserves were used to reduce the revenue requirement.

(6) Other Expenses (Income) include interest income, capital contributions, miscellaneous revenues, and sales to other utilities.

(7) Test Year Projected Revenues vary each year as kilowatt-hour (kWh) sales vary.

3.2 COST-OF-SERVICE

Developing the Test Year Revenue Requirement is the first step in the Rate Study. After determining the system revenue requirement, a COS for each customer class is developed to determine the specific costs to serve each class. Customer class revenues are compared to class revenue requirements to evaluate the current rate's abilities to fully recover costs. NewGen analyzed the cost to serve each customer class based on the revenue requirement.

Once completed, the COS results indicate the degree to which existing rates recover the costs to serve customers. The COS results are then used to design new electric rates. The COS analyses relied on the following key supporting data and analysis:

- I. Test Year reported revenue requirements and revenues based on current rates
- II. Total System and customer class demand and energy requirements
- III. Actual and assumed customer service characteristics
- IV. Information obtained from customer accounts and records

3.2.1 Functionalization of Revenue Requirement

The second step in the COS and rate design process is to functionalize the revenue requirement. The Electric Utility's rates were unbundled into four functions: power supply, transmission, distribution, and customer service. The assignment of costs by function falls into two general categories: 1) direct assignments and 2) derived allocations. Direct assignments are costs that are readily associated with a specific utility function and are directly assigned to that function. For example, the purchase power contracts are an expense solely related to power supply, so they are directly assigned to that function.

Derived allocators are allocation factors that are based on the sum, average, or weighted effect of different underlying factors. Derived allocators can be complex and should reflect the logical answer to the question of what underlying activities drive the cost of this item. For example, administrative and general expenses are associated with the O&M of all utility functions. Thus, administrative and general expenses are allocated to each utility function using various derived allocators. Each of the four utility functions is described below.

3.2.1.1. Power Supply Function

The power supply function consists of costs associated with power generation, the cost of purchased power, and procuring and administering power supply contracts. For NBU, this cost is almost solely the costs for purchasing power in ERCOT on behalf of its retail customers.

3.2.1.2. Transmission Function

The transmission function consists of costs associated with operating and maintaining the transmission portion of the electric grid and making capital investments, as necessary. The transmission facilities transmit electricity at high voltage from the generation stations to the distribution system.

3.2.1.3. Distribution Function

The distribution function consists of costs associated with operating and maintaining the distribution portion of the electric grid and making capital investments, as necessary. The distribution facilities deliver power to the retail customers after it has been transmitted. This includes low voltage distribution lines, distribution poles, underground lines, customer service connections, meters, and lighting-related assets.

3.2.1.4. Customer Service Function

The customer service function consists of costs associated with operating and maintaining the customer-related facilities to meet customer support needs. This includes, but is not limited to, customer service, billing and collection, and meter reading.

3.2.1.5. Unbundling of Revenue Requirement

The revenue requirement determined for the Test Year was “unbundled” into the four functional areas of the system—power supply, transmission, distribution, and customer service. The results of the functional unbundling are summarized in Table 3-5.

Table 3-5: Test Year Electric Revenue Requirement by Function

Function	Revenue Requirement	\$/kWh ⁽¹⁾	% of Total
Power Supply	\$125,318,014	\$0.074	61.1%
Transmission	27,067,077	0.016	13.2%
Distribution	38,743,282	0.023	18.9%
Customer	4,462,124	0.003	2.2%
City Transfer	9,499,107	0.006	4.6%
Total	\$205,089,064	\$0.121	100%

(1) Based on Test Year retail energy sales of 1,691,971 MWh.

The power supply function represents 61% of the Test Year Revenue Requirement. The distribution function is the second largest cost center, representing 19% of the Test Year Revenue Requirement. The transmission function represents 13% of the Test Year Revenue Requirement. The customer function represents 2% of the Test Year Revenue Requirement. The remaining 5% of the revenue requirement is associated with the transfer to the City.

3.2.2 Classification of Electric Revenue Requirement

The third step in the COS and rate design process is to classify the functionalized revenue requirement. System costs can be classified into four generally accepted rate-making cost classifications: (i) demand or fixed costs, (ii) energy or variable costs, (iii) customer-related costs, and (iv) directly assignable costs. To provide a reasonable basis for the assignment of total revenue requirements (costs) to each customer class, costs for each function have been analyzed and classified into four categories as described below.

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- I. Demand Costs – Capacity (fixed- or demand-related) costs are those costs incurred to maintain a utility system in a state of readiness to serve, enabling it to meet the total combined demands of its customers. Capacity costs include the fixed portion of O&M expenses, debt service, capital expenditures, and other costs that are generally fixed and do not vary materially with the quantity of usage or that cannot be designated specifically as a customer or variable cost.
- II. Energy Costs – Energy, or variable costs, are costs that vary directly with energy usage, including such items as energy-related purchased power and a portion of O&M expenses.
- III. Customer Costs – Customer costs are those costs directly related to the number and type of customers, such as accounting, customer service, billing, and meter related expenses.
- IV. Direct Assignment Costs – Direct assignment costs are those costs that are readily identifiable and applicable to a particular customer or customer class, such as street lighting.

Once the costs within each function are assigned to each service category, the demand, energy, customer, and direct assignment component of each service is calculated. As seen in Table 3-6, three major cost categories (demand, energy, and customer) cover most functional costs. This breakdown of demand, energy, customer, and direct assignment costs is later applied to each customer class to facilitate rate design, as provided later in this section.

Table 3-6: Test Year Electric Revenue Requirements by Classification

Classification	Revenue Requirement	\$/kWh ^{(1) (2)}	% of Total
Power Supply			
Demand	\$2,973,079	\$0.002	1.4%
Energy	122,344,935	0.072	59.7%
Subtotal	125,318,014	0.074	61.1%
Transmission			
Demand	27,067,077	\$0.016	13.2%
Subtotal	27,067,077	\$0.016	13.2%
Distribution			
Demand	33,676,645	\$0.020	16.4%
Customer	4,726,166	0.003	2.3%
Direct Assignment – Lighting	340,471	0.000	0.2%
Subtotal	38,743,282	\$0.048	18.9%
Customer			
Customer	4,462,124	\$0.003	2.2%
Subtotal	4,462,124	\$0.009	2.2%
Transfers	9,499,107	\$0.006	4.6%
Total by Classification			
Demand	63,716,801	0.037	31.1%
Energy	122,344,935	0.072	59.7%
Customer	9,188,290	0.005	4.5%
Direct Assignment – Lighting	340,471	0.000	0.2%
Transfers	9,499,107	0.005	4.6%
Total Costs	\$205,089,604	\$0.121	100%

(1) Based on Test Year retail energy sales of 1,691,971 MWh.

(2) Note the total amounts shown in the table may not properly add as shown due to rounding.

Excluding the transfer to the City, 63% of the Electric Utility's total revenue requirement is energy-related or variable costs. The remaining 37% of the revenue requirement is fixed in nature and

classified as demand or customer, or directly assigned to customer classes. The City transfer is proportionally classified by the percent values of the revenue requirement classifications.

3.2.3 Allocation of Electric Revenue Requirement

The fourth step in the COS and rate design process is to allocate the functionalized, classified revenue requirement to the various customer classes. Customer classes represent aggregations of customers with similar customer usage characteristics and use the system infrastructure in a similar manner. These groups of customers have similar COS results, which justify similar rates.

3.2.3.1. Class Allocation Factors

Based upon actual and assumed customer service and consumption characteristics, NewGen developed various factors for use in allocating the revenue requirement to individual customer classes. These allocation factors reflect accepted ratemaking principles and were based upon embedded cost allocation procedures. Embedded costs are the total system costs assuming utility resources are spread across all customers. Embedded costs are generally based on historical or known costs such as audited financial statements and budgets. NewGen developed demand-related, energy-related, customer-related, and direct assignment allocation factors as described below.

3.2.3.2. Demand Allocations

Demand allocators are derived based on the demand requirements of individual customers and classes of customers. Costs are allocated to classes based on the class contribution to the system peak, or coincident peak allocators. This is a measure of each class's cost responsibility associated with the infrastructure required to meet the system peak demand. As you move from the generator to the meter, the measure of peak demand responsibility changes from a system perspective ("coincident peak"), to a class perspective ("non-coincident peak"), to a customer perspective ("demand at meter"). Demand contributions at these various points in the system are determined based on advanced metering infrastructure ("AMI") and billing data available to NBU and NewGen.

For customer class allocation purposes, the four-month coincident peak ("4CP") and four-month non-coincident peak ("4NCP") were used to allocate demand-related power supply, transmission, and distribution-related costs. The 4CP was used to allocate the small amount of demand-related power supply costs for NBU recognizing that capacity needs are based on the four summer peaking months. Transmission costs for the Electric Utility were also allocated using the 4CP

method, which aligns with the ERCOT transmission cost allocation procedures and recognizes that the transmission system is constructed to deliver power at the times of the maximum system peak or the four summer months.

Similarly, distribution costs are designed to meet the maximum demands of the localized system or customers, so the 4NCP allocation factor was used. Distribution demand-related costs were allocated to customer classes based on the 4NCP. An NCP allocator is typically used to allocate distribution costs, as these facilities are sized to meet localized peak demands rather than the system peak demand. The 4NCP method was used to allocate the distribution system demand-related costs associated with substations, poles, and conductors. Distribution transformers are typically sized for very localized or neighborhood level impacts, thus a sum of maximum demands at the retail meters was used to allocate these costs.

3.2.3.3. Energy Allocations

Energy allocation factors are the basis for allocating costs or expenses classified as variable or energy related and are assumed to vary directly with kilowatt-hour (“kWh”) sales. Energy-related costs classified as variable are energy costs from renewable contracts and spot market purchases. Typically, net energy for load (“NEFL”), or the energy necessary to supply each customer class, is used to allocate these types of costs to individual customer classes. NEFL is also sometimes called adjusted metered load or energy at generation, as it takes into consideration energy losses that occur on the transmission and distribution systems between the power supplier delivery point and the customer’s meter. Table 3-7 lists the energy allocation factors utilized in the Study.

Table 3-7: Energy Allocation Factors by Customer Class

Customer Class	Net Energy for Load
Residential	38.5%
Small Business	4.3%
Large Business	23.7%
Large Power	7.6%
Transmission	25.8%
Lighting ⁽¹⁾	0.1%
Total	100%

(1) Includes lighting athletic fields (LAF), area lighting (AL), and highway lighting (HL) classes

3.2.3.4. Customer Allocations

Customer costs are defined as those costs related to the number of customers and the type of service required. Included in the customer-related costs are the costs associated with meter reading, customer service, sales, billing, collection, and other customer-related activities. The customer allocation factors were largely based on the number of customers in each class.

In allocating certain customer-related costs to the various customer classifications, weighted customer allocation factors were utilized. Weighting reflects that servicing certain types of customers requires more effort and expense than other types of customers. Weighting factors were developed based on discussions with NBU staff, as well as the application of industry knowledge and practices. Weighting factors reflect the relationships between the customer classes, the types of equipment or services needed to serve the class, and the relative costs of those items. For example, utilities typically have “key account” customer service representatives dedicated to serving large business customers, which results in higher customer service costs for these customers on a per customer basis.

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3.2.4 Electric Cost-of-Service Results

The unbundled COS results by customer class are shown in Table 3-8.

Table 3-8: Unbundled Revenue Requirement by Class ⁽¹⁾

	Residential (RE)	Small Business (SGS)	Large Business (LGS)	Large Power (VLP)	Transmission (TSR)	Lighting (AF, AL, HL)	Total
Functionalized by Class							
Power Supply	\$48,625,417	\$5,410,166	\$29,808,257	\$9,445,228	\$31,952,034	\$76,911	\$125,318,014
Transmission	13,534,954	1,252,479	7,108,806	1,833,542	3,336,343	952	27,067,076
Distribution	24,411,157	2,063,870	9,023,360	2,361,076	652,591	231,226	38,743,280
Customer	953,228	562,279	2,817,235	32,199	58,438	38,746	4,462,125
Total COS	87,524,756	9,288,794	48,757,658	13,672,045	35,999,406	347,835	195,590,494
Classified by Class							
Demand Related	35,194,988	3,058,279	16,722,794	4,371,314	4,292,665	76,761	63,716,801
Energy Related	47,138,722	5,272,593	29,027,417	9,243,830	31,585,566	76,807	122,344,935
Customer Related	5,191,046	957,923	3,007,446	56,902	121,176	194,268	9,528,761
City Transfer	4,250,753	451,122	2,367,979	664,001	1,748,358	16,893	9,499,106
Total COS	\$91,775,509	\$9,739,917	\$51,125,636	\$14,336,047	\$37,747,765	\$364,729	\$205,089,603

(1) Note the total amounts shown in the table may not properly add as shown due to rounding.

3.2.5 Cost-of-Service Results Compared to Current Revenue

Estimated operating revenues were developed by the NewGen Project Team to compare the revenue generated under current rates to the current operating costs of the Electric Utility. Table 3-9 summarizes the variance between the Test Year Revenue Requirement or COS over the five-year Study Period and the annual revenue generated from current rates by customer class. The results of comparing the projected revenues to the customer class revenue requirements indicate the degree to which existing rates recover revenues from each customer class on a COS basis and are considered in designing new electric rates.

Table 3-9: Electric Cost-of-Service Results

Customer Class	Allocated Test Year COS	Test Year Rate Revenues	Revenue Over/(Under)	% Increase of Existing Rate Revenues for Full Cost Recovery
Residential	\$91,775,510	\$78,309,104	(\$13,466,406)	17.2%
Small Business	9,739,917	8,471,099	(1,268,818)	15.0%
Large Business	51,125,637	43,521,515	(7,604,122)	17.5%
Large Power	14,336,047	12,587,396	(1,748,651)	13.9%
Transmission	37,747,765	39,199,588	1,451,824	-3.7%
Lighting ⁽¹⁾	364,728	375,137	10,408	-2.8%
Total	\$205,089,604	\$182,463,839	(\$22,625,765)	12.4%

(1) Includes lighting athletic fields (LAF), area lighting (AL), and highway lighting (HL) classes

As shown in Table 3-9, overall COS analysis forecasts the need for a rate increase to meet the Electric Utility's operating expenses. The Residential, Small Business, Large Business, and Large Power classes are collecting revenues below their COS requirements. The Transmission and Lighting classes are collecting revenues above their COS requirements. It is important to note that the COS results show relative consistency across the customer classes with the major retail classes all aligned with the average system-wide increase of 11.83%. NewGen discusses proposed changes to the current electric rates later in this report.

3.3 ELECTRIC RATE STRUCTURE

In general, proposed and recommended rate structures should meet the objectives and best practices identified by NBU and discussed in this report. The proposed electric rates include the following:

- availability charge
- delivery charge
- demand charge (if applicable)
- the power cost recovery adjustment ("PCRA")

The availability, delivery, and demand charges are commonly referred to as "base rates", while the PCRA is referred to as the pass-through adjustment rate.

3.3.1 Base Rate Charges

The availability charge should be designed to recover customer-related costs. The expenses to the utility for providing customer-related functions do not change with the energy the customer consumes and should therefore be on a \$/month or \$/day basis. The delivery charge, calculated in \$/kilowatt-hour (“kWh”), should be designed to recover all variable costs including O&M and applicable power supply costs. The demand charge should be designed to recover demand-related costs and should be on a \$/kilowatt (“kW”) month or \$/kW day basis.

Availability and demand charges should collect revenues to fund NBU’s fixed costs; however, depending on rate design, delivery charges may collect revenues to recover both fixed and variable costs. For customer classes that do not have demand charges, a large portion of fixed costs are collected through the delivery charge.

All customer classes have seasonal rates that reflect the higher demand periods (i.e., summer) and lower demand periods (i.e., winter) for the Electric Utility system. The summer period (“high season”) is June through September, and the non-summer period (“low season”) is October through May. These seasonal charges provide price signals to customers that reflect the higher costs associated with system peaking periods. The COS results also indicate availability and demand charges are too low for some classes and thus should be increased. This is a common result for many utilities throughout the industry.

3.3.2 Power Cost Recovery Adjustment Charges

Utilities often have adjustment charges that pass through variable costs, allowing the utility to fully recover these costs as the costs are not controlled by the utility. The utility uses the pass-through cost adjustment rates to recover costs when they vary from the projected basis. The PCRA includes the total cost of generation cost recovery factor (“GCRF”), transmission cost recovery factor (“TCRF”), and power stabilization reserve contributions. The PCRA charges were reviewed and forecasted for the Study Period. The PCRA charge, calculated in \$/kWh, should be designed to recover all variable costs including O&M and applicable power supply costs. The PCRA charge may collect revenues to recover both fixed and variable costs.

The GCRF includes the variable cost of power above or below the base rate and is dictated by power market price fluctuations. The GCRF pass-through charges (or credits) account for differences in the projected purchased power-related costs to the customers without the need for a formal rate change. As shown in the COS study, the generation charges are approximately 62%

of the revenue requirement. The TCRF includes the cost of transmission above or below the base rate and changes annually, as dictated by the Public Utility Commission of Texas. As shown in the COS study, the transmission charges are approximately 12% of the revenue requirement. The GCRF and TCRF charges are a combined rate and are estimated at the average power and transmission costs for the Study Period.

The upcoming ERCOT Market Redesign will require NBU to demonstrate sufficient capacity to meet peak demands. NBU would need to proactively purchase performance credits from generation entities to meet the calculated peak demands. This additional capacity liability will need to be considered and incorporated in the price structure in the future.

3.4 PROPOSED ELECTRIC RATE DESIGN

Rate design is the culmination of a COS study where the rates and charges for each customer classification are established in such a manner that the total revenue requirement of the utility will be recovered in the most equitable and consistent manner, to the extent reasonable and practical. During rate design, consideration was given to the recovery of fixed costs in the customer and demand charges, and power cost recovery under ERCOT, as well as phasing in the proposed rates over time.

Based on the COS results, NBU decided to support the revenue requirement needs with a combination of rate increases over a four-year period. NBU set the average annual retail revenue increases at 4.8% for FY 2024, 5.9% for FY 2025, 4.6% for FY 2026, and 3.8% for FY 2027. The rate increases are driven by system capital improvements and infrastructure needs. The rate plan positions NBU to fund capital improvements with rate revenue (cash) rather than issuing debt for all capital improvements, which also aligns with NBU's financial policies. The rate increases are not a response to ERCOT market prices or pass-through power supply and transmission costs.

The Rate Design section of this report includes proposed rates to accomplish revenue goals and appropriate allocation among customer classes. The NBU rate increases were not applied equally to each customer class, as the COS results indicate that some classes require rate increases and others show an opportunity for a decrease. NBU's desired rate implementation plan excluded any rate decreases for customer classes and implemented rate increases aligned with the COS results for the remaining customer classes. The rate change, and resulting billing increase, for each customer class is provided in Table 3-10.

Table 3-10: Proposed Electric Rate Increases by Customer Class

Customer Class	FY 2024	FY 2025	FY 2026	FY 2027
Residential	6.3%	6.5%	4.9%	4.0%
Small Business	6.7%	6.7%	4.3%	3.4%
Large Business	7.3%	8.6%	5.9%	4.9%
Large Power	5.7%	7.3%	5.3%	4.3%
Transmission	0.0%	0.0%	0.0%	0.0%
Lighting	1.6%	1.6%	1.0%	0.7%
System Average	4.8%	5.9%	4.6%	3.8%

(1) Includes lighting athletic fields (LAF), area lighting (AL), and highway lighting (HL) classes

The proposed Electric Utility rates include an availability charge (\$/month), a delivery charge (\$/kWh for residential and \$/kW for commercial), a generation cost charge (\$/kWh), a transmission charge (power supply demand charge) (\$/kW), and a GCRF/TCRF charge (\$/kWh). Seasonal (summer and non-summer) rates are also included in the proposed rates. For all customer classes, the proposed GCRF/TCRF rate is \$0.0299 per kWh.

Based on the forecast cost to operate the Electric Utility from FY 2024 through FY 2027, NewGen recommends rate adjustments over four phases. The Electric Utility Rate revenue under the proposed rates for each customer class is shown in Table 3-11. Please note that these total changes in revenue amounts differ slightly from the financial forecast system average increases due to rounding and small adjustments in designing the specific NBU rates.

Table 3-11: Electric Utility Rate Revenue by Customer/Class at Proposed Rates

Customer Class	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Residential	\$68,343,056	\$80,285,018	\$87,473,153	\$95,934,238	\$104,709,870
Small Business	8,128,611	9,167,808	9,573,772	10,030,602	10,462,366
Large Business	39,787,808	46,323,398	50,269,583	54,475,701	58,675,541
Large Power	12,661,322	13,899,797	14,190,276	14,666,221	15,110,619
Transmission	41,427,417	43,226,318	40,756,928	39,799,459	39,270,621
Lighting ⁽¹⁾	301,182	307,792	310,198	312,345	313,977
Total	\$170,649,396	\$193,210,131	\$202,573,910	\$215,218,566	\$228,542,994

(1) Current effective rate

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For each customer class, excluding lighting, the proposed rates and example monthly customer bills are presented in the subsections below.

3.4.1 Residential Service

The Residential (“RE”) class is composed of residential customers who have single-phase service and are served on a retail basis. The COS results showed the Test Year revenues were 8.9% less than the COS for the class. Table 3-12 shows the proposed rates over the five-year rate increase.

Table 3-12: Proposed Electric Rates: Residential Service

Item	Unit	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge	\$/month	\$17.06	\$20.00	\$20.00	\$20.00	\$20.00
Delivery Charge	\$/kWh	0.0149	0.0195	0.0265	0.0313	0.0348
Generation Cost of Power						
Summer ⁽²⁾	\$/kWh	0.0500	0.0500	0.0500	0.0500	0.0500
Non-Summer ⁽³⁾	\$/kWh	0.0400	0.0400	0.0400	0.0400	0.0400
Transmission Cost of Power	\$/kWh	0.0052	0.0052	0.0052	0.0052	0.0052
GCRF and TCRF	\$/kWh	\$0.0299	\$0.0299	\$0.0299	\$0.0299	\$0.0299

(1) Current effective rates

(2) Summer are months June, July, August, and September

(3) Non-Summer are months October through May

The COS analysis indicates that the current revenues collected for the Residential service class are below COS levels, and the proposed rates are designed to move this customer class closer to COS levels. The electric availability charge is low and is proposed to increase in each phase. The proposed increases will help offset the differences between the current revenues and the COS, as well as increase fixed cost recovery. The delivery charges are also proposed to increase in each phase to assist this customer class to move closer to COS levels. The demand-related costs are collected in the delivery charge.

Assuming that a residential customer uses approximately 1,200 kWh per month for their average energy consumption, the proposed rate adjustment would equate to a billing increase of approximately 4%. Table 3-13 calculates the approximate average monthly billing impact that a typical Residential account will experience from FY 2024 to FY 2025. At this level of energy consumption, the majority of Residential customers will experience a billing increase of less than \$9.00 per month for each year of the two-year rate increase.

Table 3-13: Average Residential Electric Bill - Usage at 1,200 kWh

Charge	Unit	FY 2023 ⁽¹⁾	Bill ⁽²⁾	FY 2024	Bill ⁽²⁾	FY 2025	Bill
Availability	\$/month	\$17.06	\$17.06	\$20.00	\$20.00	\$20.00	\$20.00
Delivery	\$/kWh	0.0149	17.88	0.020	23.45	0.026	31.75
Pass Through (PCRA)							
Generation Cost (Summer)	\$/kWh	0.0500	60.00	0.050	60.00	0.050	60.00
Transmission Cost	\$/kWh	0.0052	6.24	0.005	6.24	0.005	6.24
GCRF and TCRF ⁽³⁾	\$/kWh	0.0299	35.94	0.030	35.94	0.030	35.94
Bill Total			\$137.12		\$145.63		\$153.93
% Change					6.5%		4.9%
Difference					\$8.94		\$7.20

(1) Current effective rate

(2) Assumes 1,200 kWh per month average consumption

(3) GCRF/TCRF estimated at the average power and transmission cost for 5 yr. period

3.4.2 Small General Service

Small General Service (“SGS”) customers are commercial electric customers that have single-phase and three-phase service with a total connected load that exceeds 25 kW of demand in motors or other inductive-type equipment and/or monthly energy consumption that exceeds 3,000 kWh. The COS results showed the Test Year revenues were 9.9% less than the COS for the class. Table 3-14 shows the proposed rates over the five-year rate increase.

Table 3-14: Proposed Electric Rates: Small General Service

Item	Unit	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge	\$/month	\$23.10	\$29.05	\$35.46	\$39.78	\$42.89
Delivery Charge	\$/kWh	0.0096	0.0128	0.0156	0.0174	0.0186
Generation Cost of Power						
Summer ⁽²⁾	\$/kWh	0.0500	0.0500	0.0500	0.0500	0.0500
Non-Summer ⁽³⁾	\$/kWh	0.0400	0.0400	0.0400	0.0400	0.0400
Transmission Cost of Power	\$/kWh	0.0052	0.0052	0.0052	0.0052	0.0052
GCRF and TCRF	\$/kWh	\$0.0299	\$0.0299	\$0.0299	\$0.0299	\$0.0299

(1) Current effective rates

(2) Summer are months June, July, August, and September

(3) Non-Summer are months October through May

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The COS analysis indicates that the current revenues collected for the SGS class are below COS levels, and the proposed rates are designed to move this customer class closer to COS levels. The electric availability charge is low and is proposed to increase in each phase. The proposed increases will help offset the differences between the current revenues and the COS, as well as increase fixed cost recovery. The delivery charges are also proposed to increase in each phase to assist this customer class to move closer to COS levels. The demand-related costs are collected in the delivery charge.

If an SGS customer uses approximately 1,400 kWh per month for their average energy consumption, the proposed rate adjustment would equate to a billing increase of approximately 4.6%. Table 3-15 calculates the approximate average monthly billing impact that a typical SGS account will experience from FY 2024 to FY 2025. At this level of energy consumption, most SGS customers will experience a billing increase of approximately \$10.00 for each year of the two-year rate increase.

Table 3-15: Average Small General Service Electric Bill - Usage at 1,400 kWh

Charge	Unit	FY 2023	Bill ⁽¹⁾	FY 2024	Bill ⁽¹⁾	FY 2025	Bill
Availability	\$/month	\$23.10	\$23.10	\$29.05	\$29.050	\$35.460	\$35.46
Delivery	\$/kWh	0.0096	13.45	0.0128	17.892	0.0156	\$21.84
Pass Through (PCRA)							
Generation Cost (Summer)	\$/kWh	0.0500	70.00	0.0500	70.00	0.0500	\$70.00
Transmission Cost	\$/kWh	0.0052	7.28	0.0052	7.28	0.0052	\$7.28
GCRF and TCRF ⁽²⁾	\$/kWh	0.0299	41.93	0.0299	41.93	0.0299	\$41.93
Bill Total			\$155.68		\$166.11		\$176.44
% Change					6.7%		6.2%
Difference					\$10.43		\$10.33

(1) Assumes 1,400 kWh per month average consumption

(2) GCRF/TCRF estimated at the average power and transmission cost for 5 yr. period

3.4.3 Large General Service

Large General Service customers (“LGS”) customers are commercial three-phase service electric customers that have maximum kilovolt-ampere (“kVA”) capacities ranging up to 12,999 kVA per month. The COS results showed the Test Year revenues were 14.0% less than the COS for the class. Table 3-16 shows the proposed rates over the four-year rate increase.

Table 3-16: Proposed Electric Rates: Large General Service

Item	Unit	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge	kVA / month					
Greater than 12,999	\$/month	\$4,134.38	\$5,728.27	\$7,621.16	\$9,011.52	\$10,066.17
Less than 13,000 and greater than 7,999	\$/month	3,638.25	5,040.87	6,706.61	7,930.13	8,858.22
Less than 8,000 and greater than 3,999	\$/month	2,728.69	3,780.66	5,029.97	5,947.61	6,643.68
Less than 4,000 and greater than 2,999	\$/month	1,819.13	2,520.44	3,353.31	3,965.07	4,429.12
Less than 3,000 and greater than 1,999	\$/month	1,212.75	1,680.29	2,235.54	2,643.38	2,952.74
Less than 2,000 and greater than 1,499	\$/month	606.38	840.15	1,117.78	1,321.70	1,476.38
Less than 1,500 and greater than 750	\$/month	363.83	504.09	670.67	793.02	885.83
Less than 751 and greater than 500	\$/month	272.87	378.07	503.00	594.76	664.37
Less than 501 greater than 300	\$/month	212.23	294.05	391.22	462.59	516.73
Less than 301 and greater than 150	\$/month	121.28	168.04	223.57	264.36	295.30
Less than 151	\$/month	36.38	50.41	67.07	79.31	88.59
Delivery Charge	\$/kW	5.34	7.50	9.98	11.61	12.83
Generation Cost of Power						
Summer ⁽²⁾	\$/kWh	0.0500	0.0500	0.0500	0.0500	0.0500
Non-Summer ⁽³⁾	\$/kWh	0.0400	0.0400	0.0400	0.0400	0.0400
Transmission Cost of Power	\$/kW	1.15	1.15	1.15	1.15	1.15
GCRF and TCRF	\$/kWh	\$0.0299	\$0.0299	\$0.0299	\$0.0299	\$0.0299

(1) Current effective rates

(2) Summer are months June, July, August, and September

(3) Non-Summer are months October through May

The COS analysis indicates that the current revenues collected for the LGS class are below COS levels, and the proposed rates are designed to move this customer class closer to COS levels. The electric availability charge is low and is proposed to increase in each phase. The proposed increases will help offset the differences between the current revenues and the COS, as well as increase fixed cost recovery. The delivery and demand charges are also proposed to increase in each phase to assist this customer class to move closer to COS levels.

If an LGS customer uses approximately 29,000 kWh for their average energy consumption and 83.72 kW per month for their average demand, the proposed rate adjustment would equate to a

billing increase of approximately 6.7%. Table 3-17 calculates the approximate average monthly billing impact that a typical LGS account will experience from FY 2024 to FY 2025. At this level of energy consumption, an average LGS customer will experience a billing increase of less than \$225 for each year of the two-year rate increase.

Table 3-17: Average Large General Service Electric Bill - Usage at 29,000 kWh

Charge	Unit	FY 2023 ⁽¹⁾	Bill ⁽²⁾	FY 2024	Bill ⁽²⁾	FY 2025	Bill ⁽²⁾
Availability	\$/month	\$36.38	\$36.38	\$50.41	\$50.41	\$67.07	\$67.07
Delivery	\$/kW	5.34	447.06	7.50	627.93	9.98	835.53
Pass Through (PCRA)							
Generation Cost (Summer)	\$/kWh	0.0500	1,450.00	0.0500	1,450.00	0.0500	1,450.00
Transmission Cost	\$/kW	1.15	96.28	1.15	96.28	1.15	96.28
GCRF and TCRF ²	\$/kWh	0.0299	868.50	0.0299	868.50	0.0299	868.50
Bill Total			\$2,896.82		\$3,091.69		\$3,317.38
% Change					6.7%		7.3%
Difference					\$194.87		\$224.29

(1) Assumes 29,000 kWh and 83.72 kW per month average consumption

(2) GCRF/TCRF estimated at the average power and transmission cost for five-year period

3.4.4 Very Large Power

Very Large Power (“VLP”) customers are commercial three-phase service electric customers that have maximum kVA capacities ranging up to 12,999 kVA per month. The COS results showed the Test Year revenues were 9.8% less than the COS for the class. Table 3-18 shows the proposed rates over the four-year rate increase.

Table 3-18: Proposed Electric Rates: Very Large Power

Item	Unit	FY 2023 (1)	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge	kVA / month					
Greater than 12,999	\$ / month	\$4,472.02	\$6,888.70	\$10,079.55	\$12,657.14	\$14,733.54
Less than 13,000 and greater than 7,999	\$ / month	3,577.61	5,510.95	8,063.62	10,125.69	11,786.81
Less than 8,000 and greater than 3,999	\$ / month	2,683.22	4,133.22	6,047.73	7,594.29	8,840.13
Less than 4,000 and greater than 2,999	\$ / month	1,788.81	2,755.48	4,031.82	5,062.86	5,893.42
Less than 3,000 and greater than 1,999	\$ / month	1,192.54	1,836.98	2,687.87	3,375.23	3,928.94
Less than 2,000 and greater than 1,499	\$ / month	596.27	918.49	1,343.93	1,687.61	1,964.46
Less than 1,500 and greater than 750	\$ / month	357.76	551.10	806.37	1,012.58	1,178.69
Less than 751 and greater than 500	\$ / month	268.32	413.32	604.77	759.42	884.00
Less than 501 greater than 300	\$ / month	208.70	321.48	470.39	590.68	687.58
Less than 301 and greater than 150	\$ / month	119.25	183.70	268.79	337.53	392.90
Less than 151	\$ / month	35.78	55.12	80.65	101.27	117.88
Delivery Charge	\$/kW	3.22	5.01	7.33	9.07	10.46
Generation Cost of Power						
Summer (2)	\$/kWh	0.0500	0.050	0.050	0.050	0.050
Non-Summer (3)	\$/kWh	0.0400	0.040	0.040	0.040	0.040
Transmission Cost of Power	\$/kW	1.15	1.15	1.15	1.15	1.15
GCRF and TCRF	\$/kWh	\$0.0299	\$0.030	\$0.030	\$0.030	\$0.030

(1) Current effective rates

(2) Summer are months June, July, August, and September

(3) Non-Summer are months October through May

If a VLP customer uses approximately 1,078,000 kWh for their average energy consumption and 2,460 kW per month for their average demand, the proposed rate adjustment would equate to a billing increase of approximately 3.8%. Table 3-19 calculates the approximate average monthly billing impact that a typical Large Commercial account will experience from FY 2024 to FY 2025. At this level of energy consumption, most VLP customers will experience a billing increase of approximately \$5,000 per month in FY 2024 and \$6,500 per month in FY 2025.

Table 3-19: Average Very Large Power Electric Bill - Usage at 1,078,000 kWh

Charge	Unit	FY 2023 ⁽¹⁾	Bill ⁽²⁾	FY 2024	Bill ⁽²⁾	FY 2025	Bill ⁽²⁾
NBU Delivery							
Availability	\$/month	\$1,192.54	\$1,192.54	\$1,836.98	\$1,836.98	\$2,687.87	\$2,687.87
Delivery	\$/kW	3.22	7,921.20	5.01	12,324.85	7.33	18,031.80
Pass Through (PCRA)							
Generation Cost (Summer)	\$/kWh	0.0500	53,900.00	0.0500	53,900.00	0.0500	53,900.00
Transmission Cost	\$/kW	1.1500	2,829.00	1.1500	2,829.00	1.1500	2,829.00
GCRF and TCRF ⁽³⁾	\$/kWh	0.0299	32,284.43	0.0299	32,284.43	0.0299	32,284.43
Bill Total			\$98,127.16		\$103,175.25		\$109,733.10
% Change					5.1%		6.4%
Difference					\$5,047.84		\$6,558.09

(1) Current effective rates

(2) Assumes 1,078,000 kWh and 2,460 kW per month average consumption

(3) GCRF/TCRF estimated at the average power and transmission cost for 5 yr. period

3.4.5 Transmission

The Transmission customer class did not receive any rate adjustments or changes. The Transmission charges will remain the same as their current rates.

3.4.6 Experimental Electric Rate

The Experimental Electric Rate (“EER”) customer class did not receive any rate adjustments or changes. The EER charges will remain the same as their current rates.

3.4.7 Second Feeder Service

The Second Feeder Service (“SFS”) customer class did show a modest rate adjustment to align with changes in the LGS and VLP classes distribution feeder costs. However, the rate increases for the secondary feeder service were capped at the COS results for feeder costs in the LGS class after 2024. Table 3-20 shows the proposed rates for SFS over the four-year rate increase.

Table 3-20: Proposed Electric Rates: Second Feeder Service

Item	Unit	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Capacity Reservation	\$/kW	3.18	5.10	6.69	6.69	6.69

(1) Current effective rates

3.4.8 Net Metering

The Net Metering (“NM”) customer class includes a proposed rate adjustment. Table 3-21 shows the proposed rates for NM over the four-year rate increase. The minimum monthly bill includes the Availability Charge plus the Delivery Charge, along with any special charges or adjustments.

Table 3-21: Proposed Electric Rates: Net Metering

Item	Unit	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
Residential	\$/month	\$17.06	\$20.00	\$20.00	\$20.00	\$20.00
Small General Service	\$/month	23.10	29.05	35.46	39.78	42.89
Delivery Charge	Specified in the appropriate RE or SGS rate, plus a fixed cost per type of installed kW					
RE Solar	\$/kW	1.58	1.58	1.58	1.58	1.58
RE Wind	\$/kW	0.74	0.74	0.74	0.74	0.74
SGS Solar	\$/kW	0.87	0.87	0.87	0.87	0.87
SGS Wind	\$/kW	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41
Generation Cost of Power						
Summer ⁽²⁾	\$/kWh	Specified in the appropriate RE or SGS rate				
Non-Summer ⁽³⁾	\$/kWh	Specified in the appropriate RE or SGS rate				

(1) Current effective rates

3.4.9 Lighting

The Lighting customer class includes Lighting Athletic Fields (“LAF”), Area Lighting (“AL”), and Interstate Highway Lighting (“HL”). The COS results showed the Test Year revenues for AL and HL classes were adequately recovering costs; however, it did show a modest rate adjustment for LAF. Table 3-22 shows the proposed rates for LAF lighting over the four-year rate increase.

Table 3-22: Proposed Electric Rates: Athletic Field Lighting

Item	Unit	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge	\$ / month					
Greater than 12,999	\$ / month	\$4,331.25	\$5,107.50	\$5,892.08	\$6,391.80	\$6,739.43
Less than 13,000 and greater than 7,999	\$ / month	3,465.00	4,086.00	4,713.66	5,113.44	5,391.54
Less than 8,000 and greater than 3,999	\$ / month	2,598.75	3,064.50	3,535.25	3,835.08	4,043.66
Less than 4,000 and greater than 2,999	\$ / month	1,732.50	2,043.00	2,356.83	2,556.72	2,695.77
Less than 3,000 and greater than 1,999	\$ / month	1,155.00	1,362.00	1,571.22	1,704.48	1,797.18
Less than 2,000 and greater than 1,499	\$ / month	577.50	681.00	785.61	852.24	898.59
Less than 1,500 and greater than 750	\$ / month	346.50	408.60	471.37	511.34	539.15
Less than 751 and greater than 500	\$ / month	259.88	306.45	353.52	383.51	404.37
Less than 501 and greater than 300	\$ / month	202.13	238.35	274.96	298.28	314.51
Less than 301 and greater than 150	\$ / month	115.50	136.20	157.12	170.45	179.72
Less than 151	\$ / month	34.65	40.86	47.14	51.13	53.92
Delivery Charge	\$/kWh	0.048	0.056	0.065	0.071	0.075
Generation Cost of Power						
Summer ⁽²⁾	\$/kWh	0.0500	0.0500	0.0500	0.0500	0.0500
Non-Summer ⁽³⁾	\$/kWh	0.0400	0.0400	0.0400	0.0400	0.0400
Transmission Cost of Power	\$/kWh	0.0052	0.0052	0.0052	0.0052	0.0052
GCRF and TCRF	\$/kWh	\$0.0299	\$0.0299	\$0.0299	\$0.0299	\$0.0299

(1) Current effective rates

(2) Summer are months June, July, August, and September

(3) Non-Summer are months October through May

4.0 WATER UTILITY

The Water Utility serves approximately 54,000 customers with a projected use of 4.7 billion gallons of water during FY 2024. The proportion of customer accounts and projected water sales volume by customer class is shown in Table 4-1. Revenues for NBU, required to meet the costs of providing water service to customers, are derived principally from metered and unmetered water sales and private fire flow charges. NBU also receives other revenue from various miscellaneous sources, such as leases, impact fees, penalties/violations, allocated income and services, to name a few. Water revenues, under existing rates, are estimated to be approximately \$41.6 million in FY 2024 and increase due to customer growth to approximately \$44.9 million by FY 2027.

Table 4-1: Projected Number of Customer Accounts, Volumes and Revenue Under Existing Rates – FY 2024 Test Year

Customer Class	Water Customers		Water Volumes		Water Revenue	
	Accounts	Percent	Gallons	Percent	Amount	Percent
Residential	36,709	67.9%	2,472,924,054	52.31%	\$16,731,661	40.2%
Residential Irrigation	13,197	24.4%	649,760,543	13.74%	8,730,193	21.0%
Small General Service	2,542	4.7%	938,047,330	19.84%	7,973,137	19.2%
Commercial Irrigation	892	1.7%	265,688,130	5.62%	3,428,546	8.2%
Multi-Unit Residential 2-4	229	0.4%	24,962,372	0.53%	253,438	0.6%
Multi-Unit Residential 5+	265	0.5%	257,504,322	5.45%	2,669,655	6.4%
Commercial – Reuse Water	1	0.0%	21,513,634	0.46%	73,448	0.2%
Other Sales	200	0.4%	97,294,972	2.06%	1,734,996	4.2%
Total	54,035	100%	4,727,695,357	100.00%	\$41,595,074	100%

4.1 REVENUE REQUIREMENTS

The revenue required to provide for the continued operation of the Water Utility must be sufficient to meet the annual cash obligations of the utility. The utility's annual revenue requirements consist of Purchased Water expenses, O&M expense, Debt Service requirements, funds for O&M reserves, expenses for Support Services, transfers to the City, and cash-funded capital expenditures. A summary of the Water Utility's estimated total annual requirements for FY 2024 is in Table 4-2.

Table 4-2: Projected FY 2024 Water Utility Revenue Requirements

Description	Amount	Percentage
Purchased Water	\$12,385,036	25.7%
Operating Expenses	10,242,396	21.3%
Non-Operating Expenses	12,484,076	25.9%
Debt Service	11,107,432	23.1%
City Transfer	1,079,906	2.2%
Contingency Reserves ⁽¹⁾	670,220	1.4%
Capital Expenditures (Cash Funded from Rates)	191,820	0.4%
Total Projected Revenue Requirements	\$48,160,886	100%

(1) Contingency reserves are funded annually to maintain a reserve fund balance equal to 90 - 120 days of O&M expenses.

Based on the cash flow analysis of the Water Utility's revenue and revenue requirements, a revenue increase of 7.1% is required for FY 2024. Thereafter, a 13.4%, 13.6%, and 11.8% revenue increase is forecasted for FY 2025, FY 2026, and FY 2027, respectively. The Water Utility should be self-supporting with sufficient funds generated each year to assist in funding water related programs, improvements, and other activities.

4.2 COST-OF-SERVICE

The total COS is defined as the total revenue requirements to be derived from charges for water service. NBU's estimated annual Water Utility cost-of-service is approximately \$44.6 million for the FY 2024 Test Year as shown in Table 4-3.

Table 4-3: Net Revenue Requirement to be Recovered from Rates

Description	Operating Expense	Capital Cost	Total Cost
Revenue Requirements			
O&M Expenses	\$35,111,509	\$-	\$35,111,509
Debt Service	-	11,107,432	11,107,432
Other Expenditures & Transfers:			
Contingency Reserves	670,220	-	670,220
City Transfer	1,079,906	-	1,079,906
Capital Expenditures (Cash Funded from Rates)	-	191,820	191,820
Subtotal	36,861,635	11,299,252	48,160,887
Less Revenue Requirements Met from Other Sources			
Other Operating Revenue	516,635	158,365	675,000
Non-Operating Revenue (Exclusive of Impact Fees)	2,243,398	687,672	2,931,070
Subtotal	2,760,033	846,037	3,606,070
Net Revenue Requirements to be Recovered by Rates	\$34,101,602	\$10,453,216	\$44,554,817

Utilizing standard rate-making practices, FNI allocated the costs of providing water service to individual customer classes served for FY 2024 Test Year. This process involved conducting an analysis of costs, by system function, including those related to average rates of use, extra capacity in excess of average use, customer billing, and meter services, direct fire protection, and raw water costs. A summary of the Water Utility's allocated cost-of-service by these functional classifications is shown in Table 4-4.

Table 4-4: Water Utility Cost-of-Service - FY 2024 Test Year

Description	Total	Percent of Total
Common to All		
Base	\$20,378,334	45.7%
Maximum Day Demand	13,656,941	30.7%
Maximum Hour Demand	1,906,075	4.3%
Customer Related		
Meters	2,902,279	6.5%
Billing	3,993,363	9.0%
Fire Protection	1,717,825	3.9%
Total Cost of Service to be Allocated	\$44,554,817	100%

A comparison of the resultant total cost-of-service allocated to customer classes based upon their respective service requirements is shown in Table 4-5. Also shown is the indicated percentage revenue adjustment (increase/decrease) required in the level of water rates to meet each class's allocated cost-of-service.

Table 4-5: Water Cost-of-Service Results

Customer Class	Allocated Test Year COS	Test Year Rate Revenues	Revenue Over/(Under) Recovery	% Increase of Existing Rate Revenues for Full Cost Recovery
Residential	\$23,664,604	\$16,731,661	(\$6,932,943)	41.4%
Residential Irrigation	7,516,023	8,730,193	1,214,170	-13.9%
Commercial	7,102,474	7,973,137	870,663	-10.9%
Commercial Irrigation	2,372,621	3,428,546	1,055,925	-30.8%
Multi-Unit Residential 2-4	214,798	253,438	38,641	-15.2%
Multi-Unit Residential 5+	1,566,563	2,669,655	1,103,091	-41.3%
Commercial - Re-Use Water	127,980	73,448	(54,531)	74.2%
Other Sales	1,989,754	1,734,996	(254,758)	14.7%
Total	\$44,554,817	\$41,595,074	(\$2,959,742)	7.1%

The last column in Table 4-5 shows that an overall 7.1% revenue increase is needed to meet FY 2024 Test Year revenue requirements; however, the proportion of this revenue adjustment varies among the classes. The results in Table 4-5 show each customer class's contribution to the total revenue requirement, and therefore, what each class would recover in revenues if rates were set up purely on a cost-of-service basis; however, it is also important to note that individual policies and goals can contradict each other. The COS results are used as a benchmark that is balanced with managing affordability, conservation signals, and gradualism.

4.3 PROPOSED WATER RATE STRUCTURE

FNI designed the proposed water rates to implement rate changes that establish the appropriate allocation of costs among customer classes. The proposed rates consist of availability charges and usage charges. The availability charge is designed to recover a portion of customer billing and collection costs, customer meter and service-related costs, and provision for a readiness-to-serve component. Availability charges are intended to provide funds for covering a portion of the water system's fixed cost without depending on water sales. FNI recommends a limited increase in availability charges. The recommended usage charges are designed to recover costs related to supplying customers with water to meet the average and peak rates of water use.

All NBU water customers are also charged a Water Supply Fee ("WSF"). This fee consists of the cost of certain water supplies. With the exception of the Residential class, this charge applies to all water usage. The WSF for the Residential class applies after 6,000 gallons of usage.

4.3.1 Residential Class Recommendations

The water rate structure for the Residential customer class is designed to incentivize single-family residential customers to conserve water. The residential rate structure has four consumption blocks in increasing tiers, based on water usage. The second, third, and fourth tiers are priced greater than the first tier, and each preceding tier, with a goal to reduce outdoor discretionary water consumption used primarily for lawn irrigation purposes. To illustrate the proportion of billed water usage that is affected by the proposed four-step conservation rates, Table 4-6 summarizes the percentage of water usage billed in each block based upon the average customer usage over a 12-month period. The summary shows that approximately 91% of all customers use less than 12,000 gallons per month. Approximately 9% of all water usage is billed at more than 12,000 gallons per month.

Table 4-6: Evaluation of Residential Tier Consumption

Monthly Consumption Average Over 12 Months	Usage Billed in Block	Cumulative Usage Billed in Block
First 3,000 gallons	37.4%	37.4%
Next 3,000 gallons	33.5%	70.9%
Next 6,000 gallons	20.0%	90.9%
Over 12,000 gallons	9.1%	100%
Total	100%	

For the purpose of simplifying the rates, FNI recommends removing the rate differential of on-peak and off-peak rates. The purpose of the rate differential is to (i) address any differences in the cost of providing water service over different times of the year (i.e., summer vs. winter), and (ii) send pricing signals to encourage specific usage characteristics from customers. After analysis of NBU's current structure, FNI found no differences in expenses throughout the year, related to on-peak and off-peak rates, other than the different levels of water usage tied to seasonality. This difference is driven by irrigation. Additionally, the conservation structured tiers currently in place allow NBU to be more specific in its pricing signals than on-peak and off-peak rates. To remove the on-peak and off-peak rate differential, the rates were designed such that the resulting revenue would be the same with and without the on-peak and off-peak rate differential. In other words, the process of removing the rate differential produced a neutral effect on revenue.

There are levels of water usage that account for basic needs, and there is discretionary usage, which includes all water usage that is not required to support basic living or business needs. The largest discretionary water usage is for irrigation. Except in certain circumstances, such as agriculture, irrigation is most often driven by the desire to maintain healthy landscaping and vegetated ground cover. Conservation tiers provide the ability to price the different levels of usage to encourage/discourage usage at those levels, or at the very least, make it more expensive to continue to use at higher levels of water consumption.

Currently, for Residential class customers, the first tier covers from 0 – 7,500 gallons per month. Since the time when these tiers were put into place, the average usage per Residential customer has decreased from 7,000 to 5,330 gallons per month. Driven by concerns of affordability, FNI recommends that existing first tier be split into two tiers and changed to 0 – 3,000 gallons per month (Tier 1) and 3,001 – 6,000 gallons per month (Tier 2), respectively. Tier 1 captures

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approximately 37.4% of Residential customers and Tier 2 includes approximately 33.5%, for almost 71% of the Residential customer base. FNI recommends lowering the usage threshold for Tier 1 to minimize the financial impact for those customers who are able and willing to control water consumption. Currently, the highest tier encompasses usage of more than 25,000 gallons per month. FNI recommends lowering the tier threshold to usage of more than 12,000 gallons per month. This reflects the idea that usage greater than 12,000 gallons per month for Residential customers represents irrigation usage. These changes are shown in Table 4-7.

Table 4-7: Residential Service Tiers

Class	Current (gallons)	Proposed (gallons)
Tier 1	0 – 7,500 Gallons	0 – 3,000 Gallons
Tier 2	7,501 – 15,000 Gallons	3,001 – 6,000 Gallons
Tier 3	15,001 – 25,000 Gallons	6,001 – 12,000 Gallons
Tier 4	>25,000 Gallons	>12,000

4.3.2 General Service Class Recommendations

Currently, NBU groups all of its commercial customers into the Small General Service (“SGS”) customer class. Like the Residential class, the SGS class rate is designed with conservation tiers in place. As mentioned above, the purpose of conservation tiers is to delineate between usage required for daily living or for the purposes of conducting business and that of discretionary usage. However, in the case of the SGS class, with a customer base that can range in usage from 2,000 gallons to 2,000,000 gallons per month, it’s impossible to have a rate structure that provides the appropriate pricing signals, without penalizing customers for the water usage it takes to operate their business.

FNI recommends splitting the current SGS class into two classes: Large General Service (“LGS”) and SGS. Commercial customers consistently using over 100,000 gallons per month would be moved into the LGS class, which already exists in NBU’s rate schedules but is currently unused. The LGS class has a flat rate for usage, with the assumption being that the majority of the customer usage at this level is for the purposes of conducting activities critical to that business. This provides the ability to adjust the tier levels in the General Service classes, as seen in Table 4-8, to more closely match the usage levels of the customers in the LGS and SGS classes, which will provide better pricing signals on their usage.

Table 4-8: Tier Levels in the General Service Classes

Class	Current (gallons)	Proposed (gallons)
SGS Tier 1	0 – 5,000	0 – 5,000
SGS Tier 2	5,001 – 50,000	5,001 – 35,000
SGS Tier 3	50,001 – 200,000	35,001 – 75,000
SGS Tier 4	>200,000	>75,000
LGS	Not current standard for use. Currently unused	Consistent usage over 100,000 gallons per month

4.3.3 Irrigation Service Class Recommendations

The Irrigation Service class is applicable to those residential or general service rate classification customers who have a sprinkler or irrigation system on a separate water meter. As shown in Table 4-9, the current structure includes three usage tiers, with thresholds at 5,000 and 25,000 gallons. To provide better use of pricing signals, FNI proposes to adjust the tier thresholds to 6,000 and 20,000 gallons.

Table 4-9: Tier Levels in the Irrigation Service Classes

Class	Current (gallons)	Proposed (gallons)
Irrigation Tier 1	0 – 5,000	0 – 6,000
Irrigation Tier 2	5,001 – 25,000	6,001 – 20,000
Irrigation Tier 3	>25,000	>20,000

4.3.4 Fire Hydrant Service Class Recommendations

The Fire Hydrant Service Class is for water service delivered through a fire hydrant, whether metered or estimated. Service under this rate must be arranged through NBU prior to the needed service date. This service is charged with a flat availability charge and a flat usage charge. FNI does not recommend a change to the structure of the Fire Hydrant Service Class.

4.4 PROPOSED WATER RATE DESIGN

The proposed rates and average monthly customer bills are presented for each rate class in the following subsections.

4.4.1 Residential Service

The Residential class is solely for residential purposes and related activities consisting of service to single-family dwellings, or permanent residential multifamily dwellings where each dwelling unit is individual metered. The Residential class makes up the largest number of water customer class accounts for NBU. Table 4-10 shows the proposed Residential rates for FY 2024 – FY 2027.

The current effective rates are shown for FY 2023. Note that the Usage Charges for FY 2023 reflect the current use of off-peak and on-peak rates, which are proposed to be eliminated in the FY 2024 rate structure. Because the table shows the proposed FY 2024 water rate structure with modified tier thresholds, the FY 2023 the Usage Charge rates shown in the table are not an exact comparison but are nevertheless provided for reference. Refer back to Table 4-7 for the existing Residential rate structure.

Table 4-10: Proposed Water Rates: Residential Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
5/8" Meter	\$/Month	\$15.98	\$15.98	\$16.05	\$16.30	\$16.65
1" Meter	\$/Month	27.17	28.00	29.10	31.00	32.15
1 1/2" Meter	\$/Month	31.59	32.00	33.00	34.25	35.00
2" Meter	\$/Month	38.56	40.00	40.00	40.50	41.25
3" Meter	\$/Month	56.27	57.50	58.10	59.00	59.65
> 4" Meter	\$/Month	66.34	68.00	68.50	69.50	71.00
Usage Charge ⁽²⁾						
0 - 3,000 Gallons	\$/1,000 Gallons	1.93 / 2.02 ⁽³⁾	1.95	2.15	2.50	2.85
3,001 - 6,000 Gallons	\$/1,000 Gallons	1.93 / 2.02	4.90	5.20	5.85	6.15
6,001 - 12,000 Gallons	\$/1,000 Gallons	4.87 / 5.25	7.65	8.00	8.70	9.25
> 12,000 Gallons	\$/1,000 Gallons	6.65 / 7.98	11.50	12.25	12.95	13.45
Water Supply Fee						
0 - 3,000 Gallons	\$/1,000 Gallons	-	-	-	-	-
3,001 - 6,000 Gallons	\$/1,000 Gallons	-	-	-	-	-
6,001 - 12,000 Gallons	\$/1,000 Gallons	2.79	1.84	1.84	1.84	1.84
> 12,000 Gallons	\$/1,000 Gallons	\$2.79	\$1.84	\$1.84	\$1.84	\$1.84

(1) Current effective rate

(2) FY 2023 rates shown are from the current rate structure, which differs from the proposed rate structure shown here.

(3) FY 2023 usage rates show off-peak and on-peak rates, which are proposed to be eliminated in FY 2024.

(4) FY 2023 includes a Usage Charge tier of >25,000 gallons, with off-peak / on-peak rates of \$9.15 / \$11.90 not reflected in the table

Table 4-10 shows that both the availability and usage charges have been increased to bring the Residential class closer to COS. The availability charge is a fixed monthly fee that is dependent on the size of the customer's meter. The usage charge is based upon the amount of water used monthly. The usage charge is tiered to promote the conservation of water. As more water is used, each tier is priced higher than the previous tier. Tables 4-11 and 4-12 show a Residential customer bill at 3,000 gallons and 6,000 gallons of water usage, respectively.

Table 4-11: Average Residential Water Bill - Water Usage at 3,000 Gallons

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability ⁽²⁾	\$/month	\$15.98	\$15.98	\$15.98	\$15.98	\$16.05	\$16.05
Usage							
0 - 3,000 Gallons	\$/1,000 gallons	1.93	5.79	1.95	5.85	2.15	6.45
Water Supply Fee	\$/1,000 gallons	-		-		-	
Customer Bill			\$21.77		\$21.83		\$22.50
YOY % Change					0.3%		3.1%

(1) Off-peak rates shown

(2) Assumes 5/8" meter

(3) Water usage of 3,000 gallons

Table 4-12: Average Residential Water Bill - Water Usage at 6,000 Gallons

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability ⁽²⁾	\$/month	\$15.98	\$15.98	\$15.98	\$15.98	\$16.05	\$16.05
Usage							
0 - 3,000 Gallons	\$/1,000 gallons	1.93	5.79	1.95	5.85	2.15	6.45
3,001 - 6,000 Gallons	\$/1,000 gallons	1.93	5.79	4.90	14.7	5.20	15.6
Water Supply Fee	\$/1,000 gallons	-		-		-	
Customer Bill			\$27.56		\$36.53		\$38.10
YOY % Change					32.5%		4.3%

(1) Off-peak rates shown

(2) Assumes 5/8" meter

(3) Water usage of 6,000 gallons

4.4.2 Multi-Unit Service

The Multi-Unit class is made up of NBU's apartment and multi-family community. This class is used for permanent residential multi-unit development, such as duplexes, triplexes, quadruplexes, apartment buildings or an individual residence with separate apartment type unit(s) where each dwelling unit is not individually metered. Table 4-13 shows the proposed rate increases for FY 2024 – FY 2025.

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The current effective rates are shown for FY 2023. Note that the Usage Charges for FY 2023 reflect the current use of off-peak and on-peak rates, which are proposed to be eliminated in the FY 2024 rate structure.

Table 4-13: Proposed Water Rates: Multi-Unit Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
5/8" Meter	\$/Month	\$15.98	\$15.98	\$16.05	\$16.30	\$16.65
1" Meter	\$/Month	20.84	28.00	29.10	31.00	32.15
1 1/2" Meter	\$/Month	24.21	32.00	33.00	34.25	35.00
2" Meter	\$/Month	29.57	40.00	40.00	40.50	41.25
3" Meter	\$/Month	43.14	57.50	58.10	59.00	59.65
> 4" Meter	\$/Month	50.87	68.00	68.50	69.50	71.00
Usage Charge						
All Usage	\$/1,000 Gallons	2.71 / 3.12	3.55	4.50	5.40	5.75
Water Supply Fee						
All Usage	\$/1,000 Gallons	2.79	1.84	1.84	1.84	1.84
Unit Charge						
All Units Over One	\$/Unit	\$12.48	\$12.48	\$12.48	\$12.48	\$12.48

(1) Current effective rate

Table 4-14 provides an average Multi-Unit customer bill based on an assumed water usage of 5,000 gallons and a 5/8" Meter. The table shows the customer bill decreasing from FY 2023 to FY 2024. The WSF decrease from \$2.79/1,000 gallons in FY 2023 to \$1.84/1,000 gallons in FY 2024 is driving the decrease in the customer bill for FY 2024.

Table 4-14: Average Multi-Unit Water Bill - Water Usage at 5,000 Gallons

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability ⁽²⁾	\$/month	\$15.98	\$15.98	\$15.98	\$15.98	\$16.05	\$16.05
Usage							
All Usage	\$/1,000 gallons	2.71	13.55	3.55	17.75	4.50	22.50
Water Supply Fee	\$/1,000 gallons	2.79	13.95	1.84	9.20	1.84	9.20
Customer Bill			\$43.48		\$42.93		\$47.75
YOY % Change					-1.3%		11.2%

(1) Off-peak rates shown

(2) Assumes 5/8" meter

(3) Water usage of 5,000 gallons

(4) Bill shown is per residential unit, so one Availability charge is applied

4.4.3 Small General Service ("SGS")

The General Service rate is applicable to water service for any customer that is not residential or multi-family, most of which being commercial businesses and non-profits. NBU has a SGS and LGS class. Currently, all General Service customers are under the SGS rate class, however, as mentioned above, FNI recommends moving the higher usage customers to the LGS rate. Table 4-15 provides the proposed SGS class rates for FY 2024 – FY 2027 and Table 4-16 shows an average SGS customer comparison.

The current effective rates are shown for FY 2023. Note that the Usage Charges for FY 2023 reflect the current use of off-peak and on-peak rates, which are proposed to be eliminated in the FY 2024 rate structure. Because the table shows the proposed FY 2024 water rate structure with modified tier thresholds, the FY 2023 the Usage Charge rates shown in the table are not an exact comparison but are nevertheless provided for reference. Refer back to Table 4-8 for the existing General Service Class rate structure.

Table 4-15: Proposed Water Rates: Small General Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
5/8" Meter	\$/Month	\$20.06	\$21.50	\$22.00	\$23.50	\$24.15
1" Meter	\$/Month	22.59	23.50	24.25	25.75	26.15
1 1/2" Meter	\$/Month	29.34	30.50	31.25	32.50	33.00
2" Meter	\$/Month	37.29	39.00	40.00	41.25	41.85
3" Meter	\$/Month	56.46	58.50	60.00	61.25	61.75
4" Meter	\$/Month	85.86	87.00	91.00	92.15	92.85
6" Meter	\$/Month	149.07	153.00	157.91	159.15	160.00
8" Meter	\$/Month	149.07	175.00	185.00	187.00	188.50
> 10" Meter	\$/Month	155.04	200.00	225.00	230.00	232.00
Usage Charge ⁽²⁾						
0 - 5,000 Gallons	\$/1,000 Gallons	2.98 / 3.27 ⁽³⁾	\$3.75	\$3.75	\$4.70	\$5.25
5,001 - 35,000 Gallons	\$/1,000 Gallons	3.24 / 3.74	5.00	5.75	6.50	6.75
35,001 - 75,000 Gallons	\$/1,000 Gallons	3.78 / 4.92	6.75	8.00	8.65	8.90
> 75,000 Gallons ⁽⁴⁾	\$/1,000 Gallons	3.78 / 4.92	8.00	12.00	12.80	12.95
Water Supply Fee						
All Usage	\$/1,000 Gallons	2.79	1.84	1.84	1.84	1.84
Unit Charge						
All Units Over One	\$/Unit	\$12.48	\$12.48	\$12.48	\$12.48	\$12.48

(1) Current effective rate

(2) FY 2023 rates shown are from the current rate structure, which differs from the proposed rate structure shown here.

(3) FY 2023 usage rates show off-peak and on-peak rates, which are proposed to be eliminated in FY 2024.

(4) FY 2023 includes a Usage Charge tier of >200,000 gallons, with off-peak / on-peak rates of \$4.67 / \$6.53 not reflected in the table

Table 4-16: Average Small General Service Water Bill - Water Usage at 12,300 Gallons

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability ⁽²⁾	\$/month	\$20.06	\$20.06	\$21.50	\$21.50	\$22.00	\$22.00
Usage							
0 - 5,000 Gallons	\$/1,000 gallons	2.98	14.90	3.75	18.75	3.75	18.75
5,001 - 35,000 Gallons	\$/1,000 gallons	3.24	23.65	5.00	36.50	5.75	41.98
Water Supply Fee							
All Usage	\$/1,000 gallons	2.79	34.32	1.84	22.63	1.84	22.63
Customer Bill			\$92.93		\$99.38		\$105.36
YOY % Change					6.9%		6.0%

(1) Off-peak rates shown

(2) Assumes 5/8" meter

(3) Water usage of 12,300 gallons

4.4.4 Large General Service ("LGS")

The LGS class currently has no customers under this rate. However, because of the large discrepancy between usage levels in the SGS class, it's proposed that General Service users that consistently use equal to or over 100,000 gallons of water per month move into the LGS class. Because of the large amounts of water used by these customers for business purposes, this allows more appropriate pricing signals to be given. Table 4-17 provides the proposed water rates for the Large General Service class alongside the current effective FY 2023 rates, and Table 4-18 shows the average bill comparison for an LGS customer.

Table 4-17: Proposed Water Rates: Large General Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
Flat Meter Charge	\$/Month	\$1,794.11	\$350.00	\$400.00	\$425.00	\$450.00
Usage Charge						
All Usage	\$/1,000 Gallons	2.40	3.25	3.75	4.55	4.90
Water Supply Fee						
All Usage	\$/1,000 Gallons	\$2.79	\$1.84	\$1.84	\$1.84	\$1.84

(1) Current effective rate

Table 4-18: Average Large General Service Water Bill - Water Usage at 300,000 Gallons

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability	\$/month	\$1,794.11	\$1,794.11	\$350.00	\$350.00	\$400.00	\$400.00
Usage ⁽²⁾							
All Usage	\$/1,000 gallons	2.40	720.00	3.25	975.00	3.75	1125.00
Water Supply Fee							
All Usage	\$/1,000 gallons	2.79	837.00	1.84	552.00	1.84	552.00
Customer Bill			\$3,351.11		\$1,877.00		\$2,077.00
YOY % Change					-44.0%		10.7%

(1) off-peak rates shown

(2) Water usage of 300,000 gallons

4.4.5 Irrigation Service

Table 4-19 provides the proposed water rates for the Irrigation class alongside the current effective FY 2023 rates. Note that the Usage Charges for FY 2023 reflect the current use of off-peak and on-peak rates, which are proposed to be eliminated in the FY 2024 rate structure. Because the table shows the proposed FY 2024 water rate structure with modified tier thresholds, the FY 2023 Usage Charge rates shown in the table are not an exact comparison but are nevertheless provided for reference. Refer back to Table 4-9 for the existing Irrigation Service Class rate structure.

Starting in 2007, NBU requires a separate irrigation meter for all small commercial buildings with a site plan of 10,000 sq. feet or less and all single-family dwellings. This allows irrigation water to be metered separately from regular, domestic water usage and billed at the irrigation rate. If a customer does not have an irrigation meter, all water usage is billed according to the customer class of the existing meter.

Table 4-19: Proposed Water Rates: Irrigation Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
5/8" Meter	\$/Month	\$11.80	\$15.98	\$16.05	\$16.30	\$16.65
1" Meter	\$/Month	14.32	28.00	29.10	31.00	32.15
1 1/2" Meter	\$/Month	18.72	32.00	33.00	34.25	35.00
2" Meter	\$/Month	19.97	40.00	40.00	40.50	41.25
3" Meter	\$/Month	31.20	57.50	58.10	59.00	59.65
> 4" Meter	\$/Month	37.44	68.00	68.50	69.50	71.00
Usage Charge ⁽²⁾						
0 - 6,000 Gallons	\$/1,000 Gallons	5.23 / 6.54 ⁽³⁾	6.50	7.75	8.75	10.00
6,001 - 20,000 Gallons	\$/1,000 Gallons	6.39 / 7.99	7.75	9.00	10.00	11.00
> 20,000 Gallons	\$/1,000 Gallons	6.39 / 7.99 8.80 / 11.02	10.35	13.30	13.90	14.40
Water Supply Fee						
All Usage	\$/1,000 Gallons	\$2.79	\$1.84	\$1.84	\$1.84	\$1.84

(1) Current effective rate

(2) FY 2023 rates shown are from the current rate structure, which differs from the proposed rate structure shown here.

(3) FY 2023 usage rates show off-peak and on-peak rates, which are proposed to be eliminated in FY 2024.

As a point of comparison, Table 4-20 shows the financial effect for a residential customer with a Residential service compared to a customer with both a Residential service and an Irrigation service for FY 2024 and FY 2025. The example assumes total monthly usage of 15,000 gallons. The winter season Residential water usage average of 6,000 gallons is used as the assumed usage for household purposes, and the remaining 9,000 gallons is assumed to be for irrigation purposes. Table 4-21 provides a detailed breakdown of the comparison for FY 2024.

Table 4-20: Average Residential Customer with and without an Irrigation Meter

Description	FY 2023 ⁽¹⁾	FY 2024	FY 2025
Residential Customer without Irrigation Meter ⁽²⁾			
Customer Water Bill	\$87.91	\$133.49	\$139.41
YOY % Change		52%	4%
Total Customer Bill	87.91	133.49	139.41
YOY % Change		52%	4%
Residential Customer with Irrigation Meter ⁽³⁾			
Customer Water Bill	27.56	36.53	38.10
YOY % Change		0%	4%
Customer Irrigation Bill	85.72	94.79	106.11
YOY % Change		11%	12%
Total Customer Bill	\$113.28	\$131.32	\$144.21
YOY % Change		16%	10%

(1) Current effective rate, off-peak

(2) Without irrigation meter assumes Water - 15,000 gallons.

(3) With irrigation meter assumes Water - 6,000 gallons, Irrigation - 9,000 gallons

Table 4-21: FY 2024 Effect of Irrigation with Residential vs. Irrigation Service

Description		Units	Rate	Residential Service Only		Residential and Irrigation Service	
				Usage	Bill	Usage	Bill
Residential Service							
Availability Charge	5/8" meter	\$/month	\$15.98	1	\$15.98	1	\$15.98
Usage Charge	0 - 3,000 Gallons	\$/1,000 Gallons	1.95	3,000	5.85	3,000	5.85
	3,001 - 6,000 Gallons	\$/1,000 Gallons	4.90	3,000	14.70	3,000	14.70
	6,001 - 12,000 Gallons	\$/1,000 Gallons	7.65	6,000	45.90		
	> 12,000 Gallons	\$/1,000 Gallons	11.50	3,000	34.50		
Residential Usage Charge Subtotal				15,000	100.95	6,000	20.55
Water Supply Fee	0 - 3,000 Gallons	\$/1,000 Gallons		3,000	0.00	3,000	
	3,001 - 6,000 Gallons	\$/1,000 Gallons		3,000	0.00	3,000	
	6,001 - 12,000 Gallons	\$/1,000 Gallons	1.84	6,000	11.04		
	> 12,000 Gallons	\$/1,000 Gallons	1.84	3,000	5.52		
Residential Water Supply Fee Subtotal				15,000	16.56	6,000	
Residential Service Total				15,000	133.49	6,000	36.53
Irrigation Service							
Availability Charge	5/8" meter	\$/month	15.98			1	\$15.98
Usage Charge	0 - 6,000 Gallons	\$/1,000 Gallons	6.50			6,000	39.00
	6,001 - 20,000 Gallons	\$/1,000 Gallons	7.75			3,000	23.25
Irrigation Usage Charge Subtotal						9,000	62.25
Water Supply Fee	0 - 6,000 Gallons	\$/1,000 Gallons	1.84			6,000	11.04
	6,001 - 20,000 Gallons	\$/1,000 Gallons	1.84			3,000	5.52
Irrigation Water Supply Fee Subtotal						9,000	16.56
Irrigation Service Total					--	9,000	94.79
Total per Residential Property					15,000	\$133.49	\$131.32

4.4.6 Fire Hydrant Service

Table 4-21 provides the proposed water rates for the Fire Hydrant Service class alongside the current effective FY 2023 rates.

Table 4-22: Proposed Water Service: Fire Hydrant Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
Flat Meter Charge	\$/Month	\$207.31	\$300.00	\$350.00	\$375.00	\$400.00
Usage Charge						
All Usage	\$/1,000 Gallons	6.87 / 8.74	7.90	8.50	9.35	10.00
Water Supply Fee						
All Usage	\$/1,000 Gallons	\$2.79	\$1.84	\$1.84	\$1.84	\$1.84

(1) Current effective rate

5.0 WASTEWATER UTILITY

The Wastewater Utility serves approximately 34,000 customers, with a projected usage of 2.53 billion gallons of billable wastewater during FY 2024. The proportion of customer accounts and projected billable wastewater sales volume by customer class is shown in Table 5-1. Revenues that NBU requires to meet the costs of providing wastewater service to customers is derived principally from wastewater collections. NBU also receives other revenue from various miscellaneous sources, such as impact fees, penalties, allocated income, GBRA participation fees and services. Wastewater revenues from existing rates are estimated to be approximately \$37.9 million in FY 2024 and increase due to customer growth to approximately \$41.3 million by FY 2027.

Table 5-1: Projected Number of Wastewater Customer Accounts, Volumes and Revenue Under Existing Rates – FY 2024 Test Year

Customer Class	Wastewater Customers		Wastewater Volumes		Wastewater Revenue	
	Accounts	Percent	Gallons	Percent	Amount	Percent
Residential	29,135	91.1%	1,357,259,686	53.6%	\$21,075,553	55.6%
Commercial	2,432	7.6%	875,155,368	34.6%	12,497,352	33.0%
Multi-Unit Res 2-4	166	0.5%	10,938,509	0.4%	196,224	0.5%
Multi-Unit Res 5+	239	0.7%	282,108,876	11.2%	4,121,666	10.9%
Schertz	1	~0%	5,125,431	0.2%	15,479	~0%
Total⁽¹⁾	31,972	100%	2,530,587,870	100%	\$37,906,274	100%

(1): Excludes Springs Hill and Guadalupe-Blanco River Authority (GBRA).

5.1 REVENUE REQUIREMENTS

The revenue required to adequately provide for the continued operation of the Wastewater Utility must be sufficient to meet the annual cash obligations of the utility. The utility's annual revenue requirements consist of O&M expenses, Debt Service requirements, funds for O&M Reserves, expenses for Support Services, transfers to the City, and cash funded capital expenditures. A summary of these estimated annual requirements for FY 2024, which have been developed by others and provided by NBU staff, are in Table 5-2.

Table 5-2: Projected FY 2024 Wastewater Utility Revenue Requirements

Description	Amount	Percentage
Operating Expenses	\$8,783,725	20.1%
Non-Operating Expenses	8,546,902	19.6%
Debt Service	9,599,068	22.0%
City Transfer	1,194,338	2.7%
Reserves ⁽¹⁾	456,080	1.0%
Capital Expenditures (Cash Funded from Rates)	15,127,442	34.6%
Total Projected Revenue Requirements	\$43,707,555	100%

(1) Contingency reserves are funded annually to maintain a reserve fund balance equal to 90 - 120 days of O&M expenses.

Based on the cash flow analysis of the revenue and revenue requirements for the Wastewater Utility, an annual revenue increase of 5.8% is projected to be needed for FY 2024. Thereafter, 11.0%, 7.7%, and 6.4% revenue increases are forecasted to be needed for FY 2025, FY 2026, and FY 2027, respectively. To prevent rate fluctuation on the end user customers, levelized rate increases of 7.3%, 7.3%, 7.7%, and 7.7% for FY 2024, FY 2025, FY 2026, and FY 2027, respectively, are proposed. The Wastewater Utility should be self-supporting with sufficient funds generated each year to fund wastewater related programs, improvements, and other activities.

5.2 COST-OF-SERVICE

The COS defines the total revenue requirements to be derived from charges for wastewater. NBU's estimated annual cost-of-service to be met from wastewater rates, is approximately \$40.1 million for the FY 2024 Test Year, consisting of the elements to be assigned to customer classes as shown in Table 5-3.

Table 5-3: Net Revenue Requirement to be Recovered from Rates - FY 2024 Test Year

Description	Operating Expense	Capital Cost	Total Cost
Revenue Requirements			
O&M Expenses	\$17,330,627		\$17,330,627
Debt Service		9,599,068	9,599,068
Other Expenditures & Transfers:			
City Transfer	1,194,338		1,194,338
Contingency Reserves	456,080		456,080
Cash Funded Capital Projects		15,127,442	15,127,442
Subtotal	18,981,046	24,726,509	43,707,555
Less Revenue Requirements Met from Other Sources			
Wastewater Penalties	91,197	118,803	210,000
Wastewater Services	0	0	0
GBRA Capital Participation Fee	345,593	450,202	795,795
Commercial Contract - Schertz	6,722	8,757	15,479
Springs Hill Revenue from Sales	273,563	356,369	629,932
GBRA Revenue from Sales	113,337	147,643	260,980
Allocated Income	738,246	961,709	1,699,955
Subtotal	1,568,658	2,043,483	3,612,141
Net Revenue Requirements to be Recovered by Rates	\$17,412,388	\$22,683,027	\$40,095,415

Utilizing standard rate-making practices, FNI allocated the costs of providing wastewater service to individual customer classes served for the FY 2024 Test Year. This process involved conducting an analysis of costs by system function including those related to the volume and strength of wastewater and customer billing and service-related costs. A summary of the Wastewater Utility's allocated cost-of-service by these functional classifications is shown in Table 5-4.

Table 5-4: Wastewater Utility Cost-of-Service - FY 2024 Test Year

Description	Total	Percent of Total
Common to All		
Volume	\$25,061,235	62.5%
BOD	6,427,265	16.0%
TSS	4,533,960	11.3%
Customer Related		
Billing	\$4,073,067	10.2%
Total Cost of Service to be Allocated	\$40,095,527	100%

A comparison of the resultant total cost-of-service allocated to customer classes based upon their respective service requirements is shown in Table 5-5. Also shown is the indicated percentage revenue adjustment (increase/decrease) required in the level of wastewater rates to meet each class's allocated cost-of-service. Table 5-5 shows that an overall 5.8% revenue increase is needed to meet the FY 2024 Test Year revenue requirement, or an additional \$2,204,620 in revenue. It is the goal of the COS study to recover sufficient revenues to continue operating the system in a fair and equitable manner, while keeping in mind the policies and concerns of the utility and the community.

Table 5-5: Wastewater Cost-of-Service Results

Customer Class	Allocated Test Year COS	Test Year Rate Revenues	Revenue Over/(Under) Recovery	% Increase of Existing Rate Revenues for Full Cost Recovery
Residential	\$23,518,324	\$21,075,553	(\$2,442,771)	11.6%
Commercial	12,162,439	12,497,352	334,913	-2.7%
Multi-Unit Residential 2-4	197,359	196,224	(1,135)	0.6%
Multi-Unit Residential 5+	4,217,293	4,121,666	(95,627)	2.3%
Total	\$40,095,415	\$37,890,795	(\$2,204,620)	5.8%

5.3 PROPOSED WASTEWATER RATE STRUCTURE

Unlike for water, the volumetric rates for wastewater service apply to all usage for all customer classes. This is because billable wastewater volumes are based upon water usage. Therefore, there is no direct way for the Wastewater Utility to control customers' wastewater usage and no way to signal water conservation through wastewater tiered rates, as is done through NBU's water rates design. Because wastewater usage is dependent on water usage, FNI is proposing no change to the wastewater rate structures.

5.4 PROPOSED WASTEWATER RATE DESIGN

Based upon the results of the COS analysis, rate adjustments for FY 2024 have only been made to the Residential class rates. While it is not the primary goal, the proposed wastewater rates have been designed toward implementing rate adjustments that move in the direction of establishing full cost-of-service-based rates. As shown in the cost-of-service results from Table 4-5, any adjustments to the other classes of service will move NBU further away from a cost-of-service revenue recovery. Generally, the proposed rates have been designed to limit the increase in the current service charge levels and increase the volume charges for all billable wastewater volume used. Wastewater is billed based upon the average of the lowest three months in the preceding 12-month period. Therefore, this will provide the Residential customer with more flexibility and control over their monthly bill by controlling their water usage.

The proposed rates are designed following the same general form of rate structure as the existing wastewater rates, which consist of a schedule of service charges and volume charges. The proposed service charge is designed to recover customer billing and collection costs, customer meter and service-related costs, and provision for a readiness-to-serve component. FNI proposes that the service charges have limited increases to maintain revenue levels, not dependent upon water sales, to provide funds to cover the system's fixed costs.

5.4.1 Residential Service

This service rate is applicable to sewer service used solely for residential purposes and related activities consisting of service to single-family dwellings. Table 5-6 provides the proposed Residential Service wastewater rates for FY 2024 – FY 2027 and includes the current effective FY 2023 rates for reference.

Table 5-6: Proposed Wastewater Rates: Residential Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
Flat Customer Charge	\$/Month	\$27.52	\$30.41	\$33.60	\$36.62	\$39.18
Usage Charge						
All Usage	\$/1,000 Gallons	6.47	7.15	7.90	8.61	9.21
Residential WW Only	Flat \$	78.34	86.57	95.66	104.27	111.57
Maximum Charge	\$	\$147.86	\$163.40	\$180.54	\$196.79	\$210.57

(1) Current effective rate

A comparison of typical bills for various Residential customer class levels of billable usage under the proposed schedule of wastewater rates with those under existing rates is shown in Table 5-7. For Residential single-family customers, a representative monthly bill for Residential service is about 4,600 gallons and would be increased by \$6.02, or 11% under the proposed rates for FY 2024. Generally, Residential single-family customers using less than 4,600 gallons per month will experience increases of less than this amount while customers that use over this amount will experience a larger increase.

Table 5-7: Average Residential Wastewater Bill - Wastewater Volume at 4,600 Gallons

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability	\$/month	\$27.52	\$27.52	\$30.41	\$30.41	\$33.6	\$33.60
Usage							
All Usage ⁽²⁾	\$/1,000 gallons	6.47	29.76	7.15	32.89	7.90	36.34
Customer Bill			\$57.28		\$63.30		\$69.94
YOY % Change					10.5%		10.5%

(1) Current Effective Rate

(2) Water usage of 4,600 gallons

For Residential Sewer Only customers, a representative monthly bill would be increased by \$8.23, or 10.5% under the proposed rates for FY 2024. This is specifically for those residential customers who do not receive water service through NBU. The monthly bill for sewer service only is a flat monthly rate and is shown in Table 5-8.

Table 5-8: Average Residential Wastewater Bill – Sewer Only Service

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability	\$/month	\$78.34	\$78.34	\$86.57	\$86.57	\$95.66	\$95.66
Usage							
All Usage ⁽²⁾	\$/1,000 gallons	0.00	0.00	0.00	0.00	0.00	0.00
Customer Bill			\$78.34		\$86.57		\$95.66
YOY % Change					10.5%		10.5%

(1) Current Effective Rate

(2) Residential Sewer Only based upon a flat rate monthly charge.

5.4.2 Multi-Unit 2-4 Service

This service rate is applicable to sewer service used solely for residential purposes and related activities consisting of service to permanent residential multifamily dwellings with not more than four separate and identifiable permanent residential dwelling areas, such as duplexes, triplexes, or quadruplexes, and where water service is provided by NBU to all units through one water meter. Table 5-9 provides the proposed Multi-Unit 2-4 Service wastewater rates for FY 2024 – FY 2027 and includes the current effective FY 2023 rates for reference.

Table 5-9: Proposed Wastewater Rates: Multi-Unit 2-4 Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
Flat Customer Charge	\$/Month	\$27.52	\$30.41	\$33.60	\$36.62	\$39.18
Usage Charge						
All Usage	\$/1,000 Gallons	6.47	7.15	7.90	8.61	9.21
Unit Charge						
All Units Over One	\$/Unit	\$16.37	\$16.37	\$16.37	\$16.37	\$16.37

(1) Current effective rate

A comparison of typical bills for a multiple unit property with two units under the proposed schedule of wastewater rates with those under existing rates is shown in Table 5-10. For Multi-Unit 2-4 customers, a representative monthly bill for service is about 4,600 gallons and would be increased by \$6.02, or 8% under the proposed rates for FY 2024. Generally, Multi-Unit 2-4

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customers using less than 4,600 gallons per month will experience increases of less than this amount while customers that use over this amount will experience a larger increase.

Table 5-10: Average Multi-Unit 2-4 Wastewater Bill – Wastewater Volume at 4,600 Gallons⁽²⁾

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability	\$/month	\$27.52	\$27.52	\$30.41	\$30.41	33.6	\$33.60
Usage							
All Usage ⁽²⁾	\$/1,000 gallons	6.47	29.76	7.15	32.89	7.90	36.34
Units Over One		16.37	16.37	16.37	16.37	16.37	16.37
Customer Bill			\$73.65		\$79.67		\$86.31
YOY % Change					8.2%		8.3%

5.4.3 Multi-Unit 5+ Service

This service rate is applicable to sewer service used solely for residential purposes and related activities consisting of service to permanent residential multifamily dwellings with more than four separate and identifiable permanent residential dwelling areas where water service is provided by NBU to all units through one water meter. Table 5-11 provides the proposed Multi-Unit 5+ Service wastewater rates for FY 2024 – FY 2027 and includes the current effective FY 2023 rates for reference. No rate changes are proposed for FY 2024 and FY 2025.

Table 5-11: Proposed Wastewater Rates: Multi-Unit 5+

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
5/8" Meter	\$/Month	\$39.12	\$39.12	\$39.12	\$41.76	\$45.62
1" Meter	\$/Month	42.45	42.45	42.45	45.32	49.51
1 1/2" Meter	\$/Month	59.21	59.21	59.21	63.21	69.06
2" Meter	\$/Month	75.31	75.31	75.31	80.39	87.83
3" Meter	\$/Month	116.22	116.22	116.22	124.06	135.54
4" Meter	\$/Month	167.40	167.40	167.40	178.70	195.23
6" Meter	\$/Month	301.70	301.70	301.70	322.06	351.85
10" Meter	\$/Month	520.66	520.66	520.66	555.80	607.21
Usage Charge						
0 - 7,000 Gallons	\$/1,000 Gallons	8.18	8.18	8.18	8.73	9.54
7,001 - 25,000 Gallons	\$/1,000 Gallons	8.18	8.18	8.18	8.73	9.54
25,001 - 300,000 Gallons	\$/1,000 Gallons	8.18	8.18	8.18	8.73	9.54
> 300,000 Gallons	\$/1,000 Gallons	8.18	8.18	8.18	8.73	9.54
Unit Charge						
All Units Over One	\$/Unit	\$16.37	\$16.37	\$16.37	\$17.47	\$19.09

(1) Current effective rate

A comparison of typical bills for a 20-unit property with a 2" master meter under the proposed schedule of wastewater rates with those under existing rates is shown in Table 5-12. For Multi-Unit 5+ customers, a representative monthly bill for service is about 4,600 gallons per residential unit and would remain the same under the proposed rates for FY 2024.

Table 5-12: Average Multi-Unit 5+ Wastewater Bill – Wastewater Volume at 4,600 Gallons⁽¹⁾

Description	Units	FY 2023 ⁽¹⁾		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability	\$/month	\$75.31	\$75.31	\$75.31	\$75.31	\$75.31	\$75.31
Usage							
0 - 7,000 gallons	\$/1,000 gallons	8.18	57.26	8.18	57.26	8.18	57.26
7,001 – 25,000 gallons	\$/1,000 gallons	8.18	147.24	8.18	147.24	8.18	147.24
25,001 - 300,000 gallons	\$/1,000 gallons	8.18	548.06	8.18	548.06	8.18	548.06
Units Over One	\$/Unit	16.37	311.03	16.37	311.03	16.37	311.03
Customer Bill			\$1,138.90		\$1,138.90		\$1,138.90
YOY % Change					0.0%		0.0%

(1) Water usage of 4600 gallons

(2) Example assumes 20 residential units per bill

(3) Master meter is 2" meter

5.4.4 Small General Service

The Small General Service rate applies to any customer who does not qualify for the Residential, Multi-Unit 2-4, or the Multi-Unit 5+ service rates, and where water service is provided by NBU. Table 5-13 provides the proposed rate increases for FY 2024 – FY 2027 for the SGS class and includes the current effective FY 2023 rates for reference. No rate changes are proposed for FY 2024 and FY 2025.

Table 5-13: Proposed Wastewater Rates: Small General Service

Description	Units	FY 2023 ⁽¹⁾	FY 2024	FY 2025	FY 2026	FY 2027
Availability Charge						
5/8" Meter	\$/Month	\$39.12	\$39.12	\$39.12	\$41.76	\$45.62
1" Meter	\$/Month	42.45	42.45	42.45	45.32	49.51
1 1/2" Meter	\$/Month	59.21	59.21	59.21	63.21	69.06
2" Meter	\$/Month	75.31	75.31	75.31	80.39	87.83
3" Meter	\$/Month	116.22	116.22	116.22	124.06	135.54
4" Meter	\$/Month	167.40	167.40	167.40	178.70	195.23
6" Meter	\$/Month	301.70	301.70	301.70	322.06	351.85
10" Meter	\$/Month	520.66	520.66	520.66	555.80	607.21
Usage Charge						
0 - 7,000 Gallons	\$/1,000 Gallons	8.18	8.18	8.18	8.73	9.54
7,001 - 25,000 Gallons	\$/1,000 Gallons	8.18	8.18	8.18	8.73	9.54
25,001 - 300,000 Gallons	\$/1,000 Gallons	8.18	8.18	8.18	8.73	9.54
> 300,000 Gallons	\$/1,000 Gallons	8.18	8.18	8.18	8.73	9.54
Unit Charge						
All Units Over One	\$/Unit	16.37	16.37	16.37	17.47	19.09
Commercial WW Only						
All Units	\$/Unit	88.07	88.07	88.07	94.01	102.71
Private Well Service						
All Units	\$/Unit	\$35.82	\$35.82	\$35.82	\$38.24	\$41.78

(1) Current effective rate

A comparison of typical bills for a SGS property with a 2" master meter under the proposed schedule of wastewater rates with those under existing rates is shown in Table 5-14. For SGS customers, a representative monthly bill for service is about 10,000 gallons and would remain the same under the proposed rates for FY 2024.

Table 5-14: Average Small General Service Wastewater Bill – Wastewater Volume at 10,000 Gallons⁽¹⁾

Description	Units	FY 2023		FY 2024		FY 2025	
		Rate	Bill	Rate	Bill	Rate	Bill
Availability	\$/month	\$75.31	\$75.31	\$75.31	\$75.31	\$75.31	\$75.31
Usage							
0 - 7,000 gallons	\$/1,000 gallons	8.18	57.26	8.18	57.26	8.18	57.26
7,001 - 25,000 gallons	\$/1,000 gallons	8.18	24.54	8.18	24.54	8.18	24.54
Units Over One	\$/Unit	16.37	0.00	16.37	0.00	16.37	0.00
Customer Bill			\$157.11		\$157.11		\$157.11
YOY % Change					0.0%		0.0%

(1) Water usage of 10,000 gallons.

(2) Example assumes one unit.

(3) Master meter is 2" meter.

6.0 SUMMARY AND RECOMMENDATIONS

Based on a forecast of revenues under existing rates and revenue requirements for each utility for FY 2024 through FY 2027, FNI recommends a series of rate increases for the utilities. The overall revenue adjustments required to recover the forecasted revenue deficiencies for the utilities are shown in Table 6-1. The forecasted revenue deficiencies, and subsequent rate adjustments needed, as shown in Table 6-1 are considered the *minimum levels required* to maintain prudent financial operations of NBU, appropriate debt service coverage ratios, and adequate reserve fund levels.

The resulting rate adjustments allow water and wastewater utilities to continue to maintain a debt to cash funding ratio consistent with NBU policies and goals. The proposed rate adjustments will allow the electric utility to transition from entirely debt funding capital projects to an approximate 50/50 debt to cash funding ratio that aligns the electric utility with NBU policies and goals and industry best practices.

Table 6-1: Required Revenue Adjustments to Recover Deficits

Utility	FY 2024	FY 2025	FY 2026	FY 2027
Electric	4.8%	5.9%	4.6%	3.8%
Water	9.1%	13.4%	13.6%	11.8%
Wastewater	7.3%	7.3%	7.7%	7.7%

While the proposed rate increases did serve to move the customer classes to more closely align with the results of the COS analysis, FNI did not attempt to match 100% of the COS revenue recovery.

A comparison of typical bills for an average Residential customer under the proposed schedule of water rates with those under existing rates is shown in Table 6-2. The average monthly bill is for a residential customer using 1,200 kWh of electricity, 6,000 gallons of water and 4,600 gallons of sewer usage.

Table 6-2: Comparison of Average Residential Customer Monthly Utility Bill Under Existing and Proposed Rates

	Current	FY 2024	FY 2025
Electric ⁽¹⁾	\$137.12	\$145.63	\$153.93
YOY % Change		6.2%	5.7%
Water	27.56	36.53	38.1
YOY % Change		32.5%	4.3%
Wastewater	57.28	63.3	69.94
YOY % Change		10.5%	10.5%
Total Customer Bill	\$221.96	\$245.46	\$261.97
YOY % Change		10.6%	6.7%

(1) Uses five-year average for PCRA

6.1 RECOMMENDATIONS

Regular reviews of the performance of a utility's rates are an integral part of any utility's management, and failure to monitor the utility's rates can result in the need for significant rate actions. FNI/NewGen recommends that, going forward, NBU continue to regularly monitor and review the performance of its adopted rates and perform rate adjustments in a timely manner to preserve the financial integrity of NBU. In summary, FNI provides the following specific recommendations for each Utility to maintain financial strength and stability into the future.

6.1.1 Electric

- I. Implement two-year rate plan.
 - FY 2024: 4.8% average system rate/revenue increase
 - FY 2025: 5.9% average system rate/revenue increase
- II. Move to a balanced 50/50 debt and rate funded capital program to reduce cost of debt and maintain financial strength and stability for NBU.
- III. Phase in increases over next five years to achieve 50/50 goal ratio (gradualism).
- IV. Implement consistent rate increases across classes (e.g., no customer classes are getting significantly larger rate increases than others).

6.1.2 Water

- I. Implement two-year rate plan.

New Braunfels Utilities

- FY 2024: 9.1% average system rate revenues increase
- FY 2025: 13.4% average system rate revenues increase
- II. Remove on-peak/off-peak differential from existing rate structure.
- III. Split Commercial class into Small General Service (SGS) and Large General Service (LGS)
- IV. Move higher usage customers into the LGS class.
- V. Modify usage tiers in Residential, SGS, and Irrigation classes to more accurately reflect class usage.
- VI. Create additional tier in Residential class to allow for savings by low-usage customers.

6.1.3 Wastewater

- I. Implement two-year rate plan.
 - FY 2024: 7.3% average system rate revenues increase
 - FY 2025: 7.3% average system rate revenues increase
- II. No changes to customer classifications are recommended.



New Braunfels Utilities Board of Trustees
263 Main Plaza
New Braunfels, TX 78130

March 23, 2023

Dear NBU Board of Trustees:

On behalf of the NBU Rate Advisory Committee (RAC), it's my distinct honor and privilege to present you our feedback pertaining to the 2022-2023 Cost of Service and Rate Design Study. The RAC members devoted significant time and energy to learning about the utility business, in general, and the costs of providing essential services to NBU customers.

The RAC is comprised of eighteen (18) members, seven (7) of which were nominated by the New Braunfels City Council and eleven (11) of which were nominated by the NBU Board of Trustees. The RAC represents the following sectors in the community: industrial, healthcare, recreational/seasonal/tourism, manufacturing, large retail, small business, education, non-profit, developer/builder, as well as single and multifamily residential.

Since its inception in April of 2023, the RAC has held nine (9) public meetings, in addition to a public forum. During those meetings, the RAC discussed topics including (i) an overview of NBU's water, wastewater and electric systems; (ii) NBU's revenues, revenue requirements and projected operating results for the water, wastewater and electric utilities; (iii) NBU capital project funding; (iv) the electric energy market and ERCOT; (v) NBU bond ratings and target ratios; (vi) cost of service results for the water, wastewater and electric utilities; and (vii) recommended rates structures for the water, wastewater and electric utilities.

Additionally, RAC members took the initiative to form subcommittees and provide feedback to NBU staff and consultants based on the following seven (7) key policy areas:

1. Low/Fixed Income Customers;
2. Equity and Fairness in Rate Making;
3. Conservation and Renewables;
4. Revenue Sufficiency;
5. Accommodating Growth;
6. Utility Stability and Financial Strength; and
7. Simple to Understand and Easy to Implement.

Throughout this process, the RAC has received input from different sectors of the New Braunfels community, which allowed the RAC members to provide a well-rounded and complete perspective to NBU's consultants and staff.

At its final meeting on February 1, 2023, the RAC unanimously agreed to provide to the NBU Board of Trustees and New Braunfels City Council the feedback of the key policy subcommittees contained in the “Electric, Water and Wastewater Utility Revenues, Revenue Requirements, Cost of Service and Rates” report, prepared by Freese and Nichols, Inc., and NewGen Strategies and Solutions, LLC, and dated March 24, 2023.

Thank you for your consideration in accepting the “Electric, Water and Wastewater Utility Revenues, Revenue Requirements, Cost of Service and Rates” report. I am happy to answer any questions you have regarding the RAC’s feedback.

It has been a pleasure to serve on NBU’s inaugural Rate Advisory Committee and I look forward to continued opportunities to serve the great City of New Braunfels.

Sincerely,



Justin Meadows
Rate Advisory Committee Chair

NBU is scheduled to present the first reading of the water rate ordinance revisions to City Council on April 3, 2023, and the second reading on April 10, 2023.

FINANCIAL IMPACT

The new rates will meet the water revenue requirement of \$44,444,079 for fiscal year 2024 and \$50,427,388 for fiscal year 2025.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. Proposed Water Rate Tables
2. Water Rate Resolution #2023-167
3. Water Rate Muni-Code Redlined
4. Water Rate Muni-Code Clean

Meter Size	Residential (\$/Bill)		Small Commercial (\$/Bill)		Irrigation (\$/Bill)		Multi Family 2-25 (\$/Bill)		Multi Unit 26-100+ (\$/Bill)		Hydrants* (\$/Bill)	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
5/8-Inch	\$ 15.98	\$ 15.98	\$ 20.06	\$ 21.50	\$ 11.80	\$ 15.98	\$ 15.98	\$ 15.98	\$ 15.98	\$ 15.98	\$ 207.31	\$ 300.00
1-Inch	\$ 27.17	\$ 28.00	\$ 22.59	\$ 23.50	\$ 14.32	\$ 28.00	\$ 20.84	\$ 28.00	\$ 20.84	\$ 28.00	\$ 207.31	\$ 300.00
1 1/2-Inch	\$ 31.59	\$ 32.00	\$ 29.34	\$ 30.50	\$ 18.72	\$ 32.00	\$ 24.21	\$ 32.00	\$ 24.21	\$ 32.00	\$ 207.31	\$ 300.00
2-Inch	\$ 38.56	\$ 40.00	\$ 37.29	\$ 39.00	\$ 19.97	\$ 40.00	\$ 29.57	\$ 40.00	\$ 29.57	\$ 40.00	\$ 207.31	\$ 300.00
3-Inch	\$ 56.27	\$ 57.50	\$ 56.46	\$ 58.50	\$ 31.20	\$ 57.50	\$ 43.14	\$ 57.50	\$ 43.14	\$ 57.50	\$ 207.31	\$ 300.00
4-Inch	\$ 66.34	\$ 68.00	\$ 85.86	\$ 87.00	\$ 37.44	\$ 68.00	\$ 50.87	\$ 68.00	\$ 50.87	\$ 68.00	\$ 207.31	\$ 300.00
6-Inch	\$ 66.34	\$ 68.00	\$ 149.07	\$ 153.00	\$ 37.44	\$ 68.00	\$ 50.87	\$ 68.00	\$ 50.87	\$ 68.00	\$ 207.31	\$ 300.00
8-Inch	\$ 66.34	\$ 68.00	\$ 149.07	\$ 175.00	\$ 37.44	\$ 68.00	\$ 50.87	\$ 68.00	\$ 50.87	\$ 68.00	\$ 207.31	\$ 300.00
10-Inch	\$ 66.34	\$ 68.00	\$ 155.04	\$ 200.00	\$ 37.44	\$ 68.00	\$ 50.87	\$ 68.00	\$ 50.87	\$ 68.00	\$ 207.31	\$ 300.00
12-Inch	\$ 66.34	\$ 68.00	\$ 155.04	\$ 200.00	\$ 37.44	\$ 68.00	\$ 50.87	\$ 68.00	\$ 50.87	\$ 68.00	\$ 207.31	\$ 300.00
16-Inch	\$ 66.34	\$ 68.00	\$ 155.04	\$ 200.00	\$ 37.44	\$ 68.00	\$ 50.87	\$ 68.00	\$ 50.87	\$ 68.00	\$ 207.31	\$ 300.00
Unit Charge			\$ 12.48	\$ 12.48		\$ 12.48	\$ 12.48	\$ 12.48	\$ 12.48	\$ 12.48		

* Hydrants do not have dedicated meters, this represents a fixed charge per for each hydrant related account.

Residential	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	7.5	\$ 1.93	\$ -	3	\$ 1.95	\$ -
Block 2	15	\$ 4.87	\$ 2.79	6	\$ 4.90	\$ -
Block 3	25	\$ 6.65	\$ 2.79	12	\$ 7.65	\$ 1.84
Block 4	25+	\$ 9.15	\$ 2.79	12+	\$ 11.50	\$ 1.84

Small Commercial	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	5	\$ 2.98	\$ 2.79	5	\$ 3.75	\$ 1.84
Block 2	50	\$ 3.24	\$ 2.79	35	\$ 5.00	\$ 1.84
Block 3	200	\$ 3.78	\$ 2.79	75	\$ 6.75	\$ 1.84
Block 4	200+	\$ 4.67	\$ 2.79	75+	\$ 8.00	\$ 1.84

Irrigation	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	7.5	\$ 5.23	\$ 2.79	6	\$ 6.50	\$ 1.84
Block 2	25	\$ 6.39	\$ 2.79	20	\$ 7.75	\$ 1.84
Block 3	25+	\$ 8.80	\$ 2.79	20+	\$ 10.35	\$ 1.84

Multi Family 2-4	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	8	\$ 2.71	\$ 2.79	8	\$ 3.55	\$ 1.84
Block 2	20	\$ 2.71	\$ 2.79	20	\$ 3.55	\$ 1.84
Block 3	20+	\$ 2.71	\$ 2.79	20+	\$ 3.55	\$ 1.84

Multi Family 5-10	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	20	\$ 2.71	\$ 2.79	20	\$ 3.55	\$ 1.84
Block 2	40	\$ 2.71	\$ 2.79	40	\$ 3.55	\$ 1.84
Block 3	40+	\$ 2.71	\$ 2.79	40+	\$ 3.55	\$ 1.84

Multi Family 11-25	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	40	\$ 2.71	\$ 2.79	40	\$ 3.55	\$ 1.84
Block 2	100	\$ 2.71	\$ 2.79	100	\$ 3.55	\$ 1.84
Block 3	100+	\$ 2.71	\$ 2.79	100+	\$ 3.55	\$ 1.84

Current	Proposed
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	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Multi Unit 26-50						
Block 1	100	\$ 2.71	\$ 2.79	100	\$ 3.55	\$ 1.84
Block 2	200	\$ 2.71	\$ 2.79	200	\$ 3.55	\$ 1.84
Block 3	200+	\$ 2.71	\$ 2.79	200+	\$ 3.55	\$ 1.84

	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Multi Unit 51-75						
Block 1	200	\$ 2.71	\$ 2.79	200	\$ 3.55	\$ 1.84
Block 2	300	\$ 2.71	\$ 2.79	300	\$ 3.55	\$ 1.84
Block 3	300+	\$ 2.71	\$ 2.79	300+	\$ 3.55	\$ 1.84

	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Multi Unit 76-100						
Block 1	300	\$ 2.71	\$ 2.79	300	\$ 3.55	\$ 1.84
Block 2	400	\$ 2.71	\$ 2.79	400	\$ 3.55	\$ 1.84
Block 3	400+	\$ 2.71	\$ 2.79	400+	\$ 3.55	\$ 1.84

	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Multi Unit 100+						
Block 1	400	\$ 2.71	\$ 2.79	400	\$ 3.55	\$ 1.84
Block 2	800	\$ 2.71	\$ 2.79	800	\$ 3.55	\$ 1.84
Block 3	800+	\$ 2.71	\$ 2.79	800+	\$ 3.55	\$ 1.84

	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Hydrants						
Block 1	All	\$ 6.87	\$ 2.79	All	\$ 7.90	\$ 1.84

	Current	Proposed
Large Commercial		
Customer Charge	\$ 1,794.11	\$ 350.00
Rate (\$/Thou. Gal.)	\$ 2.40	\$ 3.25

	Current	Proposed
Tanker		
Customer Charge	\$ 17.25	\$ 300.00
Rate (\$/Thou. Gal.)	\$ 2.51	\$ 7.90

Meter Size	Residential (\$/Bill)		Small Commercial (\$/Bill)		Irrigation (\$/Bill)		Multi Family 2-25 (\$/Bill)		Multi Unit 26-100+ (\$/Bill)		Hydrants* (\$/Bill)	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
5/8-Inch	\$ 15.98	\$ 16.05	\$ 21.50	\$ 22.00	\$ 15.98	\$ 16.05	\$ 15.98	\$ 16.05	\$ 15.98	\$ 16.05	\$ 300.00	\$ 350.00
1-Inch	\$ 28.00	\$ 29.10	\$ 23.50	\$ 24.25	\$ 28.00	\$ 29.10	\$ 28.00	\$ 29.10	\$ 28.00	\$ 29.10	\$ 300.00	\$ 350.00
1 1/2-Inch	\$ 32.00	\$ 33.00	\$ 30.50	\$ 31.25	\$ 32.00	\$ 33.00	\$ 32.00	\$ 33.00	\$ 32.00	\$ 33.00	\$ 300.00	\$ 350.00
2-Inch	\$ 40.00	\$ 40.00	\$ 39.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 300.00	\$ 350.00
3-Inch	\$ 57.50	\$ 58.10	\$ 58.50	\$ 60.00	\$ 57.50	\$ 58.10	\$ 57.50	\$ 58.10	\$ 57.50	\$ 58.10	\$ 300.00	\$ 350.00
4-Inch	\$ 68.00	\$ 68.50	\$ 87.00	\$ 91.00	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 300.00	\$ 350.00
6-Inch	\$ 68.00	\$ 68.50	\$ 153.00	\$ 157.91	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 300.00	\$ 350.00
8-Inch	\$ 68.00	\$ 68.50	\$ 175.00	\$ 185.00	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 300.00	\$ 350.00
10-Inch	\$ 68.00	\$ 68.50	\$ 200.00	\$ 225.00	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 300.00	\$ 350.00
12-Inch	\$ 68.00	\$ 68.50	\$ 200.00	\$ 225.00	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 300.00	\$ 350.00
16-Inch	\$ 68.00	\$ 68.50	\$ 200.00	\$ 225.00	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 68.00	\$ 68.50	\$ 300.00	\$ 350.00
Unit Charge			\$ 12.48	\$ 12.48			\$ 12.48	\$ 12.48	\$ 12.48	\$ 12.48		

* Hydrants do not have dedicated meters, this represents a fixed charge per for each hydrant related account.

Residential	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	3	\$ 1.95	\$ -	3	\$ 2.15	\$ -
Block 2	6	\$ 4.90	\$ -	6	\$ 5.20	\$ -
Block 3	12	\$ 7.65	\$ 1.84	12	\$ 8.00	\$ 1.84
Block 4	12+	\$ 11.50	\$ 1.84	12+	\$ 12.25	\$ 1.84

Small Commercial	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	5	\$ 3.75	\$ 1.84	5	\$ 3.75	\$ 1.84
Block 2	35	\$ 5.00	\$ 1.84	35	\$ 5.75	\$ 1.84
Block 3	75	\$ 6.75	\$ 1.84	75	\$ 8.00	\$ 1.84
Block 4	75+	\$ 8.00	\$ 1.84	75+	\$ 12.00	\$ 1.84

Irrigation	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	6	\$ 6.50	\$ 1.84	6	\$ 7.75	\$ 1.84
Block 2	20	\$ 7.75	\$ 1.84	20	\$ 9.00	\$ 1.84
Block 3	20+	\$ 10.35	\$ 1.84	20+	\$ 13.30	\$ 1.84

Multi Family 2-4	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	8	\$ 3.55	\$ 1.84	8	\$ 4.50	\$ 1.84
Block 2	20	\$ 3.55	\$ 1.84	20	\$ 4.50	\$ 1.84
Block 3	20+	\$ 3.55	\$ 1.84	20+	\$ 4.50	\$ 1.84

Multi Family 5-10	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	20	\$ 3.55	\$ 1.84	20	\$ 4.50	\$ 1.84
Block 2	40	\$ 3.55	\$ 1.84	40	\$ 4.50	\$ 1.84
Block 3	40+	\$ 3.55	\$ 1.84	40+	\$ 4.50	\$ 1.84

Multi Family 11-25	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Block 1	40	\$ 3.55	\$ 1.84	40	\$ 4.50	\$ 1.84
Block 2	100	\$ 3.55	\$ 1.84	100	\$ 4.50	\$ 1.84
Block 3	100+	\$ 3.55	\$ 1.84	100+	\$ 4.50	\$ 1.84

Current	Proposed
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	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Multi Unit 26-50						
Block 1	100	\$ 3.55	\$ 1.84	100	\$ 4.50	\$ 1.84
Block 2	200	\$ 3.55	\$ 1.84	200	\$ 4.50	\$ 1.84
Block 3	200+	\$ 3.55	\$ 1.84	200+	\$ 4.50	\$ 1.84

	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Multi Unit 51-75						
Block 1	200	\$ 3.55	\$ 1.84	200	\$ 4.50	\$ 1.84
Block 2	300	\$ 3.55	\$ 1.84	300	\$ 4.50	\$ 1.84
Block 3	300+	\$ 3.55	\$ 1.84	300+	\$ 4.50	\$ 1.84

	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Multi Unit 76-100						
Block 1	300	\$ 3.55	\$ 1.84	300	\$ 4.50	\$ 1.84
Block 2	400	\$ 3.55	\$ 1.84	400	\$ 4.50	\$ 1.84
Block 3	400+	\$ 3.55	\$ 1.84	400+	\$ 4.50	\$ 1.84

	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Multi Unit 100+						
Block 1	400	\$ 3.55	\$ 1.84	400	\$ 4.50	\$ 1.84
Block 2	800	\$ 3.55	\$ 1.84	800	\$ 4.50	\$ 1.84
Block 3	800+	\$ 3.55	\$ 1.84	800+	\$ 4.50	\$ 1.84

	Current			Proposed		
	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)	Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	WSF (\$/Thou. Gal.)
Hydrants						
Block 1	All	\$ 7.90	\$ 1.84	All	\$ 8.50	\$ 1.84

	Current	Proposed
Large Commercial		
Customer Charge	\$ 350.00	\$ 400.00
Rate (\$/Thou. Gal.)	\$ 3.25	\$ 3.75

	Current	Proposed
Tanker		
Customer Charge	\$ 300.00	\$ 350.00
Rate (\$/Thou. Gal.)	\$ 7.90	\$ 8.50

R-2023-167

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING PROPOSED AMENDMENTS TO CHAPTER 130, ARTICLE IV, SECTION 130-167 OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS RELATING TO WATER RATES (I) REMOVING THE OFF PEAK AND PEAK SEASON MONTHLY CHARGE DISTINCTIONS; (II) ADJUSTING VOLUME CHARGES; (III) MODIFYING SERVICE RATE CLASSIFICATIONS; (IV) ADJUSTING WATER RATES AND CHARGES FOR FISCAL YEAR 2024; (V) PROVIDING FOR ADJUSTMENTS OF WATER RATES AND CHARGES FOR FISCAL YEAR 2025; (VI) RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO; AND (VII) AUTHORIZING PRESENTATION OF SAME TO THE CITY COUNCIL OF NEW BRAUNFELS FOR ITS CONSIDERATION AND PASSAGE

WHEREAS, the City Council of the City of New Braunfels (the “City Council”) has established an ordinance containing the rules, regulations, and policies and rate provisions affecting the New Braunfels Utilities water system and its furnishing of services, fixing rates, deposits and providing for collection procedures and for the operations of said system, and said ordinances have been codified in Chapter 130, Article IV, Code of Ordinances of the City;

WHEREAS, the Board of Trustees of New Braunfels Utilities is of the opinion that it is now necessary and advisable that Chapter 130, Article IV, Section 130-167 of the Code of Ordinances relating to water rates and charges be amended for fiscal year 2024 and fiscal year 2025; and

WHEREAS, the Board of Trustees has reviewed the proposed amendments and is of the opinion that the same should be approved and submitted to the City Council for its consideration and passage.

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

SECTION 1. The Board of Trustees hereby approves the proposed amendments to Chapter 130, Article IV, Section 130-167 of the Code of Ordinances of the City of New Braunfels relating to water rates as set forth in attached Exhibit A to, among other things, (i) remove the off peak and peak season monthly charge distinctions; (ii) adjust volume charges; (iii) modify service rate classifications; (iv) adjust water rates and charges beginning August 1, 2023, as specified therein; and (v) adjust water rates and charges in effect on July 31, 2024, beginning August 1, 2024, as specified therein, excluding those covered by contract, with no further action by the City Council of New Braunfels, Texas or by New Braunfels Utilities.

SECTION 2. The Board of Trustees hereby recommends approval of such amendments to the City Council and authorizes and directs the Chief Executive Officer of New Braunfels Utilities to present the proposed ordinance amendments in ordinance form to the City Council for its consideration and passage as provided by law.

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.

PASSED, APPROVED, AND ADOPTED, this the 30th day of March, 2023.

Dr. Judith Dykes-Hoffmann
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ian Taylor
Secretary to the Board
New Braunfels Utilities

Exhibit A

ORDINANCE NO. 2023-_____

AN ORDINANCE AMENDING CHAPTER 130, ARTICLE IV, SECTION 130-167, CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS RELATING TO WATER RATES REMOVING THE OFF PEAK AND PEAK SEASON MONTHLY CHARGE DISTINCTIONS; ADJUSTING VOLUME CHARGES; MODIFYING SERVICE RATE CLASSIFICATIONS; ADJUSTING WATER RATES AND CHARGES FOR FISCAL YEAR 2024; PROVIDING FOR ADJUSTMENTS OF WATER RATES AND CHARGES FOR FISCAL YEAR 2025; RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; CONTAINING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of New Braunfels, Texas (the “City”), owns and operates by and through New Braunfels Utilities its own water system in accordance with the laws of the State of Texas and the charter of said City; and

WHEREAS, the Council of the City of New Braunfels has heretofore established an ordinance providing for assessment and collection of water rates and said ordinance has been codified as Chapter 130, Article IV, Code of Ordinances of the City; and

WHEREAS, Section 130-167 of the Code of Ordinances of the City requires an update when rates are changed; and

WHEREAS, the New Braunfels Utilities Board of Trustees recommended new water rates and charges for fiscal year 2024 and fiscal year 2025 at a meeting held on March 30, 2023; and

WHEREAS, in order to change the water rates, it is now necessary and advisable that Section 130-167, Article IV, Code of Ordinances, as heretofore established by ordinance, be amended; and

WHEREAS, the City Council of the City retains the power to consider an additional adjustment of NBU’s rates at any time.

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

SECTION 1.

THAT, the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

THAT, Section 130-167, Chapter 130, Article IV, New Braunfels Code of Ordinances relating to water rates, as heretofore established by ordinance, be and hereby is amended to, among other things, (i) remove the off peak and peak season monthly charge distinctions; (ii) adjust volume charges; (iii) modify service rate classifications; (iv) adjust water rates and charges beginning August 1, 2023; and (v) adjust water rates and charges in effect on July 31, 2024, beginning August 1, 2024, excluding those covered by contract, with no further action by the City Council of New Braunfels, Texas or by New Braunfels Utilities.

SECTION 3.

THAT, Section 130-167, Chapter 130, Article IV, New Braunfels Code of Ordinances, as heretofore established by ordinance, be and hereby is amended in the following section with deleted language signified by strikethrough font and new language signified by underlined font as set forth in attached Exhibit A.

SECTION 4.

THAT, this ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to water rates, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 5.

THAT, if any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 6.

THAT, this ordinance shall be effective on August 1, 2023.

SECTION 7.

PASSED AND APPROVED: First Reading this 3rd day of April, 2023.

PASSED AND APPROVED: Second Reading this 10th day of April, 2023.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

GAYLE WILKINSON, City Secretary

APPROVED AS TO FORM:

VALERIA ACEVEDO, City Attorney

EXHIBIT A

Sec. 130-167. - Water rates.

- (a) *Service rate classifications.* All water service supplied shall be designated by the following classifications with descriptions, rates and conditions of sale as indicated further in this section:

Residential service.

Multi-unit permanent residential water service.

Small general service.

Large general service.

Fire hydrant service.

Landscaping/Irrigation service.

Tanker service.

Wholesale service.

Contractual water service.

Experimental service.

- (b) *Determination of classification.* Upon application for service, NBU shall make the initial determination of the customer's service rate classification. The classification is subject to change in accordance with the provisions of this article.

Rate schedule administration and assignment. Upon request for water service from a prospective customer, NBU shall assign the appropriate rate classification for water service to the applicant requesting service. This assignment may be based upon information provided by the applicant, or other information available at the time the assignment is made.

If an existing customer receiving service changes the nature or character of water service requirements, then NBU shall, upon review of the information available pertaining to the revised water service requirement, reassign the customer to the appropriate rate schedule.

If a prospective or existing customer is eligible to receive water service under more than one of NBU's rate schedules, or if the rates charged are unduly burdensome as a result of the customer's technical qualification for a specific rate schedule, then NBU shall assign the most appropriate rate schedule for water service after consideration of the various service requirements, the potential impact on the NBU system, the potential relative costs of serving the customer, and other available pertinent information.

If a customer requests an adjustment to the billing items due to an unusual occurrence or due to unusual or special circumstances, then NBU may, upon review of the information available pertaining to the customer's request and after consideration of the potential impact on NBU, adjust the billing items.

- (c) *Residential service rate.*

- (1) *Availability.* The residential service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The residential service rate is applicable for water service used solely for residential purposes and related activities consisting of service to single-family dwellings, or permanent residential multifamily dwellings where each dwelling unit is individually metered.
- (3) *Excluded uses.* The residential service rate shall not be applicable for service to a residence also used for commercial purposes, including, but not limited to, boardinghouses, motels, hotels, nursing homes, barbershops, beauty shops, general contractors storing equipment or building materials on the property, child care centers, retail businesses, restaurants, technical repair

services, professional services offered to the public on the premises, and other similar commercial or nonresidential activities.

- (4) *Monthly rates.* The residential service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge, as shown below, plus any special charges or adjustments.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Effective August 1, 2023	Effective August 1, 2024
5/8-inch and smaller	\$15.98	\$16.05
1-inch	\$28.00	\$29.10
1½-inch	\$32.00	\$33.00
2-inch	\$40.00	\$40.00
3-inch	\$57.50	\$58.10
4-inch and greater	\$68.00	\$68.50

Monthly volume charge. The monthly volume charge for water usage per 1,000 gallons, or any part thereof, shall be:

Gallons of Water Usage	Effective August 1, 2023	Effective August 1, 2024
0—3,000	\$1.95	\$2.15
3,001—6,000	\$4.90	\$5.20
6,001—12,000	\$7.65	\$8.00
Excess of 12,000	\$11.50	\$12.25

- (5) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus any special charges or adjustments; or
 - The amount specified in any contract between the customer and NBU.
- (d) *Multi-unit permanent residential service rate.*
- Availability.* The multi-unit permanent residential service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
 - Applicability.* The multi-unit permanent residential service rate is applicable for water service used solely for permanent residential multi-unit development, such as duplexes, triplexes, quadruplexes, apartment buildings, or an individual residence with separate apartment type unit(s) where each dwelling unit is not individually metered.
 - Excluded uses.* The multi-unit permanent residential service rate shall not be applicable for service to individually metered residential dwellings.
 - Monthly rates.* The multi-unit permanent residential service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer

charge plus the monthly volume charge plus the monthly unit charge, as shown below, plus any special charges or adjustments.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Effective August 1, 2023	Effective August 1, 2024
5/8-inch and smaller	\$15.98	\$16.05
1-inch	\$28.00	\$29.10
1½-inch	\$32.00	\$33.00
2-inch	\$40.00	\$40.00
3-inch	\$57.50	\$58.10
4-inch and greater	\$68.00	\$68.50

Monthly volume charge. The monthly volume charge for water usage per 1,000 gallons, or any part thereof, shall be:

Number of Units	Gallons of Water Usage	Effective August 1, 2023	Effective August 1, 2024
2—4	0—8,000	\$3.55	\$4.50
	8,001—20,000	\$3.55	\$4.50
	Excess of 20,000	\$3.55	\$4.50
5—10	0—20,000	\$3.55	\$4.50
	20,001—40,000	\$3.55	\$4.50
	Excess of 40,000	\$3.55	\$4.50
11—25	0—40,000	\$3.55	\$4.50
	40,001—100,000	\$3.55	\$4.50
	Excess of 100,000	\$3.55	\$4.50
26—50	0—100,000	\$3.55	\$4.50
	100,001—200,000	\$3.55	\$4.50
	Excess of 200,000	\$3.55	\$4.50
51—75	0—200,000	\$3.55	\$4.50
	200,001—300,000	\$3.55	\$4.50
	Excess of 300,000	\$3.55	\$4.50
76—100	0—300,000	\$3.55	\$4.50
	300,001—400,000	\$3.55	\$4.50
	Excess of 400,000	\$3.55	\$4.50
100 +	0—400,000	\$3.55	\$4.50
	400,001—800,000	\$3.55	\$4.50

	Excess of 800,000	\$3.55	\$4.50
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Monthly unit charge. When a customer with a master metered water service receives service at a duplex, triplex, quadruplex, apartment complex or individual residence with separate apartment type unit(s) each such separate and identifiable permanent residential area and each public bathroom, laundry area, or other area where water service exists shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$12.48 per month effective August 1, 2023, and \$12.48 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges for such users of water among the occupants or tenants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (5) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus the monthly unit charge, plus any special charges or adjustments; or
 - The amount specified in any contract between the customer and NBU.
- (e) *Small general service rate.*
- Availability.* The small general service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
 - Applicability.* The small general service rate is applicable to water service for any customer whose volumetric usage is less than 100,000 gallons per month, which does not qualify for service under another rate schedule, and includes, but is not limited to nursing homes, schools, restaurants, cafes, bakeries, grocery stores, motels, hotels, banks, barbershops, beauty shops, child care and day care centers, churches, professional offices, feed and hardware stores, funeral homes, furniture stores, general offices, laundries, nurseries and garden centers, retail businesses, and warehouses and other similar nonresidential customers.
 - Monthly rates.* The small general service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable, as shown below, plus any special charges or adjustments.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Effective August 1, 2023	Effective August 1, 2024
5/8-inch and smaller	\$21.50	\$22.00
1-inch	\$23.50	\$24.25
1½-inch	\$30.50	\$31.25
2-inch	\$39.00	\$40.00
3-inch	\$58.50	\$60.00
4-inch	\$87.00	\$91.00
6-inch	\$153.00	\$157.91
8-inch	\$175.00	\$185.00
10 inch and greater	\$200.00	\$225.00

Monthly volume charge. The monthly volume charge for water usage per 1,000 gallons, or any part thereof, shall be:

Gallons of Water Usage	Effective August 1, 2023	Effective August 1, 2024
0—5,000	\$3.75	\$3.75
5,001—35,000	\$5.00	\$5.75
35,001—75,000	\$6.75	\$8.00
Excess of 75,000	\$8.00	\$12.00

Monthly unit charge. When a customer receives service at a multi-unit facility, each separate and identifiable office, retail, wholesale or other type of working areas designed for occupancy by separate tenants or unrelated users shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$12.48 per month effective August 1, 2023, and \$12.48 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges among the occupants or tenants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus the monthly unit charge, plus any special charges or adjustments, if applicable; or
 - The amount specified in any contract between the customer and NBU.

(f) *Large general service rate.*

- Availability.* The large general service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- Applicability.* The large general service rate is applicable to customers with water consumption equal to or exceeding 100,000 gallons per month for at least six months of the immediately preceding 12-month billing period.
- Monthly rates.* The large general service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge and the monthly volume charge, as shown below.

Monthly customer charge: \$350.00 effective August 1, 2023, and \$400.00 effective August 1, 2024

Monthly volume charge: \$3.25 per 1,000 gallons effective August 1, 2023, and \$3.75 per 1,000 gallons effective August 1, 2024

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus any special charges or adjustments; or
 - The amount specified in any contract between the customer and NBU.

(g) *Fire hydrant service rate.*

- (1) *Availability.* The fire hydrant service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The fire hydrant service rate is applicable to water service provided through a fire hydrant, whether metered or estimated. Any customer requesting service under this rate must make arrangements with NBU prior to the date service is required. A service charge of \$100.00 will be assessed to set and remove the fire hydrant meter.
- (3) *Monthly rates.* The fire hydrant service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge and the monthly volume charge, as shown below.

 Monthly customer charge: \$300.00 effective August 1, 2023, and \$350.00 effective August 1, 2024

 Monthly volume charge: \$7.90 per 1,000 gallons effective August 1, 2023, and \$8.50 per 1,000 gallons effective August 1, 2024
- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
 - a. The monthly customer charge plus the monthly volume charge, plus any special charges or adjustments; or
 - b. The amount specified in any contract between the customer and NBU.
- (5) *Deposit.* All customers using a fire hydrant meter shall furnish a deposit of \$300.00 or establish other means of credit acceptable to NBU.

(h) *Landscape/irrigation service rate.*

- (1) *Availability.* The landscape/irrigation service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The landscape/irrigation service rate is applicable to water service for a residential, small general service, and large general service rate classification customer who has a sprinkler or irrigation system on a separate water meter:
 - a. Dedicated exclusively to such purpose, and
 - b. Which is in addition to one or more other water meters serving the same location.
- (3) *Monthly rates.* The landscape/irrigation service rate will be calculated monthly and will be an amount equal to the sum of the monthly customer charge and the monthly volume charge, as shown below.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Effective August 1, 2023	Effective August 1, 2024
5/8-inch and smaller	\$15.98	\$16.05
1-inch	\$28.00	\$29.10
1½-inch	\$32.00	\$33.00
2-inch	\$40.00	\$40.00
3-inch	\$57.50	\$58.10
4-inch and greater	\$68.00	\$68.50

Monthly volume charge. The monthly volume charge for water usage per 1,000 gallons, or any part thereof, shall be:

Gallons of Water Usage	Effective August 1, 2023	Effective August 1, 2024
0—6,000	\$6.50	\$7.75
6,001—20,000	\$7.75	\$9.00
Excess of 20,000	\$10.35	\$13.30

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus any special charges or adjustments; or
 - The amount specified in any contract between the customer and NBU.

(i) *Tanker service rate.*

- Availability.* The tanker service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- Applicability.* The tanker water service rate is applicable to water service provided at locations approved by NBU, whether metered or estimated. Under this rate, a customer may acquire and purchase water through the use of water tanker trucks or other mobile water transport containers. Any customer requesting service under this rate must make arrangements with NBU prior to the date service is required.
- Rates.* The rate for each tanker or other mobile water transport containers acquiring water at locations approved by NBU shall be the sum of the tanker charge and the volume charge, as shown below.

Tanker charge	Effective August 1, 2023	Effective August 1, 2024
Per month	\$300.00	\$350.00
Volume charge, per 1,000 gallons or any part thereof	\$7.90	\$8.50

- (4) *Minimum charge.* The minimum charge for each tanker truck connection shall be the larger of the following:
- The tanker charge plus the volume charge, plus any special charges or adjustments; or
 - The amount specified in any contract between the customer and NBU.

(j) *Wholesale water service.*

- Availability.* Wholesale water service is available under the rules, regulations, and policies, as set by contract and approved by the NBU Board of Trustees. Contracts for wholesale service will be approved only when water supplies are sufficient to satisfy the requirements of the contract without jeopardizing the water needs of the citizens of the City and customers of NBU.
- Applicability.* A wholesale service contract is applicable for water service to water systems created by the appropriate agency of the state as well as to other water systems and purveyors which resell water or water service.
- Rates.* The rate set by contract shall not be less than the marginal cost to serve that customer.

- (k) *Contractual water service.* NBU shall have the right to enter into contracts with customers for water service subject to prior approval of the NBU Board of Trustees. Such water service charges may be

calculated on the basis of customer classification as set forth in this article or on cost of service, at the election of NBU; however, the water service charge shall never be less than cost of service.

(l) *Experimental rate.*

- (1) *Applicability.* The experimental rate shall be applicable to any and all rate class groups at times chosen by NBU. The time period for which the experimental rate may apply shall not exceed one year. At any time, the number of customers affected by the experimental rate shall not exceed one percent of the total number of customers served by NBU.
- (2) *Purpose.* The purpose of the experimental rate is to aid in design of new rates. NBU shall have the authority to initiate or discontinue the experimental rate at NBU's sole discretion.
- (3) *Selection.* The methods and criteria for selection of rate class groups to be used for the experimental rate shall be chosen and defined by NBU. Participation in the experimental rate by customers shall be on a voluntary basis.

(m) *Residential and landscape irrigation drought surcharges.*

- (1) If stage III water use reduction measures are in effect, NBU will implement a \$1.00 per 1,000 gallon surcharge for residential usage greater than 15,000 gallons and for irrigation usage greater than 7,500 gallons per month.
- (2) If stage IV water use reduction measures are in effect, NBU will implement a \$2.00 per 1,000 gallon surcharge for residential usage greater than 15,000 gallons and for irrigation usage greater than 7,500 gallons per month.

(n) NBU is directed to provide updates to City Council and the NBU Board on NBU's financial status. City Council retains the power to consider a review of NBU's rates at any time.

Sec. 130-167. - Water rates.

- (a) *Service rate classifications.* All water service supplied shall be designated by the following classifications with descriptions, rates and conditions of sale as indicated further in this section:

Residential service.

Multi-unit permanent residential water service.

Small general service.

Large general service.

Fire hydrant service.

Landscaping/Irrigation service.

Tanker service.

Wholesale service.

Contractual water service.

Experimental service.

- (b) *Determination of classification.* Upon application for service, NBU shall make the initial determination of the customer's service rate classification. The classification is subject to change in accordance with the provisions of this article.

Rate schedule administration and assignment. Upon request for water service from a prospective customer, NBU shall assign the appropriate rate classification for water service to the applicant requesting service. This assignment may be based upon information provided by the applicant, or other information available at the time the assignment is made.

If an existing customer receiving service changes the nature or character of water service requirements, then NBU shall, upon review of the information available pertaining to the revised water service requirement, reassign the customer to the appropriate rate schedule.

If a prospective or existing customer is eligible to receive water service under more than one of NBU's rate schedules, or if the rates charged are unduly burdensome as a result of the customer's technical qualification for a specific rate schedule, then NBU shall assign the most appropriate rate schedule for water service after consideration of the various service requirements, the potential impact on the NBU system, the potential relative costs of serving the customer, and other available pertinent information.

If a customer requests an adjustment to the billing items due to an unusual occurrence or due to unusual or special circumstances, then NBU may, upon review of the information available pertaining to the customer's request and after consideration of the potential impact on NBU, adjust the billing items.

- (c) *Residential service rate.*

- (1) *Availability.* The residential service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The residential service rate is applicable for water service used solely for residential purposes and related activities consisting of service to single-family dwellings, or permanent residential multifamily dwellings where each dwelling unit is individually metered.
- (3) *Excluded uses.* The residential service rate shall not be applicable for service to a residence also used for commercial purposes, including, but not limited to, boardinghouses, motels, hotels, nursing homes, barbershops, beauty shops, general contractors storing equipment or building materials on the property, child care centers, retail businesses, restaurants, technical repair

services, professional services offered to the public on the premises, and other similar commercial or nonresidential activities.

- (4) *Monthly rates.* The residential service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge, as shown below, plus any special charges or adjustments.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Effective August 1, 2023	Effective August 1, 2024
5/8-inch and smaller	\$15.98	\$16.05
1-inch	\$28.00	\$29.10
1½-inch	\$32.00	\$33.00
2-inch	\$40.00	\$40.00
3-inch	\$57.50	\$58.10
4-inch and greater	\$68.00	\$68.50

Monthly volume charge. The monthly volume charge for water usage per 1,000 gallons, or any part thereof, shall be:

Gallons of Water Usage	Effective August 1, 2023	Effective August 1, 2024
0—3,000	\$1.95	\$2.15
3,001—6,000	\$4.90	\$5.20
6,001—12,000	\$7.65	\$8.00
Excess of 12,000	\$11.50	\$12.25

- (5) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus any special charges or adjustments; or
 - The amount specified in any contract between the customer and NBU.
- (d) *Multi-unit permanent residential service rate.*
- Availability.* The multi-unit permanent residential service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
 - Applicability.* The multi-unit permanent residential service rate is applicable for water service used solely for permanent residential multi-unit development, such as duplexes, triplexes, quadruplexes, apartment buildings, or an individual residence with separate apartment type unit(s) where each dwelling unit is not individually metered.
 - Excluded uses.* The multi-unit permanent residential service rate shall not be applicable for service to individually metered residential dwellings.
 - Monthly rates.* The multi-unit permanent residential service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer

charge plus the monthly volume charge plus the monthly unit charge, as shown below, plus any special charges or adjustments.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Effective August 1, 2023	Effective August 1, 2024
5/8-inch and smaller	\$15.98	\$16.05
1-inch	\$28.00	\$29.10
1½-inch	\$32.00	\$33.00
2-inch	\$40.00	\$40.00
3-inch	\$57.50	\$58.10
4-inch and greater	\$68.00	\$68.50

Monthly volume charge. The monthly volume charge for water usage per 1,000 gallons, or any part thereof, shall be:

Number of Units	Gallons of Water Usage	Effective August 1, 2023	Effective August 1, 2024
2—4	0—8,000	\$3.55	\$4.50
	8,001—20,000	\$3.55	\$4.50
	Excess of 20,000	\$3.55	\$4.50
5—10	0—20,000	\$3.55	\$4.50
	20,001—40,000	\$3.55	\$4.50
	Excess of 40,000	\$3.55	\$4.50
11—25	0—40,000	\$3.55	\$4.50
	40,001—100,000	\$3.55	\$4.50
	Excess of 100,000	\$3.55	\$4.50
26—50	0—100,000	\$3.55	\$4.50
	100,001—200,000	\$3.55	\$4.50
	Excess of 200,000	\$3.55	\$4.50
51—75	0—200,000	\$3.55	\$4.50
	200,001—300,000	\$3.55	\$4.50
	Excess of 300,000	\$3.55	\$4.50
76—100	0—300,000	\$3.55	\$4.50
	300,001—400,000	\$3.55	\$4.50
	Excess of 400,000	\$3.55	\$4.50
100 +	0—400,000	\$3.55	\$4.50
	400,001—800,000	\$3.55	\$4.50

	Excess of 800,000	\$3.55	\$4.50
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Monthly unit charge. When a customer with a master metered water service receives service at a duplex, triplex, quadruplex, apartment complex or individual residence with separate apartment type unit(s) each such separate and identifiable permanent residential area and each public bathroom, laundry area, or other area where water service exists shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$12.48 per month effective August 1, 2023, and \$12.48 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges for such users of water among the occupants or tenants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (5) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus the monthly unit charge, plus any special charges or adjustments; or
 - The amount specified in any contract between the customer and NBU.
- (e) *Small general service rate.*
- Availability.* The small general service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
 - Applicability.* The small general service rate is applicable to water service for any customer whose volumetric usage is less than 100,000 gallons per month, which does not qualify for service under another rate schedule, and includes, but is not limited to nursing homes, schools, restaurants, cafes, bakeries, grocery stores, motels, hotels, banks, barbershops, beauty shops, child care and day care centers, churches, professional offices, feed and hardware stores, funeral homes, furniture stores, general offices, laundries, nurseries and garden centers, retail businesses, and warehouses and other similar nonresidential customers.
 - Monthly rates.* The small general service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable, as shown below, plus any special charges or adjustments.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Effective August 1, 2023	Effective August 1, 2024
5/8-inch and smaller	\$21.50	\$22.00
1-inch	\$23.50	\$24.25
1½-inch	\$30.50	\$31.25
2-inch	\$39.00	\$40.00
3-inch	\$58.50	\$60.00
4-inch	\$87.00	\$91.00
6-inch	\$153.00	\$157.91
8-inch	\$175.00	\$185.00
10 inch and greater	\$200.00	\$225.00

Monthly volume charge. The monthly volume charge for water usage per 1,000 gallons, or any part thereof, shall be:

Gallons of Water Usage	Effective August 1, 2023	Effective August 1, 2024
0—5,000	\$3.75	\$3.75
5,001—35,000	\$5.00	\$5.75
35,001—75,000	\$6.75	\$8.00
Excess of 75,000	\$8.00	\$12.00

Monthly unit charge. When a customer receives service at a multi-unit facility, each separate and identifiable office, retail, wholesale or other type of working areas designed for occupancy by separate tenants or unrelated users shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$12.48 per month effective August 1, 2023, and \$12.48 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges among the occupants or tenants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus the monthly unit charge, plus any special charges or adjustments, if applicable; or
 - The amount specified in any contract between the customer and NBU.

(f) *Large general service rate.*

- Availability.* The large general service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- Applicability.* The large general service rate is applicable to customers with water consumption equal to or exceeding 100,000 gallons per month for at least six months of the immediately preceding 12-month billing period.
- Monthly rates.* The large general service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge and the monthly volume charge, as shown below.

Monthly customer charge: \$350.00 effective August 1, 2023, and \$400.00 effective August 1, 2024

Monthly volume charge: \$3.25 per 1,000 gallons effective August 1, 2023, and \$3.75 per 1,000 gallons effective August 1, 2024

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge, plus any special charges or adjustments; or
 - The amount specified in any contract between the customer and NBU.

(g) *Fire hydrant service rate.*

- (1) *Availability.* The fire hydrant service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The fire hydrant service rate is applicable to water service provided through a fire hydrant, whether metered or estimated. Any customer requesting service under this rate must make arrangements with NBU prior to the date service is required. A service charge of \$100.00 will be assessed to set and remove the fire hydrant meter.
- (3) *Monthly rates.* The fire hydrant service rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge and the monthly volume charge, as shown below.

Monthly customer charge: \$300.00 effective August 1, 2023, and \$350.00 effective August 1, 2024

Monthly volume charge: \$7.90 per 1,000 gallons effective August 1, 2023, and \$8.50 per 1,000 gallons effective August 1, 2024

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
 - a. The monthly customer charge plus the monthly volume charge, plus any special charges or adjustments; or
 - b. The amount specified in any contract between the customer and NBU.
- (5) *Deposit.* All customers using a fire hydrant meter shall furnish a deposit of \$300.00 or establish other means of credit acceptable to NBU.

(h) *Landscape/irrigation service rate.*

- (1) *Availability.* The landscape/irrigation service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The landscape/irrigation service rate is applicable to water service for a residential, small general service, and large general service rate classification customer who has a sprinkler or irrigation system on a separate water meter:
 - a. Dedicated exclusively to such purpose, and
 - b. Which is in addition to one or more other water meters serving the same location.
- (3) *Monthly rates.* The landscape/irrigation service rate will be calculated monthly and will be an amount equal to the sum of the monthly customer charge and the monthly volume charge, as shown below.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Effective August 1, 2023	Effective August 1, 2024
5/8-inch and smaller	\$15.98	\$16.05
1-inch	\$28.00	\$29.10
1½-inch	\$32.00	\$33.00
2-inch	\$40.00	\$40.00
3-inch	\$57.50	\$58.10
4-inch and greater	\$68.00	\$68.50

Monthly volume charge. The monthly volume charge for water usage per 1,000 gallons, or any part thereof, shall be:

Gallons of Water Usage	Effective August 1, 2023	Effective August 1, 2024
0—6,000	\$6.50	\$7.75
6,001—20,000	\$7.75	\$9.00
Excess of 20,000	\$10.35	\$13.30

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
 - a. The monthly customer charge plus the monthly volume charge, plus any special charges or adjustments; or
 - b. The amount specified in any contract between the customer and NBU.

(i) *Tanker service rate.*

- (1) *Availability.* The tanker service rate is available under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The tanker water service rate is applicable to water service provided at locations approved by NBU, whether metered or estimated. Under this rate, a customer may acquire and purchase water through the use of water tanker trucks or other mobile water transport containers. Any customer requesting service under this rate must make arrangements with NBU prior to the date service is required.
- (3) *Rates.* The rate for each tanker or other mobile water transport containers acquiring water at locations approved by NBU shall be the sum of the tanker charge and the volume charge, as shown below.

Tanker charge	Effective August 1, 2023	Effective August 1, 2024
Per month	\$300.00	\$350.00
Volume charge, per 1,000 gallons or any part thereof	\$7.90	\$8.50

- (4) *Minimum charge.* The minimum charge for each tanker truck connection shall be the larger of the following:
 - a. The tanker charge plus the volume charge, plus any special charges or adjustments; or
 - b. The amount specified in any contract between the customer and NBU.

(j) *Wholesale water service.*

- (1) *Availability.* Wholesale water service is available under the rules, regulations, and policies, as set by contract and approved by the NBU Board of Trustees. Contracts for wholesale service will be approved only when water supplies are sufficient to satisfy the requirements of the contract without jeopardizing the water needs of the citizens of the City and customers of NBU.
- (2) *Applicability.* A wholesale service contract is applicable for water service to water systems created by the appropriate agency of the state as well as to other water systems and purveyors which resell water or water service.
- (3) *Rates.* The rate set by contract shall not be less than the marginal cost to serve that customer.

- (k) *Contractual water service.* NBU shall have the right to enter into contracts with customers for water service subject to prior approval of the NBU Board of Trustees. Such water service charges may be

calculated on the basis of customer classification as set forth in this article or on cost of service, at the election of NBU; however, the water service charge shall never be less than cost of service.

(l) *Experimental rate.*

- (1) *Applicability.* The experimental rate shall be applicable to any and all rate class groups at times chosen by NBU. The time period for which the experimental rate may apply shall not exceed one year. At any time, the number of customers affected by the experimental rate shall not exceed one percent of the total number of customers served by NBU.
- (2) *Purpose.* The purpose of the experimental rate is to aid in design of new rates. NBU shall have the authority to initiate or discontinue the experimental rate at NBU's sole discretion.
- (3) *Selection.* The methods and criteria for selection of rate class groups to be used for the experimental rate shall be chosen and defined by NBU. Participation in the experimental rate by customers shall be on a voluntary basis.

(m) *Residential and landscape irrigation drought surcharges.*

- (1) If stage III water use reduction measures are in effect, NBU will implement a \$1.00 per 1,000 gallon surcharge for residential usage greater than 15,000 gallons and for irrigation usage greater than 7,500 gallons per month.
- (2) If stage IV water use reduction measures are in effect, NBU will implement a \$2.00 per 1,000 gallon surcharge for residential usage greater than 15,000 gallons and for irrigation usage greater than 7,500 gallons per month.

(n) NBU is directed to provide updates to City Council and the NBU Board on NBU's financial status. City Council retains the power to consider a review of NBU's rates at any time.

Discuss and Consider Adopting Resolution #2023-167 by the Board of Trustees of New Braunfels Utilities Approving Proposed Amendments to Chapter 130, Article IV, Section 130-167 of the Code of Ordinances of the City of New Braunfels Relating to Water Rates (i) Removing the Off Peak and Peak Season Monthly Charge Distinctions; (ii) Adjusting Volume Charges; (iii) Modifying Service Rate Classifications; (iv) Adjusting Water Rates and Charges for Fiscal Year 2024; (v) Providing for Adjustments of Water Rates and Charges for Fiscal Year 2025; (vi) Resolving Other Matters Incident and Related Thereto; and (vii) Authorizing Presentation of Same to the City Council of New Braunfels for its Consideration and Passage



Water Rate Recommendations

On Peak/Off Peak

- Remove On-Peak/Off-Peak Differential
- Make FY2022 Revenue Neutral

General Service (GS) Class

- Split Commercial Class into Large GS and Small GS
- Move High Use Customers to Large General Service Class

Usage Tiers

- Establish Tiers to Reflect Usage Levels
- Create Tier to Allow for Low Usage Savings

FY 2024/2025 Water Rate Design

- Remove On-Peak/Off-Peak Differential
- Split Commercial Class into Small General Service and Large General Service (LGS) to match customer usage patterns
 - Move Larger Usage Customers into Large Commercial Class
- Modified tiers in Residential and Small Commercial Class to match customer usage patterns
- Average System Revenue Increase
 - 2024: 9.07% | 2025: 13.43%
- Drivers: ~84% capital; ~7% personnel; ~9% other O&M

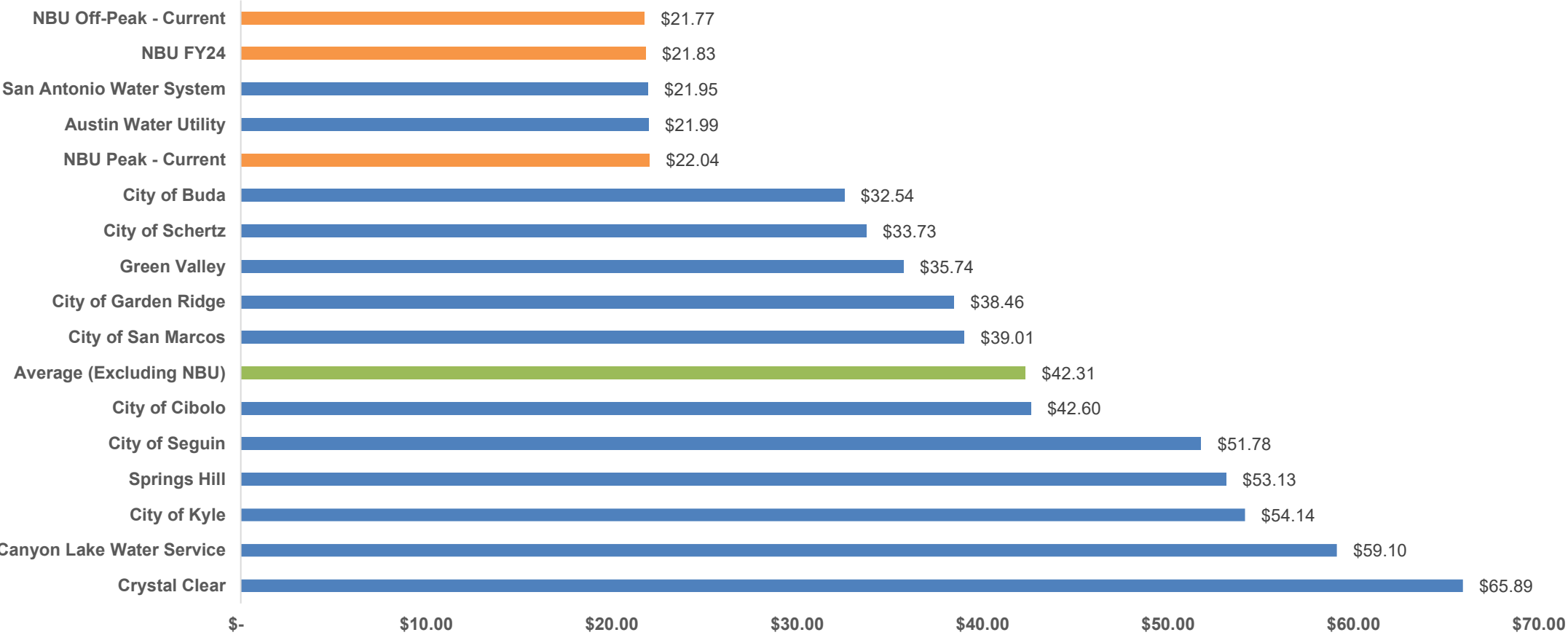
Recommendations – Residential Water Usage at 3,000 Gallons*

WATER - AVERAGE RESIDENTIAL BILL						
	Current**		FY24		FY25	
Customer Bill \$	21.77	\$	21.83	\$	22.50	
YOY % Change			0%		3%	

***37.4% of NBU water customers use 3,000 gallons or less on average per month**

****Assuming off-peak rate**

Residential Water Bill Comparison Essential Use – 3,000 Gallons





Meeting Date: March 30, 2023 **Agenda Type:** Action Items

From: John Warren **Reviewed by:** Ashley Van Booven
 Finance Manager Director of Finance

Submitted by: Dawn Schriewer **Approved by:** Ian Taylor
 Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Adopting Resolution #2023-168 by the Board of Trustees of New Braunfels Utilities Approving Proposed Amendments to Chapter 130, Article V, Section 130-257 of the Code of Ordinances of the City of New Braunfels (i) Adjusting Sewer Rates and Charges for Fiscal Year 2024; (ii) Providing for Adjustments of Sewer Rates and Charges for Fiscal Year 2025; (iii) Resolving Other Matters Incident and Related Thereto; and (iv) Authorizing Presentation of Same to the City Council of New Braunfels for Its Consideration and Passage

BACKGROUND

On February 24, 2022, the NBU Board of Trustees approved a Professional Services Agreement with Freese and Nichols, Inc. (“FNI”) to conduct a comprehensive rate study, including a cost of service analysis, and to oversee the Rate Advisory Committee (“RAC”). On April 28, 2022, the Board approved Resolution #2022-157 establishing the RAC, approving the RAC Bylaws, and appointing eighteen (18) RAC members. The RAC was established to assist NBU in making the rate recommendations and providing community feedback to the utility.

The revenue requirements for the Sewer Line of Business that are identified in the Fiscal Year 2024 Budget and Five Year Financial Operating Plan are driven primarily from the need to build and maintain infrastructure to meet regulatory requirements.

NBU’s twenty-year wastewater infrastructure strategies are identified in NBU’s Water/Wastewater Master Plan. The proposed rates will provide the revenue needed to make these investments. The proposed sewer rate design includes an adjustment of base rates for an average system revenue increase of 7.3% for fiscal year 2024 and 7.3% for fiscal year 2025.

NBU is scheduled to present the first reading of the sewer rate ordinance revisions to City Council on April 3, 2023, and the second reading on April 10, 2023.

FINANCIAL IMPACT

The new rates will meet the sewer revenue requirement of \$39,543,805 for fiscal year 2024 and \$44,403,322 for fiscal year 2025.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. Proposed Sewer Rate Tables
2. Sewer Rate Resolution #2023-168
3. Sewer Rate Muni-Code Redlined
4. Sewer Rate Muni-Code Clean

	Residential (\$/Bill)		Multi-Use 2-4 (\$/Bill)	
	Current	Proposed	Current	Proposed
Total				
Customer Bills	\$ 27.52	\$ 30.41	\$ 27.52	\$ 30.41
Consumption	\$ 6.47	\$ 7.15	\$ 6.47	\$ 7.15
Sewer Only	\$ 78.34	\$ 86.57		
Maximum Charge	\$ 147.86	\$ 163.40		
Unit Charge			\$ 16.37	\$ 16.37

Meter Size	Multi-Use 5+ (\$/Bill)		Small General Service (\$/Bill)	
	Current	Proposed	Current	Proposed
5/8-Inch	\$ 39.12	\$ 39.12	\$ 39.12	\$ 39.12
1-Inch	\$ 42.45	\$ 42.45	\$ 42.45	\$ 42.45
1 1/2-Inch	\$ 59.21	\$ 59.21	\$ 59.21	\$ 59.21
2-Inch	\$ 75.31	\$ 75.31	\$ 75.31	\$ 75.31
3-Inch	\$ 116.22	\$ 116.22	\$ 116.22	\$ 116.22
4-Inch	\$ 167.40	\$ 167.40	\$ 167.40	\$ 167.40
6-Inch	\$ 301.70	\$ 301.70	\$ 301.70	\$ 301.70
10-Inch +	\$ 520.66	\$ 520.66	\$ 520.66	\$ 520.66
Sewer Only			\$ 88.07	\$ 88.07
Private Well Service			\$ 35.82	\$ 35.82

Usage	Multi-Use 5+		Small General Service	
	Current	Proposed	Current	Proposed
Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	Rate (\$/Thou. Gal.)	Rate (\$/Thou. Gal.)	Rate (\$/Thou. Gal.)
Block 1	7	\$ 8.18	\$ 8.18	\$ 8.18
Block 2	25	\$ 8.18	\$ 8.18	\$ 8.18
Block 3	300	\$ 8.18	\$ 8.18	\$ 8.18
Block 4	300+	\$ 8.18	\$ 8.18	\$ 8.18

	Residential (\$/Bill)		Multi-Use 2-4 (\$/Bill)	
	Current	Proposed	Current	Proposed
Total				
Customer Bills	\$ 30.41	\$ 33.60	\$ 30.41	\$ 33.60
Consumption	\$ 7.15	\$ 7.90	\$ 7.15	\$ 7.90
Sewer Only	\$ 86.57	\$ 95.66		
Maximum Charge	\$ 163.40	\$ 180.54		
Unit Charge			\$ 16.37	\$ 16.37

Meter Size	Multi-Use 5+ (\$/Bill)		Small General Service (\$/Bill)	
	Current	Proposed	Current	Proposed
5/8-Inch	\$ 39.12	\$ 39.12	\$ 39.12	\$ 39.12
1-Inch	\$ 42.45	\$ 42.45	\$ 42.45	\$ 42.45
1 1/2-Inch	\$ 59.21	\$ 59.21	\$ 59.21	\$ 59.21
2-Inch	\$ 75.31	\$ 75.31	\$ 75.31	\$ 75.31
3-Inch	\$ 116.22	\$ 116.22	\$ 116.22	\$ 116.22
4-Inch	\$ 167.40	\$ 167.40	\$ 167.40	\$ 167.40
6-Inch	\$ 301.70	\$ 301.70	\$ 301.70	\$ 301.70
10-Inch +	\$ 520.66	\$ 520.66	\$ 520.66	\$ 520.66
Sewer Only			\$ 88.07	\$ 88.07
Private Well Service			\$ 35.82	\$ 35.82

Usage	Multi-Use 5+		Small General Service	
	Current	Proposed	Current	Proposed
Block (Thou. Gal.)	Rate (\$/Thou. Gal.)	Rate (\$/Thou. Gal.)	Rate (\$/Thou. Gal.)	Rate (\$/Thou. Gal.)
Block 1	7	\$ 8.18	\$ 8.18	\$ 8.18
Block 2	25	\$ 8.18	\$ 8.18	\$ 8.18
Block 3	300	\$ 8.18	\$ 8.18	\$ 8.18
Block 4	300+	\$ 8.18	\$ 8.18	\$ 8.18

R-2023-168**A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING PROPOSED AMENDMENTS TO CHAPTER 130, ARTICLE V, SECTION 130-257 OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS (I) ADJUSTING SEWER RATES AND CHARGES FOR FISCAL YEAR 2024; (II) PROVIDING FOR ADJUSTMENTS OF SEWER RATES AND CHARGES FOR FISCAL YEAR 2025; (III) RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO; AND (IV) AUTHORIZING PRESENTATION OF SAME TO THE CITY COUNCIL OF NEW BRAUNFELS FOR ITS CONSIDERATION AND PASSAGE**

WHEREAS, the City Council of the City of New Braunfels (the “City Council”) has established an ordinance containing the rules, regulations, and policies and rate provisions affecting the New Braunfels Utilities sewer system and its furnishing of services, fixing rates, deposits and providing for collection procedures and for the operations of said systems, and said ordinances have been codified in Chapter 130, Article V, Code of Ordinances of the City;

WHEREAS, the Board of Trustees of New Braunfels Utilities is of the opinion that it is now necessary and advisable that Chapter 130, Article V, Section 130-257 of the Code of Ordinances relating to sewer rates and charges be amended for fiscal year 2024 and fiscal year 2025; and

WHEREAS, the Board of Trustees has reviewed the proposed amendments, and is of the opinion that the same should be approved and submitted to the City Council, for its consideration and passage.

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

SECTION 1. The Board of Trustees hereby approves the proposed amendments to Chapter 130, Article V, Section 130-257 of the Code of Ordinances of the City of New Braunfels as set forth in attached Exhibit A to, among other things, (i) adjust sewer rates and charges beginning August 1, 2023, as specified therein and (ii) adjust the sewer rates and charges in effect on July 31, 2024, beginning August 1, 2024, as specified therein, excluding those covered by contract, with no further action by the City Council of New Braunfels, Texas or by New Braunfels Utilities.

SECTION 2. The Board of Trustees hereby recommends approval of such amendments to the City Council and authorizes and directs the Chief Executive Officer of New Braunfels Utilities to present the proposed ordinance amendments in ordinance form to the City Council for its consideration and passage as provided by law.

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.

PASSED, APPROVED, AND ADOPTED, this the 30th day of March, 2023.

Dr. Judith Dykes-Hoffmann
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ian Taylor
Secretary to the Board
New Braunfels Utilities

Exhibit A

ORDINANCE NO. 2023-_____

AN ORDINANCE AMENDING CHAPTER 130, ARTICLE V, SECTION 130-257, CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS ADJUSTING SEWER RATES AND CHARGES FOR FISCAL YEAR 2024; PROVIDING FOR ADJUSTMENTS OF SEWER RATES AND CHARGES FOR FISCAL YEAR 2025; RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; CONTAINING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of New Braunfels, Texas (the "City"), owns and operates by and through New Braunfels Utilities its own sewer system in accordance with the laws of the State of Texas and the charter of said City; and

WHEREAS, the Council of the City of New Braunfels has heretofore established an ordinance providing for assessment and collection of sewer rates and which ordinance has been codified as Chapter 130, Article V, Code of Ordinances of the City; and

WHEREAS, Section 130-257 of the Code of Ordinances of the City requires an update when rates are changed; and

WHEREAS, the New Braunfels Utilities Board of Trustees recommended new sewer rates and charges for fiscal year 2024 and fiscal year 2025 at a meeting held on March 30, 2023; and

WHEREAS, in order to change the sewer rates, it is now necessary and advisable that Section 130-257, Article V, Code of Ordinances, as heretofore established by ordinance, be amended; and

WHEREAS, the City Council of the City retains the power to consider an additional adjustment of NBU's rates at any time.

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

SECTION 1.

THAT, the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

THAT, Section 130-257, Chapter 130, Article V, New Braunfels Code of Ordinances, as heretofore established by ordinance, be and hereby is amended to, among other things, (i) adjust sewer rates and charges beginning August 1, 2023, and (ii) adjust the sewer rates and charges in effect on July 31, 2024, beginning August 1, 2024, excluding those covered by contract, with no further action by the City Council of New Braunfels, Texas or by New Braunfels Utilities.

SECTION 3.

THAT, Section 130-257, Chapter 130, Article V, New Braunfels Code of Ordinances, as heretofore established by ordinance, be and hereby are amended as set forth in attached Exhibit A with deleted language signified by strikethrough font and new language signified by underlined font.

SECTION 4.

THAT, this ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to sewer rates, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 5.

THAT, if any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 6.

THAT, this ordinance shall be effective on August 1, 2023.

SECTION 7.

PASSED AND APPROVED: First Reading this April 3, 2023.

PASSED AND APPROVED: Second Reading this April 10, 2023.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

GAYLE WILKINSON, City Secretary

APPROVED AS TO FORM:

VALERIA ACEVEDO, City Attorney

Sec. 130-257. - Sewer rates.

- (a) *Service rate classifications.* All sewage treatment services supplied shall be designated by the following classifications with descriptions, rates, and conditions of service as indicated further in this section:

Residential service 1 (with water service)

Residential service 2 (without water service)

General service 1 (with water service)

General service 2 (without water service)

Contractual service

Experimental service

- (b) *Rate schedule administration and assignment.* Upon request for sewer service from a prospective customer, NBU shall assign the appropriate rate classification for sewer service to the applicant requesting service. This assignment may be based upon information provided by the applicant, or other information available at the time the assignment is made.

If a customer receiving service changes the nature or character of sewer service requirements, then NBU shall, upon review of the information available pertaining to the revised sewer service requirement, reassign the customer to the appropriate rate schedule.

If a prospective or existing customer is eligible to receive sewer service under more than one of the NBU rate schedules, or if the rates charged are unduly burdensome as a result of the customer's technical qualification for a specific rate schedule, then NBU shall assign the most appropriate rate schedule for sewer service after consideration of the various service requirements, potential impact on NBU facilities, the potential relative costs of serving the customer, and other available pertinent information.

If a customer requests an adjustment to the billing units due to an unusual occurrence or due to unusual or special circumstances, then NBU may, upon review of the information available pertaining to the customer's request and after consideration of the potential impact on NBU, adjust the billing units.

- (c) *Residential service 1 rate, with water service provided by NBU.*

- (1) *Availability.* The residential service 1 rate is available in the sewer service area of NBU under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The residential service 1 rate is applicable to sewer service used solely for residential purposes and related activities consisting of service to single-family dwellings or permanent residential multifamily dwellings with not more than four separate and identifiable permanent residential dwelling areas, such as duplexes, triplexes, or quadruplexes, and where water service is provided by NBU to all units through one water meter.
- (3) *Excluded uses.* The residential service 1 rate shall not be applicable to service to a residence also used for commercial purposes, including, but not limited to, boardinghouses, motels, hotels, nursing homes, apartment complexes with more than four separate and identifiable residential dwelling areas, barbershops, beauty shops, general contractors storing equipment or building materials on the property, child care centers, retail businesses, restaurants, technical repair services, professional services offered to the public on the premises, and other similar commercial or nonresidential activities.
- (4) *Monthly rates.* The residential service 1 rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable, as shown below:

Monthly customer charge. The monthly customer charge shall be \$30.41 effective August 1, 2023, and \$33.60 effective August 1, 2024.

Monthly volume charge. The monthly volume charge shall be \$7.15 effective August 1, 2023, and \$7.90 effective August 1, 2024, per 1,000 gallons, or any part thereof, of average water consumption calculated on a monthly basis as specified under determination of sewer volume billing units.

Monthly unit charge. The monthly unit charge shall be applicable when a customer with a master metered water service receives service at a duplex, triplex, quadruplex, or an individual residence with separate apartment type unit, each such separate and identifiable permanent residential dwelling area shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$16.37 per month effective August 1, 2023, and \$16.37 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges among the occupants residing in multi-unit residential structures. Charges for multi-unit service will be assessed against the customer of record for such location.

- (5) *Determination of sewer volume billing units.* Sewer volume billing units shall be calculated each month for each residential service 1 rate customer by averaging that customer's water consumption for the lowest three months during the preceding 12-month period. Only one month of metered water consumption of less than 100 gallons will be included in the calculation as long as the customer has two or more months of metered water consumption of more than 100 gallons. If the customer has less than two months of metered water consumption of 100 gallons or more, zero consumption months are not restricted from use in the calculation. This calculated three-month average water consumption will be billed each month using the rate specified under monthly volume charge in the preceding paragraph.

Residential service 1 rate customers who have a water usage history less than 12 months shall be billed at the lesser of the system calculated average consumption for similar residential service 1 rate customers or the current billing month's water consumption until the customer has established a water usage history of 12 months.

- (6) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- a. The monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable; or
 - b. The amount specified in any contract between the customer and NBU.
- (7) *Maximum monthly charge.* The maximum charge for a single unit residential structure shall be \$163.40 per month effective August 1, 2023, and \$180.54 per month effective August 1, 2024. A maximum charge is not applicable to any multi-unit residential service 1 customer.
- (8) *Proration of bills.* Single unit residential service 1 rate customers who receive less than a full month of sewer service will have their total bill prorated based on the number of days for which service is received by the customer, divided by the number of days in the current calendar month. Days of service received will be calculated based on the date of initial service or cutoff of service by NBU and will not be prorated for partial days. Proration of bills will not be applicable to any multi-unit residential customer.
- (d) *Residential service 2 rate, with water service not provided by NBU.*
- (1) *Availability.* The residential service 2 rate is available in the sewer service area of NBU under the rules, regulations, policies, and at the rates set forth in this section.
 - (2) *Applicability.* The residential service 2 rate is applicable to sewer service used solely for residential purposes and related activities consisting of service to single-family dwellings or permanent residential multifamily dwellings with not more than four separate and identifiable

permanent residential dwelling areas, such as duplexes, triplexes or quadruplexes, where water service is not provided by NBU.

- (3) *Excluded uses.* The residential service 2 rate shall not be applicable to service to a residence also used for commercial purposes, including, but not limited to, boardinghouses, motels, hotels, nursing homes, apartment complexes with more than four separate and identifiable residential dwelling units, barbershops, beauty shops, general contractors storing equipment or building materials on the property, child care centers, retail businesses, restaurants, technical repair services, professional services offered to the public on the premises, and other similar commercial or nonresidential activities.
- (4) *Monthly rates.* The residential service 2 rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly unit charge, if applicable, as shown below:

Monthly customer charge. The monthly customer charge shall be \$86.57 effective August 1, 2023, and \$95.66 effective August 1, 2024, plus the monthly unit charge if applicable. Triplexes and quadruplexes will be billed for two monthly customer charges.

Monthly unit charge. When a customer with a master metered water service receives service at a duplex, triplex, quadruplex, or an individual residence with separate apartment type units, each such separate and identifiable permanent residential dwelling area shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$16.37 per month effective August 1, 2023, and \$16.37 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges residing in multi-unit residential structures among the occupants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (5) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
 - a. The monthly customer charge plus the monthly unit charge, if applicable; or
 - b. The amount specified in any contract between the customer and NBU.

(e) *General service 1 rate, with water service provided by NBU.*

- (1) *Availability.* The general service 1 rate is available in the sewer service area of NBU under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The general service 1 rate is applicable to sewer service for any customer which does not qualify for the residential service rate, and where water service is provided by NBU.
- (3) *Monthly rates.* The general service 1 rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable, as shown below.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Customer Charge Effective August 1, 2023	Customer Charge Effective August 1, 2024
5/8 -inch and smaller	\$39.12	\$39.12
1-inch	\$42.45	\$42.45
1½-inch	\$59.21	\$59.21
2-inch	\$75.31	\$75.31

3-inch	\$116.22	\$116.22
4-inch	\$167.40	\$167.40
6-inch	\$301.70	\$301.70
10 inch and greater	\$520.66	\$520.66

Monthly volume charge. The monthly volume charge shall be based upon actual water consumption measured in 1,000-gallon increments or any part thereof, as follows:

Gallons of Water Usage	\$ per 1,000 gallons Effective August 1, 2023	\$ per 1,000 gallons Effective August 1, 2024
0—7,000	\$8.18	\$8.18
7,001—25,000	\$8.18	\$8.18
25,001—300,000	\$8.18	\$8.18
Excess of 300,000	\$8.18	\$8.18

Monthly unit charge. When a customer with a master metered water service receives service at a multiple unit residential facility with five or more units, such as an apartment complex or mobile home park, each separate and identifiable permanent residential dwelling area and each public bathroom, laundry area, or other area where sewer service exists shall be subject to a monthly unit charge for billing purposes. When a customer receives service at a multi-unit nonresidential facility, each separate and identifiable office, retail, wholesale or other type of working space designed for occupancy by separate tenants or unrelated users shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$16.37 per month effective August 1, 2023, and \$16.37 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges for such users of water among the occupants or tenants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- a. The monthly customer charge plus the monthly volume charge plus the unit charge, if applicable; or
 - b. The amount specified in any contract between the customer and NBU.
- (f) *General service 2 rate, with water service not provided by NBU.*
- (1) *Availability.* The general service 2 rate is available in the sewer service area of NBU under the rules, regulations, policies, and at the rate set forth in this section.
 - (2) *Applicability.* The general service 2 rate is applicable to sewer service for any customer which does not qualify for the residential service rate, and where water service is not provided by NBU.

- (3) *Monthly rates.* The general service 2 rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable, as shown below.

Monthly customer charge. The monthly customer charge shall be determined by NBU based on an engineering study or the size of the water meter serving each customer, using the general service 1 monthly customer charge rate schedule.

If the customer receives water service directly from a private well where the water service is not provided through a meter, then the monthly customer charge shall be determined based upon analysis of the water connection, but not less than \$35.82 per month effective August 1, 2023, and \$35.82 per month effective August 1, 2024.

Monthly volume charge. NBU shall have the right to require metered water usage data, to perform individual account analysis of water consumption, or to perform sewer flow analysis for any customer under this rate. If metered water usage data becomes available, or if NBU performs an individual water consumption analysis or sewer flow analysis, then the monthly volume charge shall be determined in accordance with the general service 1 monthly volume charge rate schedule.

If metered water data is not available, and if NBU does not require an individual water consumption analysis or sewer flow analysis, then the monthly volume charge shall be \$88.07 per month effective August 1, 2023, and \$88.07 per month effective August 1, 2024.

Monthly unit charge. When a customer receives service at a multiple unit residential facility with five or more units, such as an apartment complex or mobile home park, each separate and identifiable permanent residential dwelling area and each public bathroom, laundry area, or other area where sewer service exists shall be subject to a monthly unit charge for billing purposes. When a customer receives service at a multi-unit nonresidential facility, each separate and identifiable office, retail, wholesale or other type of working space designed for occupancy by separate tenants or unrelated users shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$16.37 per month effective August 1, 2023, and \$16.37 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges for such customers among the occupants or tenants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- a. The monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable; or
 - b. The amount specified in any contract between the customer and NBU.
- (g) *Contractual sewage treatment.* NBU shall have the right to enter into contracts with customers for sewage treatment subject to prior approval of the city council. Such sewage treatment charges may be calculated on the basis of customer classification as set forth in this article or on cost of service, at the election of NBU; however, the sewage treatment charge shall never be less than cost of service.
- (h) *Experimental rate.*
- (1) *Applicability.* The experimental rate shall be applicable to any and all customer rate classifications at times selected by NBU. The time period for which the experimental rate may apply shall not exceed one year. At any time, the number of customers affected by the experimental rate shall not exceed one percent of the total number of customers served by NBU.
 - (2) *Purpose.* The purpose of the experimental rate is to aid in the design of new rates. NBU shall have the authority to initiate or discontinue the experimental rate as it deems appropriate.

- (3) *Selection.* The methods and criteria for selection of rate class groups to be used for the experimental rate shall be selected and defined by NBU. Participation in the experimental rate by customers shall be on a voluntary basis.

(i)

Updates to City Council. NBU is directed to provide updates to City Council and the NBU Board on NBU's financial status. City Council retains the power to consider a review of NBU's rates at any time.

Sec. 130-257. - Sewer rates.

- (a) *Service rate classifications.* All sewage treatment services supplied shall be designated by the following classifications with descriptions, rates, and conditions of service as indicated further in this section:

Residential service 1 (with water service)

Residential service 2 (without water service)

General service 1 (with water service)

General service 2 (without water service)

Contractual service

Experimental service

- (b) *Rate schedule administration and assignment.* Upon request for sewer service from a prospective customer, NBU shall assign the appropriate rate classification for sewer service to the applicant requesting service. This assignment may be based upon information provided by the applicant, or other information available at the time the assignment is made.

If a customer receiving service changes the nature or character of sewer service requirements, then NBU shall, upon review of the information available pertaining to the revised sewer service requirement, reassign the customer to the appropriate rate schedule.

If a prospective or existing customer is eligible to receive sewer service under more than one of the NBU rate schedules, or if the rates charged are unduly burdensome as a result of the customer's technical qualification for a specific rate schedule, then NBU shall assign the most appropriate rate schedule for sewer service after consideration of the various service requirements, potential impact on NBU facilities, the potential relative costs of serving the customer, and other available pertinent information.

If a customer requests an adjustment to the billing units due to an unusual occurrence or due to unusual or special circumstances, then NBU may, upon review of the information available pertaining to the customer's request and after consideration of the potential impact on NBU, adjust the billing units.

- (c) *Residential service 1 rate, with water service provided by NBU.*

- (1) *Availability.* The residential service 1 rate is available in the sewer service area of NBU under the rules, regulations, policies, and at the rates set forth in this section.
- (2) *Applicability.* The residential service 1 rate is applicable to sewer service used solely for residential purposes and related activities consisting of service to single-family dwellings or permanent residential multifamily dwellings with not more than four separate and identifiable permanent residential dwelling areas, such as duplexes, triplexes, or quadruplexes, and where water service is provided by NBU to all units through one water meter.
- (3) *Excluded uses.* The residential service 1 rate shall not be applicable to service to a residence also used for commercial purposes, including, but not limited to, boardinghouses, motels, hotels, nursing homes, apartment complexes with more than four separate and identifiable residential dwelling areas, barbershops, beauty shops, general contractors storing equipment or building materials on the property, child care centers, retail businesses, restaurants, technical repair services, professional services offered to the public on the premises, and other similar commercial or nonresidential activities.
- (4) *Monthly rates.* The residential service 1 rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable, as shown below:

Monthly customer charge. The monthly customer charge shall be \$30.41 effective August 1, 2023, and \$33.60 effective August 1, 2024.

Monthly volume charge. The monthly volume charge shall be \$7.15 effective August 1, 2023, and \$7.90 effective August 1, 2024, per 1,000 gallons, or any part thereof, of average water consumption calculated on a monthly basis as specified under determination of sewer volume billing units.

Monthly unit charge. The monthly unit charge shall be applicable when a customer with a master metered water service receives service at a duplex, triplex, quadruplex, or an individual residence with separate apartment type unit, each such separate and identifiable permanent residential dwelling area shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$16.37 per month effective August 1, 2023, and \$16.37 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges among the occupants residing in multi-unit residential structures. Charges for multi-unit service will be assessed against the customer of record for such location.

- (5) *Determination of sewer volume billing units.* Sewer volume billing units shall be calculated each month for each residential service 1 rate customer by averaging that customer's water consumption for the lowest three months during the preceding 12- month period. Only one month of metered water consumption of less than 100 gallons will be included in the calculation as long as the customer has two or more months of metered water consumption of more than 100 gallons. If the customer has less than two months of metered water consumption of 100 gallons or more, zero consumption months are not restricted from use in the calculation. This calculated three-month average water consumption will be billed each month using the rate specified under monthly volume charge in the preceding paragraph.

Residential service 1 rate customers who have a water usage history less than 12 months shall be billed at the lesser of the system calculated average consumption for similar residential service 1 rate customers or the current billing month's water consumption until the customer has established a water usage history of 12 months.

- (6) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- a. The monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable; or
 - b. The amount specified in any contract between the customer and NBU.
- (7) *Maximum monthly charge.* The maximum charge for a single unit residential structure shall be \$163.40 per month effective August 1, 2023, and \$180.54 per month effective August 1, 2024. A maximum charge is not applicable to any multi-unit residential service 1 customer.
- (8) *Proration of bills.* Single unit residential service 1 rate customers who receive less than a full month of sewer service will have their total bill prorated based on the number of days for which service is received by the customer, divided by the number of days in the current calendar month. Days of service received will be calculated based on the date of initial service or cutoff of service by NBU and will not be prorated for partial days. Proration of bills will not be applicable to any multi-unit residential customer.
- (d) *Residential service 2 rate, with water service not provided by NBU.*
- (1) *Availability.* The residential service 2 rate is available in the sewer service area of NBU under the rules, regulations, policies, and at the rates set forth in this section.
 - (2) *Applicability.* The residential service 2 rate is applicable to sewer service used solely for residential purposes and related activities consisting of service to single-family dwellings or permanent residential multifamily dwellings with not more than four separate and identifiable

permanent residential dwelling areas, such as duplexes, triplexes or quadruplexes, where water service is not provided by NBU.

- (3) *Excluded uses.* The residential service 2 rate shall not be applicable to service to a residence also used for commercial purposes, including, but not limited to, boardinghouses, motels, hotels, nursing homes, apartment complexes with more than four separate and identifiable residential dwelling units, barbershops, beauty shops, general contractors storing equipment or building materials on the property, child care centers, retail businesses, restaurants, technical repair services, professional services offered to the public on the premises, and other similar commercial or nonresidential activities.
- (4) *Monthly rates.* The residential service 2 rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly unit charge, if applicable, as shown below:

Monthly customer charge. The monthly customer charge shall be \$86.57 effective August 1, 2023, and \$95.66 effective August 1, 2024, plus the monthly unit charge if applicable. Triplexes and quadruplexes will be billed for two monthly customer charges.

Monthly unit charge. When a customer with a master metered water service receives service at a duplex, triplex, quadruplex, or an individual residence with separate apartment type units, each such separate and identifiable permanent residential dwelling area shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$16.37 per month effective August 1, 2023, and \$16.37 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges residing in multi-unit residential structures among the occupants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (5) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
 - a. The monthly customer charge plus the monthly unit charge, if applicable; or
 - b. The amount specified in any contract between the customer and NBU.
- (e) *General service 1 rate, with water service provided by NBU.*
 - (1) *Availability.* The general service 1 rate is available in the sewer service area of NBU under the rules, regulations, policies, and at the rates set forth in this section.
 - (2) *Applicability.* The general service 1 rate is applicable to sewer service for any customer which does not qualify for the residential service rate, and where water service is provided by NBU.
 - (3) *Monthly rates.* The general service 1 rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable, as shown below.

Monthly customer charge. The monthly customer charge shall be determined by the size of the water meter serving each customer, as follows:

Meter Size	Customer Charge Effective August 1, 2023	Customer Charge Effective August 1, 2024
5/8 -inch and smaller	\$39.12	\$39.12
1-inch	\$42.45	\$42.45
1½-inch	\$59.21	\$59.21
2-inch	\$75.31	\$75.31

3-inch	\$116.22	\$116.22
4-inch	\$167.40	\$167.40
6-inch	\$301.70	\$301.70
10 inch and greater	\$520.66	\$520.66

Monthly volume charge. The monthly volume charge shall be based upon actual water consumption measured in 1,000-gallon increments or any part thereof, as follows:

Gallons of Water Usage	\$ per 1,000 gallons Effective August 1, 2023	\$ per 1,000 gallons Effective August 1, 2024
0—7,000	\$8.18	\$8.18
7,001—25,000	\$8.18	\$8.18
25,001—300,000	\$8.18	\$8.18
Excess of 300,000	\$8.18	\$8.18

Monthly unit charge. When a customer with a master metered water service receives service at a multiple unit residential facility with five or more units, such as an apartment complex or mobile home park, each separate and identifiable permanent residential dwelling area and each public bathroom, laundry area, or other area where sewer service exists shall be subject to a monthly unit charge for billing purposes. When a customer receives service at a multi-unit nonresidential facility, each separate and identifiable office, retail, wholesale or other type of working space designed for occupancy by separate tenants or unrelated users shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$16.37 per month effective August 1, 2023, and \$16.37 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges for such users of water among the occupants or tenants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- The monthly customer charge plus the monthly volume charge plus the unit charge, if applicable; or
 - The amount specified in any contract between the customer and NBU.
- (f) *General service 2 rate, with water service not provided by NBU.*
- Availability.* The general service 2 rate is available in the sewer service area of NBU under the rules, regulations, policies, and at the rate set forth in this section.
 - Applicability.* The general service 2 rate is applicable to sewer service for any customer which does not qualify for the residential service rate, and where water service is not provided by NBU.

- (3) *Monthly rates.* The general service 2 rate will be calculated monthly in accordance with this section and will be an amount equal to the sum of the monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable, as shown below.

Monthly customer charge. The monthly customer charge shall be determined by NBU based on an engineering study or the size of the water meter serving each customer, using the general service 1 monthly customer charge rate schedule.

If the customer receives water service directly from a private well where the water service is not provided through a meter, then the monthly customer charge shall be determined based upon analysis of the water connection, but not less than \$35.82 per month effective August 1, 2023, and \$35.82 per month effective August 1, 2024.

Monthly volume charge. NBU shall have the right to require metered water usage data, to perform individual account analysis of water consumption, or to perform sewer flow analysis for any customer under this rate. If metered water usage data becomes available, or if NBU performs an individual water consumption analysis or sewer flow analysis, then the monthly volume charge shall be determined in accordance with the general service 1 monthly volume charge rate schedule.

If metered water data is not available, and if NBU does not require an individual water consumption analysis or sewer flow analysis, then the monthly volume charge shall be \$88.07 per month effective August 1, 2023, and \$88.07 per month effective August 1, 2024.

Monthly unit charge. When a customer receives service at a multiple unit residential facility with five or more units, such as an apartment complex or mobile home park, each separate and identifiable permanent residential dwelling area and each public bathroom, laundry area, or other area where sewer service exists shall be subject to a monthly unit charge for billing purposes. When a customer receives service at a multi-unit nonresidential facility, each separate and identifiable office, retail, wholesale or other type of working space designed for occupancy by separate tenants or unrelated users shall be subject to a monthly unit charge for billing purposes. The monthly charge for each unit in excess of one unit shall be \$16.37 per month effective August 1, 2023, and \$16.37 per month effective August 1, 2024.

NBU will not undertake the apportionment of charges for such customers among the occupants or tenants. Charges for multi-unit service will be assessed against the customer of record for such location.

- (4) *Minimum monthly charge.* The minimum monthly charge shall be the larger of the following:
- a. The monthly customer charge plus the monthly volume charge plus the monthly unit charge, if applicable; or
 - b. The amount specified in any contract between the customer and NBU.
- (g) *Contractual sewage treatment.* NBU shall have the right to enter into contracts with customers for sewage treatment subject to prior approval of the city council. Such sewage treatment charges may be calculated on the basis of customer classification as set forth in this article or on cost of service, at the election of NBU; however, the sewage treatment charge shall never be less than cost of service.
- (h) *Experimental rate.*
- (1) *Applicability.* The experimental rate shall be applicable to any and all customer rate classifications at times selected by NBU. The time period for which the experimental rate may apply shall not exceed one year. At any time, the number of customers affected by the experimental rate shall not exceed one percent of the total number of customers served by NBU.
 - (2) *Purpose.* The purpose of the experimental rate is to aid in the design of new rates. NBU shall have the authority to initiate or discontinue the experimental rate as it deems appropriate.

- (3) *Selection.* The methods and criteria for selection of rate class groups to be used for the experimental rate shall be selected and defined by NBU. Participation in the experimental rate by customers shall be on a voluntary basis.
- (i) *Updates to City Council.* NBU is directed to provide updates to City Council and the NBU Board on NBU's financial status. City Council retains the power to consider a review of NBU's rates at any time.

Discuss and Consider Adopting Resolution #2023-168 by the Board of Trustees of New Braunfels Utilities Approving Proposed Amendments to Chapter 130, Article V, Section 130-257 of the Code of Ordinances of the City of New Braunfels (i) Adjusting Sewer Rates and Charges for Fiscal Year 2024; (ii) Providing for Adjustments of Sewer Rates and Charges for Fiscal Year 2025; (iii) Resolving Other Matters Incident and Related Thereto; and (iv) Authorizing Presentation Of Same To The City Council Of New Braunfels For Its Consideration And Passage



FY 2024/2025 Sewer Rate Design

- No changes to customer classifications
- Average System Revenue Increase
 - 2024: 7.3% | 2025: 7.3%
- Drivers: ~87% capital; ~4% personnel; ~9% other O&M
- Sewer comprised of three classes: Residential, Multi-Family, Commercial, no change to any class but residential

Recommendations – Residential Wastewater Volume at 4,600 Gallons

WASTEWATER - AVERAGE RESIDENTIAL BILL					
	Current		FY24		FY25
Customer Bill \$	57.28	\$	63.30	\$	69.94
YOY % Change			11%		10%

Residential Wastewater Bill Comparison

Average Use – 4,600 Gallons



Note: Residential is the only rate class with a wastewater rate adjustment.

FINANCIAL IMPACT

The new rates will meet the FY 2024 through FY 2025 electric revenue requirements of \$354,971,663.

LINK TO STRATEGIC PLAN

Financial Excellence

Stewardship

EXHIBITS

1. Proposed Electric Rate Tables
2. Electric Rate Resolution #2023-169
3. Electric Rate Muni-Code Redlined
4. Electric Rate Muni-Code Clean

Electric Rates FY 2024 effective 8/1/2023

Item 5.

Electric Service Availability charge, per month
 Delivery charge, per kWh

Residential (RE)		
	Current	Proposed
\$	17.06	\$ 20.00
\$	0.01490	\$ 0.01954

Electric Service Availability charge, per month
Fixed Cost of Installed Capacity (\$/kW)
 Res Solar
 Res Wind

Residential (RE) Net Metering		
	Current	Proposed
\$	17.06	\$ 20.00
\$	1.58	\$ 1.58
\$	0.74	\$ 0.74

Electric Service Availability charge, per month
 Delivery charge, per kWh

Small General Service (SGS)		
	Current	Proposed
\$	23.10	\$ 29.05
\$	0.009606	\$ 0.012780

Electric Service Availability charge, per month
Fixed Cost of Installed Capacity (\$/kW)
 SGS Solar
 SGS Wind

Small General Service (SGS) Net Metering		
	Current	Proposed
\$	23.10	\$ 29.05
\$	0.87	\$ 0.87
\$	0.41	\$ 0.41

Delivery demand charge, per kW
Electric Service Availability charge, per month
 Greater than 12,999 kVA, per month
 Less than 13,000 kVA and greater than 7,999 kVA, per month
 Less than 8,000 kVA and greater than 3,999 kVA, per month
 Less than 4,000 kVA and greater than 2,999 kVA, per month
 Less than 3,000 kVA and greater than 1,999 kVA, per month
 Less than 2,000 kVA and greater than 1,499 kVA, per month
 Less than 1,500 kVA and greater than 750 kVA, per month
 Less than 751 kVA and greater than 500 kVA, per month
 Less than 501 kVA and greater than 300 kVA, per month
 Less than 301 kVA and greater than 150 kVA, per month
 Less than 151 kVA, per month

Large General Service (LGS)		
	Current	Proposed
\$	5.34	\$ 7.50
Increase customer charge (varies by meter size) by 39%		
\$	4,547.81	\$ 5,728.27
\$	3,638.25	\$ 5,040.87
\$	2,728.69	\$ 3,780.66
\$	1,819.13	\$ 2,520.44
\$	1,212.75	\$ 1,680.29
\$	606.38	\$ 840.15
\$	363.83	\$ 504.09
\$	272.87	\$ 378.07
\$	212.23	\$ 294.05
\$	121.28	\$ 168.04
\$	36.38	\$ 50.41

Power Factor Penalty (\$/kW)

\$	2.384	\$ 3.305
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Electric Rates FY 2024 effective 8/1/2023

Delivery demand charge, per kW
Electric Service Availability charge, per month
 Greater than 12,999 kVA, per month
 Less than 13,000 kVA and greater than 7,999 kVA, per month
 Less than 8,000 kVA and greater than 3,999 kVA, per month
 Less than 4,000 kVA and greater than 2,999 kVA, per month
 Less than 3,000 kVA and greater than 1,999 kVA, per month
 Less than 2,000 kVA and greater than 1,499 kVA, per month
 Less than 1,500 kVA and greater than 750 kVA, per month
 Less than 751 kVA and greater than 500 kVA, per month
 Less than 501 kVA and greater than 300 kVA, per month
 Less than 301 kVA and greater than 150 kVA, per month
 Less than 151 kVA, per month

Very Large Power (VLP)		
	Current	Proposed
\$	3.22	\$ align="right">5.01
Increase customer charge (varies by meter size) by 54%		
\$	4,472.02	\$ align="right">6,888.70
\$	3,577.61	\$ align="right">5,510.95
\$	2,683.22	\$ align="right">4,133.22
\$	1,788.81	\$ align="right">2,755.48
\$	1,192.54	\$ align="right">1,836.98
\$	596.27	\$ align="right">918.49
\$	357.76	\$ align="right">551.10
\$	268.32	\$ align="right">413.32
\$	208.70	\$ align="right">321.48
\$	119.25	\$ align="right">183.70
\$	35.78	\$ align="right">55.12

Capacity charge, per contract kW per month

Second Feeder Service (SFS)		
	Current	Proposed
\$	3.67	\$ align="right">5.10

Delivery demand charge, per kWh
Electric Service Availability charge, per month
 Greater than 12,999 kVA, per month
 Less than 13,000 kVA and greater than 7,999 kVA, per month
 Less than 8,000 kVA and greater than 3,999 kVA, per month
 Less than 4,000 kVA and greater than 2,999 kVA, per month
 Less than 3,000 kVA and greater than 1,999 kVA, per month
 Less than 2,000 kVA and greater than 1,499 kVA, per month
 Less than 1,500 kVA and greater than 750 kVA, per month
 Less than 751 kVA and greater than 500 kVA, per month
 Less than 501 kVA and greater than 300 kVA, per month
 Less than 301 kVA and greater than 150 kVA, per month
 Less than 151 kVA, per month

Lighting Athletic Fields (LAF)		
	Current	Proposed
\$	0.04790	\$ align="right">0.05648
Increase customer charge (varies by meter size) by 18%		
\$	4,331.25	\$ align="right">5,107.50
\$	3,465.00	\$ align="right">4,086.00
\$	2,598.75	\$ align="right">3,064.50
\$	1,732.50	\$ align="right">2,043.00
\$	1,155.00	\$ align="right">1,362.00
\$	577.50	\$ align="right">681.00
\$	346.50	\$ align="right">408.60
\$	259.88	\$ align="right">306.45
\$	202.13	\$ align="right">238.35
\$	115.50	\$ align="right">136.20
\$	34.65	\$ align="right">40.86

Electric Service Availability charge, per month

Interstate Highway Lighting (HL)		
	Current	Proposed
\$	17.33	\$ align="right">17.33

Monthly Rate, per lamp per month

Area Lighting (AL)		
	Current	Proposed
\$	11.55	\$ align="right">11.55

		Residential (RE)	
		Current	Proposed
Electric Service Availability charge, per month		\$ 20.00	\$ 20.00
Delivery charge, per kWh		\$ 0.01954	\$ 0.02646

		Residential (RE) Net Metering	
		Current	Proposed
Electric Service Availability charge, per month		\$ 20.00	\$ 20.00
Fixed Cost of Installed Capacity (\$/kW)			
Res Solar		\$ 1.58	\$ 1.58
Res Wind		\$ 0.74	\$ 0.74

		Small General Service (SGS)	
		Current	Proposed
Electric Service Availability charge, per month		\$ 29.05	\$ 35.46
Delivery charge, per kWh		\$ 0.01278	\$ 0.01560

		Small General Service (SGS) Net Metering	
		Current	Proposed
Electric Service Availability charge, per month		\$ 29.05	\$ 35.46
Fixed Cost of Installed Capacity (\$/kW)			
SGS Solar		\$ 0.87	\$ 0.87
SGS Wind		\$ 0.41	\$ 0.41

		Large General Service (LGS)	
		Current	Proposed
Delivery demand charge, per kW		\$ 7.50	\$ 9.98
Electric Service Availability charge, per month			
Increase customer charge (varies by meter size) by 33%			
Greater than 12,999 kVA, per month		\$ 5,728.27	\$ 7,621.16
Less than 13,000 kVA and greater than 7,999 kVA, per month		\$ 5,040.87	\$ 6,706.61
Less than 8,000 kVA and greater than 3,999 kVA, per month		\$ 3,780.66	\$ 5,029.97
Less than 4,000 kVA and greater than 2,999 kVA, per month		\$ 2,520.44	\$ 3,353.31
Less than 3,000 kVA and greater than 1,999 kVA, per month		\$ 1,680.29	\$ 2,235.54
Less than 2,000 kVA and greater than 1,499 kVA, per month		\$ 840.15	\$ 1,117.78
Less than 1,500 kVA and greater than 750 kVA, per month		\$ 504.09	\$ 670.67
Less than 751 kVA and greater than 500 kVA, per month		\$ 378.07	\$ 503.00
Less than 501 kVA and greater than 300 kVA, per month		\$ 294.05	\$ 391.22
Less than 301 kVA and greater than 150 kVA, per month		\$ 168.04	\$ 223.57
Less than 151 kVA, per month		\$ 50.41	\$ 67.07
Power Factor Penalty (\$/kW)		\$ 3.305	\$ 4.397

		Very Large Power (VLP)	
		Current	Proposed
Delivery demand charge, per kW		\$ 5.01	\$ 7.33
Electric Service Availability charge, per month			
Increase customer charge (varies by meter size) by 46%			
Greater than 12,999 kVA, per month		\$ 6,888.70	\$ 10,079.55
Less than 13,000 kVA and greater than 7,999 kVA, per month		\$ 5,510.95	\$ 8,063.62
Less than 8,000 kVA and greater than 3,999 kVA, per month		\$ 4,133.22	\$ 6,047.73
Less than 4,000 kVA and greater than 2,999 kVA, per month		\$ 2,755.48	\$ 4,031.82
Less than 3,000 kVA and greater than 1,999 kVA, per month		\$ 1,836.98	\$ 2,687.87
Less than 2,000 kVA and greater than 1,499 kVA, per month		\$ 918.49	\$ 1,343.93
Less than 1,500 kVA and greater than 750 kVA, per month		\$ 551.10	\$ 806.37
Less than 751 kVA and greater than 500 kVA, per month		\$ 413.32	\$ 604.77
Less than 501 kVA and greater than 300 kVA, per month		\$ 321.48	\$ 470.39
Less than 301 kVA and greater than 150 kVA, per month		\$ 183.70	\$ 268.79
Less than 151 kVA, per month		\$ 55.12	\$ 80.65

		Second Feeder Service (SFS)	
		Current	Proposed
Capacity charge, per contract kW per month		\$ 5.10	\$ 6.59

		Lighting Athletic Fields (LAF)	
		Current	Proposed
Delivery demand charge, per kWh		\$ 0.05648	\$ 0.06516
Electric Service Availability charge, per month			
Increase customer charge (varies by meter size) by 15%			
Greater than 12,999 kVA, per month		\$ 5,107.50	\$ 5,892.08
Less than 13,000 kVA and greater than 7,999 kVA, per month		\$ 4,086.00	\$ 4,713.66
Less than 8,000 kVA and greater than 3,999 kVA, per month		\$ 3,064.50	\$ 3,535.25
Less than 4,000 kVA and greater than 2,999 kVA, per month		\$ 2,043.00	\$ 2,356.83
Less than 3,000 kVA and greater than 1,999 kVA, per month		\$ 1,362.00	\$ 1,571.22
Less than 2,000 kVA and greater than 1,499 kVA, per month		\$ 681.00	\$ 785.61
Less than 1,500 kVA and greater than 750 kVA, per month		\$ 408.60	\$ 471.37
Less than 751 kVA and greater than 500 kVA, per month		\$ 306.45	\$ 353.52
Less than 501 kVA and greater than 300 kVA, per month		\$ 238.35	\$ 274.96
Less than 301 kVA and greater than 150 kVA, per month		\$ 136.20	\$ 157.12
Less than 151 kVA, per month		\$ 40.86	\$ 47.14

		Interstate Highway Lighting (HL)	
		Current	Proposed
Electric Service Availability charge, per month		\$ 17.33	\$ 17.33

		Area Lighting (AL)	
		Current	Proposed
Monthly Rate, per lamp per month		\$ 11.55	\$ 11.55

R-2023-169

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING PROPOSED AMENDMENTS TO CHAPTER 130, ARTICLE III, SECTIONS 130-56, 130-57, AND 130-58 OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS (I) ADJUSTING ELECTRIC RATES AND CHARGES FOR FISCAL YEAR 2024; (II) PROVIDING FOR ADJUSTMENTS OF ELECTRIC RATES AND CHARGES FOR FISCAL YEAR 2025; (III) RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO; AND (IV) AUTHORIZING PRESENTATION OF SAME TO THE CITY COUNCIL OF NEW BRAUNFELS FOR ITS CONSIDERATION AND PASSAGE

WHEREAS, the City Council of the City of New Braunfels (the “City Council”) has established an ordinance containing the rules, regulations, and policies and rate provisions affecting the New Braunfels Utilities electric system and its furnishing of services, fixing rates, deposits and providing for collection procedures and for the operations of said system, and said ordinances have been codified in Chapter 130, Article III, Code of Ordinances of the City;

WHEREAS, the Board of Trustees of New Braunfels Utilities is of the opinion that it is now necessary and advisable that Chapter 130, Article III, Sections 130-56, 130-57, and 130-58 of the Code of Ordinances relating to electric rates and charges be amended for fiscal year 2024 and fiscal year 2025; and

WHEREAS, the Board of Trustees has reviewed the proposed amendments and is of the opinion that the same should be approved and submitted to the City Council for its consideration and passage.

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

SECTION 1. The Board of Trustees hereby approves the proposed amendments to Chapter 130, Article III, Sections 130-56, 130-57, and 130-58 of the Code of Ordinances of the City of New Braunfels as set forth in the attached Exhibit A to, among other things, (i) adjust electric rates and charges beginning August 1, 2023, as specified therein and (ii) adjust the electric rates and charges in effect on July 31, 2024, beginning August 1, 2024, as specified therein, excluding those covered by contract, with no further action by the City Council of New Braunfels, Texas or by New Braunfels Utilities.

SECTION 2. The Board of Trustees hereby recommends approval of such amendments to the City Council and authorizes and directs the Chief Executive Officer of New Braunfels Utilities to present the proposed ordinance amendments in ordinance form to the City Council for its consideration and passage as provided by law.

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.

PASSED, APPROVED, AND ADOPTED, this the 30th day of March, 2023.

Dr. Judith Dykes-Hoffmann
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ian Taylor
Secretary to the Board
New Braunfels Utilities

Exhibit A

ORDINANCE NO. 2023-_____

AN ORDINANCE AMENDING CHAPTER 130, ARTICLE III, SECTIONS 130-56, 130-57, AND 130-58 CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS ADJUSTING ELECTRIC RATES AND CHARGES FOR FISCAL YEAR 2024; PROVIDING FOR ADJUSTMENTS OF ELECTRIC RATES AND CHARGES FOR FISCAL YEAR 2025; RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; CONTAINING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of New Braunfels, Texas (the “City”), owns and operates by and through New Braunfels Utilities its own electric system in accordance with the laws of the State of Texas and the charter of said City; and

WHEREAS, the Council of the City of New Braunfels has heretofore established an ordinance providing for assessment and collection of electric rates and which ordinance has been codified as Chapter 130, Article III, Code of Ordinances of the City; and

WHEREAS, Sections 130-56, 130-57, and 130-58 of the Code of Ordinances of the City require an update when rates are changed; and

WHEREAS, the New Braunfels Utilities Board of Trustees recommended new electric rates and charges for fiscal year 2024 and fiscal year 2025 at a meeting held on March 30, 2023; and

WHEREAS, in order to change the electric rates, it is now necessary and advisable that Sections 130-56, 130-57, and 130-58, Article III, Code of Ordinances, as heretofore established by ordinance, be amended; and

WHEREAS, the City Council of the City retains the power to consider an additional adjustment of NBU’s rates at any time.

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

SECTION 1.

THAT, the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

THAT, Sections 130-56, 130-57, and 130-58, Chapter 130, Article III, New Braunfels Code of Ordinances, as heretofore established by ordinance, be and hereby are amended to, among other things, (i) adjust electric rates and charges beginning August 1, 2023, and (ii) adjust the electric rates and charges in effect on July 31, 2024, beginning August 1, 2024, excluding those covered by contract, with no further action by the City Council of New Braunfels, Texas or by New Braunfels Utilities.

SECTION 3.

THAT, Sections 130-56, 130-57, and 130-58, Chapter 130, Article III, New Braunfels Code of Ordinances, as heretofore established by ordinance, be and hereby are amended as set forth in attached Exhibit A with deleted language signified by strikethrough font and new language signified by underlined font.

SECTION 4.

THAT, this ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to electric rates, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 5.

THAT, if any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 6.

THAT, this ordinance shall be effective on August 1, 2023.

SECTION 7.

PASSED AND APPROVED: First Reading this 3rd day of April, 2023.

PASSED AND APPROVED: Second Reading this 10th day of April, 2023.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

GAYLE WILKINSON, City Secretary

APPROVED AS TO FORM:

VALERIA ACEVEDO, City Attorney

Sec. 130-56. Electric rates.

- (a) Service rate classifications. All electric service supplied by NBU shall be designated by the following classifications with descriptions, rates and conditions of sale as indicated further in this article:
- (1) Residential (RE);
 - (2) Small general service (SGS);
 - (3) Large general service (LGS);
 - (4) Very large power-distribution (VLP-D);
 - (5) Transmission service rate (TSR);
 - (6) Experimental electric rate (EER);
 - (7) Lighting athletic fields (LAF);
 - (8) Area lighting rate (AL);
 - (9) Second feeder service (SFS);
 - (10) Net metering (NM); and
 - (11) Interstate highway lighting rate (HL).
- (b) Upon application for service, NBU shall make the initial determination of the customer's service rate classification, which classification is subject to change in accordance with the provisions of this article.
- (c) Residential service rate (RE).
- (1) *Availability.* The residential rate (RE) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section.
 - (2) *Applicability.* The residential rate is applicable for electric service used solely for residential purposes, and related activities, consisting of service to single-family dwellings or individually metered multifamily dwellings. Where two residential units are billed through one meter, the Electric Service Availability Charge shall be doubled. Where more than two residential units or apartments are billed through one meter, the applicable general service rate shall be used.

This rate shall not be applicable for service to a residence also used for nonresidential purposes, including but not limited to boardinghouses, barbershops, beauty shops, general contractors, storing equipment or building materials on the property, child care centers, retail businesses, restaurants, technical repair services, professional services offered to the public on the premises, and other similar nonresidential activities. If the wiring is so arranged that the service for residential purposes and that for commercial purposes are separately metered, this rate is applicable to the service supplied for residential purposes.
 - (3) *Service conditions.* The service furnished under this section shall be nominal 120/240 volt single-phase, 60-hertz, three-wire. Other service voltages may, under certain specific conditions, be furnished with the approval of NBU's Chief Executive Officer.
 - (4) *Monthly rates.* The monthly rates for residential service are as follows:
 - a. Electric Service Availability Charge, \$20.00 per month effective August 1, 2023, and \$20.00 per month effective August 1, 2024
 - b. Delivery Charge, \$0.01954 per kilowatt-hour (kWh) effective August 1, 2023, and \$0.02646 per kWh effective August 1, 2024
 - c. Cost of Power Charge:

Base Generation Rate (BGR):

October—May billing period, \$0.04 per kWh

June—September billing period, \$0.05 per kWh

Base Transmission Rate (BTR):

\$0.0052 per kWh

- d. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
- (d) Small general service rate (SGS).
- (1) *Availability.* The small general service rate (SGS) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section.
 - (2) *Applicability.* The small general service rate is applicable for electric service to all nonresidential establishments, or where a residence is also used for nonresidential purposes and billed through one meter, or where the nonresidential part of a residence is separately metered from the part solely residential, or where three or more residential units are billed through one meter, and use does not exceed 25 kilowatt (kW) demand.
 - (3) *Service conditions.* The service furnished under this section shall be nominal 120/240 volt single-phase, 60-hertz, three-wire; or 120/208 volt three-phase, 60-hertz, four-wire; or 120/240 volt three-phase, 60-hertz, three-wire or four-wire; or 277/480 volt three-phase, 60-hertz, four-wire.
 - (4) *Monthly rates.* The monthly rates for small general service are as follows:
 - a. Electric Service Availability Charge, \$29.05 per month effective August 1, 2023, and \$35.46 per month effective August 1, 2024
 - b. Delivery Charge, \$0.01278 per kWh effective August 1, 2023, and \$0.0156 per kWh effective August 1, 2024
 - c. Cost of Power Charge:

Base Generation Rate (BGR):

October—May billing period, \$0.04 per kWh

June—September billing period, \$0.05 per kWh

Base Transmission Rate (BTR):

\$0.0052 per kWh
 - d. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
 - (5) *Determination of metered kW demand.* The customer's kW demand may be measured when the customer's monthly energy consumption exceeds 3,000 kWhs, and/or where customer's total connected load exceeds 25 kW in motors and other inductive-type equipment. Measurement shall be by maximum 15-minute demand. If after measurement it is determined that the customer's monthly demand has exceeded 25 kW, the customer shall be charged for kW billing demand under the appropriate rate class schedule.
- (e) Large general service rate (LGS).
- (1) *Availability.* The large general service rate (LGS) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section.

- (2) *Applicability.* The large general service rate is applicable for electric service to all nonresidential establishments, or where a residence is also used for nonresidential purposes and billed through one meter, or where the part of a residence is separately metered from the part solely residential, or where three or more residential units are billed through one meter, and use exceeds a maximum 15-minute measured demand of 25 kW during two billing periods for the June through September billing periods or for any four billing periods over a 12-month period, but does not exceed an estimated or measured 1,000 kW, maximum 15-minute measured demand during two billing periods.

When a customer is reclassified to the LGS rate from another rate schedule, the customer may not change to another rate classification within a 12-month period unless there is a substantial change in the character or conditions of service. A customer may request reclassification to another rate classification only after fulfilling all obligations of this rate.

- (3) *Service conditions.* The service furnished under this section shall be nominal 120/240 volt single-phase, 60-hertz, three-wire; or 120/208 volt three-phase, 60-hertz, four-wire; 120/240 volt three-phase, 60-hertz, three-wire or four-wire; or 277/480 volt, three-phase, 60-hertz, four-wire; or 7200/12470 volt, three-phase, 60-hertz, four-wire.
- (4) *Monthly rate.* The monthly rates for large general service are as follows:
- a. Electric Service Availability Charge, per month determined by installed kilovolt-amperes (kVA) aggregated per customer as follows:

Electric Availability Charge (kVA per month)	Effective August 1, 2023	Effective August 1, 2024
Greater than 12,999	\$ 5,728.27	\$ 7,621.16
Less than 13,000 and greater than 7,999	\$ 5,040.87	\$ 6,706.61
Less than 8,000 and greater than 3,999	\$ 3,780.66	\$ 5,029.97
Less than 4,000 and greater than 2,999	\$ 2,520.44	\$ 3,353.31
Less than 3,000 and greater than 1,999	\$ 1,680.29	\$ 2,235.54
Less than 2,000 and greater than 1,499	\$ 840.15	\$ 1,117.78
Less than 1,500 and greater than 750	\$ 504.09	\$ 670.67
Less than 751 and greater than 500	\$ 378.07	\$ 503.00
Less than 501 and greater than 300	\$ 294.05	\$ 391.22
Less than 301 and greater than 150	\$ 168.04	\$ 223.57
Less than 151	\$ 50.41	\$ 67.07

- b. Delivery Demand Charge, \$7.50 per kW effective August 1, 2023, and \$9.98 per kW effective August 1, 2024
- c. Cost of Power Charge:
Base Generation Rate (BGR):
October—May billing period, \$0.04 per kWh
June—September billing period, \$0.05 per kWh
- d. Power supply demand charge, \$1.15 per kW billing demand per month
- e. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
- (5) *Determination of billing kW demand.* The billing kW demand shall be the highest measured kW demand established in any 15-minute demand interval during the current month.
- (f) Very large power distribution rate (VLP-D).

- (1) *Availability.* Very large power-distribution service (VLP-D) shall be available, as approved by NBU's Board of Trustees, in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section.
- (2) *Applicability.* The very large power-distribution rate is applicable for electric service when the measured kW demand exceeds 1,000 kW during a 15-minute demand interval during two billing periods over a 12-month period.
- (3) *Service conditions.* The service furnished under this section shall be nominal 277/480 volt, three-phase, 60-hertz, four-wire; or 7200/12470 volt, three-phase, 60-hertz, four-wire.
- (4) *Monthly rate.* The monthly rates for very large power-distribution service are as follows:

- a. Electric Service Availability Charge, per month determined by installed kVA aggregated per customer as follows:

Electric Availability Charge (kVA per month)	Effective August 1, 2023	Effective August 1, 2024
Greater than 12,999	\$ 6,888.70	\$ 10,079.55
Less than 13,000 and greater than 7,999	\$ 5,510.95	\$ 8,063.62
Less than 8,000 and greater than 3,999	\$ 4,133.22	\$ 6,047.73
Less than 4,000 and greater than 2,999	\$ 2,755.48	\$ 4,031.82
Less than 3,000 and greater than 1,999	\$ 1,836.98	\$ 2,687.87
Less than 2,000 and greater than 1,499	\$ 918.49	\$ 1,343.93
Less than 1,500 and greater than 750	\$ 551.10	\$ 806.37
Less than 751 and greater than 500	\$ 413.32	\$ 604.77
Less than 501 and greater than 300	\$ 321.48	\$ 470.39
Less than 301 and greater than 150	\$ 183.70	\$ 268.79
Less than 151	\$ 55.12	\$ 80.65

- b. Delivery Demand Charge, \$5.01 per kW effective August 1, 2023, and \$7.33 per kW effective August 1, 2024
- c. Cost of Power Charge:
Base Generation Rate (BGR):
October—May billing period, \$0.04 per kWh
June—September billing period, \$0.05 per kWh
- d. Power supply demand charge, \$1.15 per kW billing demand per month
- e. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments. The minimum monthly bill will not include the power factor penalty for the first six months to any new customer to this rate class.
- (5) *Determination of billing kW demand.* The kW billing demand shall be the highest measured kW demand established in any 15-minute period during the current month or 75 percent of the highest 15-minute kW demand in any of the preceding 11 months, but not less than 1,000 kW.
- (g) Transmission service rate (TSR).
- (1) *Availability.* Transmission service rate (TSR) shall be available, as approved by the NBU Board of Trustees, in the electric service area of NBU under the rules, regulations, and policies as established by NBU, which are subject to change from time to time, and as provided for in this article, at the rates set forth in this section.

- (2) *Applicability.* The transmission service rate is applicable only for electric service to customers which require transmission level service (operated at 60 kilovolts (kV), or above) at each specifically identified individual service location and which meet all of the service conditions provided in this article.
- (3) *Service conditions.* The transmission service rate is available in accordance with terms, conditions and rates established by NBU and reviewed by the NBU Board of Trustees.
- (4) *Monthly rate.* The monthly rates for transmission service shall be the sum of the following:
- ERCOT charges: The actual fees and rates for ERCOT transmission service as approved by the Public Utility Commission of Texas
 - Local transformation, metering and miscellaneous charges
 - Power supply charge: The monthly power supply charge shall be the total power supply costs as they are incurred by NBU. Such costs shall include, but are not limited to, costs for purchasing, scheduling, coordinating, and providing capacity and energy to the customer, facilities charges plus any special charges or adjustments.
- (h) Experimental electric rate (EER).
- Applicability.* The experimental electric rate shall be applicable to customers in any rate class at times selected by NBU. The time period for which the experimental electric rate may apply shall not exceed two years. At any time, the number of customers affected by the experimental electric rate shall not exceed one percent of the total number of customers served by NBU.
 - Purpose.* The purpose of the experimental rate is to aid in design of new rates. NBU shall have the authority to initiate or discontinue the experimental electric rate at NBU's discretion.
 - Selection.* The methods and criteria for selection for a rate class to be used for the experimental electric rate shall be chosen and defined by NBU. Participation in the experimental electric rate by customers shall be on a voluntary basis.
- (i) Lighting athletic fields (LAF).
- Applicability.* Service will be supplied through a single point of delivery and shall be used for lighting of outdoor athletic fields and facilities used exclusively in conjunction with athletic events on these fields.
 - Service conditions.* Single or three-phase service at the voltage of the available primary distribution lines of NBU (primary), or at the secondary voltage of transformation facilities supplied from NBU's distribution system (secondary).
 - Monthly rate.* The monthly rates for athletic field service are as follows:
 - Electric Service Availability Charge, per month determined by installed kVA aggregated per customer as follows:

Electric Availability Charge (kVA per month)	Effective August 1, 2023	Effective August 1, 2024
Greater than 12,999	\$ 5,107.50	\$ 5,892.08
Less than 13,000 and greater than 7,999	\$ 4,086.00	\$ 4,713.66
Less than 8,000 and greater than 3,999	\$ 3,064.50	\$ 3,535.25
Less than 4,000 and greater than 2,999	\$ 2,043.00	\$ 2,356.83
Less than 3,000 and greater than 1,999	\$ 1,362.00	\$ 1,571.22
Less than 2,000 and greater than 1,499	\$ 681.00	\$ 785.61
Less than 1,500 and greater than 750	\$ 408.60	\$ 471.37
Less than 751 and greater than 500	\$ 306.45	\$ 353.52
Less than 501 and greater than 300	\$ 238.35	\$ 274.96
Less than 301 and greater than 150	\$ 136.20	\$ 157.12
Less than 151	\$ 40.86	\$ 47.14

- b. Delivery Charge: \$0.05648 per kWh effective August 1, 2023, and \$0.06516 per kWh effective August 1, 2024
- c. Cost of Power Charge:
- Base Generation Rate (BGR):
- October—May billing period, \$0.04 per kWh
- June—September billing period, \$0.05 per kWh
- Base Transmission Rate (BTR):
- \$0.0052 per kWh
- d. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
- (j) Area lighting rate (AL).
- (1) *Availability.* The area lighting rate (AL) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section. Service under this tariff is subject to connection charges contained in the NBU Electrical Connection Policy.
- (2) *Applicability.* The area lighting rate is applicable for electric service for pole-mounted area security lighting near NBU's electric distribution lines.
- (3) *Service conditions.* The service furnished under this section shall be nominal 120/240 volt single phase, 60-hertz, three wire. Other service voltages may, under certain specific conditions, be furnished with the approval of NBU's Chief Executive Officer.
- (4) *Monthly rates.* The monthly rates for area lighting service are as follows:
- a. \$11.55 per lamp per month effective August 1, 2023, and \$11.55 per lamp per month effective August 1, 2024
- b. *Minimum monthly bill.* The minimum monthly bill shall be the charge per lamp plus any special charges or adjustments.
- (k) Second feeder service rate (SFS).
- (1) *Availability.* The second feeder service rate (SFS) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section, provided NBU agrees that such service can be feasibly and economically provided by NBU. Service under this tariff is subject to connection charges and specifications contained in NBU Electrical Connection Policy.
- (2) *Applicability.* The second feeder service rate is applicable only for electric service to customers in LGS and VLP rate classes that require reserve capacity on a second distribution feeder at a specifically identified individual service location and that meet all of the service conditions provided in this article.
- (3) *Service conditions.* 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.
- a. Service will be provided only by long-term contract approved by the NBU Board of Trustees. This long-term contract will establish, in addition to other terms and conditions, the amount of capacity reserved on a second feeder for a customer and the adjustment of minimum reserve capacity permitted under this rate.

- b. Second feeder service does not guarantee continuous service availability and may be interrupted for maintenance activities or when necessary for operational or emergency reasons.
- c. Where appropriate, the customer will be required to maintain appropriate load balancing as determined by NBU.
- (4) *Monthly rates.* The monthly rates for second feeder service are as follows:
- a. Capacity reservation charge, \$5.10 per used kW per month effective August 1, 2023, and \$6.59 per used kW per month effective August 1, 2024
- (l) Net metering service rate (NM).
- (1) *Availability.* The net metering service rate is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section. Service under this rate may be subject to additional connection charges and specifications contained in NBU Electrical Connection Policy.
- (2) *Applicability.* The net metering service rate is available to residential customers and small general service customers with grid-connected solar, wind or other distributed generation facility of less than 50 kW where the customer's load profile exceeds the generating capacity. A distributed generation facility is an electric generation facility of ten megawatts or less and related interconnecting facilities to be interconnected at a voltage less than 60 kilovolts.
- (3) *Service conditions.* Service will be provided in accordance with terms and conditions provided by NBU.
- (4) *Monthly rates.* Monthly net metering service rates are as follows:
- a. Electric Service Availability Charge:
- Residential Customers, \$20.00 per month effective August 1, 2023, and \$20.00 per month effective August 1, 2024
- Small General Service Customers, \$29.05 per month effective August 1, 2023, and \$35.46 per month effective August 1, 2024
- b. Delivery Charge, per kWh, as specified in the appropriate RE or SGS rate, plus a fixed cost per type of installed kW as shown below:
- Residential (RE) solar \$1.58
- Residential (RE) wind \$0.74
- Small General Service (SGS) solar \$0.87
- Small General Service (SGS) wind \$0.41
- c. Cost of Power Charge:
- October—May billing period, per kWh, as defined in the appropriate RE or SGS rate
- June—September billing period, per kWh, as defined in the appropriate RE or SGS rate
- d. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus the Delivery Charge per installed kW of generation, and any special charges or adjustments.
- (5) *Determination of delivery charge kWh.* Customer's monthly delivery charge kWh shall equal the customer's kWh purchased from NBU less any kWh generated into the NBU delivery system, but never less than zero.
- (6) *Determination of power charge kWh.* Customer's monthly power charge kWh shall equal the actual kWh purchased from NBU.
- (m) Interstate highway lighting rate (HL).

- (1) *Applicability.* The interstate highway lighting rate (HL) is applicable for electric service for pole mounted interstate highway lighting located in the electric service area of NBU, but within the corporate limits or extra-territorial jurisdiction of another municipality, pursuant to the terms and conditions of a contract between that municipality and NBU and at the rates set forth in this section.
- (2) *Monthly rate.* The monthly rates for interstate highway lighting service are as follows:
 - a. Electric Service Availability Charge, \$17.33 per month
 - b. Cost of Power Charge:
 - Base Generation Rate (BGR):
 - October—May billing period, \$0.04 per kWh
 - June—September billing period, \$0.05 per kWh
 - Base Transmission Rate (BTR):
 - \$0.0052 per kWh
- (3) *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.

(n) NBU is directed to provide updates to City Council and the NBU Board on NBU's financial status. City Council retains the power to consider a review of NBU's rates at any time.

(Ord. No. 2003-74, § I(Exh. A), 10-27-03; Ord. No. 2006-05, §§ I, II, 1-23-06; Ord. No. 2006-49, § I(Exh. A), 6-12-06; Ord. No. 2009-15, § 2(Exh. A), 3-23-09; Ord. No. 2014-81, § I(Exh. A), 12-8-14; Ord. No. 2015-60, § I(Exh. A), 11-9-15; Ord. No. 2020-65, § 3, 10-26-20)

Sec. 130-57. Power factor penalty.

- (a) NBU shall assess a power factor penalty on all customers if the necessary equipment for determining power factor is installed and operational and if the measured power factor during the non-coincident peak kW demand is less than 0.95.
- (b) The power factor penalty shall be calculated by increasing the measured billing demand such that the adjusted billing demand and measured kilovolt-amperes reactive (kVAR) yield a calculated power factor of 0.95. If the measured power factor is 0.95 or greater, the billing kW demand shall be the kW demand in accordance with the appropriate rate schedule. Any additional metering equipment necessary to measure or compute kVAR or power factor may be installed at any demand metered customer, without notice, at the discretion of NBU.
- (c) *Monthly rate.* \$3.305 per kW effective August 1, 2023, and \$4.397 per kW effective August 1, 2024

(Ord. No. 2003-74, § I(Exh. A), 10-27-03; Ord. No. 2006-49, § I(Exh. A), 6-12-06; Ord. No. 2015-60, § I(Exh. A), 11-9-15; Ord. No. 2020-65, § 3, 10-26-20)

Sec. 130-58. Billing adjustments.

- (a) *Generation cost recovery factor (GCRF).* GCRF is the generation cost recovery factor expressed as dollars per kWh, to be multiplied by the energy (kWh) sold during a billing period to each customer.

$$GCRF = \frac{\{A \pm C\}}{S} \cdot BGR$$

A is the total estimated cost of generation for purchases from all NBU power suppliers. Generation Cost includes, but is not limited to, all power costs to serve retail and transmission level loads such as energy purchases from the ERCOT market, Load Serving Entity obligations or related capacity costs, reserves and ERCOT market fees.

C is the additional amount in dollars to be added to or subtracted from the total estimated cost of generation to adjust for differences between the actual cost of generation and the recovery of generation revenue in previous periods.

S is the estimated energy (kWh) sales in the billing period to all customers.

BGR is the base generation rate, expressed as dollars per kWh, included in the base rates for all customers. BGR shall be:

\$0.04 per kWh sold for the October—May billing periods.

\$0.05 per kWh sold for the June—September billing periods.

The GCRF factors calculated may be adjusted accordingly as actual monthly data is available or notification of changes in rates are supplied by generation service providers.

- (b) *Transmission cost recovery factor (TCRF)*. TCRF is the transmission system cost recovery factor expressed as dollars per kWh, to be multiplied by the energy (kWh) sold during a billing period to each customer (except TSR customers).

$$TCRF = \frac{\{T\{A \pm C\}TC\}}{ST} - BTR$$

T is the estimated total cost of transmission services (including transmission and transformation charges, ERCOT ISO fees, other ERCOT charges, delivery point charges, and other miscellaneous transmission charges), excluding transmission costs directly billed to TSR customers.

ST is the estimated energy (kWh) sales in the billing period to all customers excluding TSR customers.

BTR is the base transmission rate, expressed as dollars per kW for LGS and VLP and as dollars per kWh in other rate classes, included in the base rates for all customers, excluding the TSR customers. BTR shall be:

\$0.0052 per kWh per month.

TC is the additional amount in dollars to be added to or subtracted from the total estimated cost of transmission and transportation services to adjust for differences between the actual total cost of transmission and transformation services and the recovery of transmission and transformation services revenue in previous periods.

The TCRF factors calculated may be adjusted accordingly as actual monthly data is available or notification of changes in rates are supplied by transmission service providers.

- (c) Glossary

The following charges are reflected as line items on customer bills:

Distribution Charge. This charge covers the operation and maintenance of NBU’s local distribution infrastructure and the base costs incurred in making service available for customers. The Electric Service Availability Charge and Delivery Charge make up the total Distribution Charge. The Electric Service Availability Charge was formerly known as the customer charge.

Generation Charge. This charge reflects the pass-through amount of the cost of power and is equal to the GCRF plus the BGR.

Replenish Reserves Charge. This charge is designed to replenish NBU’s reserves for emergency events and provide rate stability.

Transmission Charge. This charge reflects the costs of transmitting energy to the NBU service territory and is equal to the TCRF plus the BTR.

Sec. 130-56. Electric rates.

- (a) Service rate classifications. All electric service supplied by NBU shall be designated by the following classifications with descriptions, rates and conditions of sale as indicated further in this article:
- (1) Residential (RE);
 - (2) Small general service (SGS);
 - (3) Large general service (LGS);
 - (4) Very large power-distribution (VLP-D);
 - (5) Transmission service rate (TSR);
 - (6) Experimental electric rate (EER);
 - (7) Lighting athletic fields (LAF);
 - (8) Area lighting rate (AL);
 - (9) Second feeder service (SFS);
 - (10) Net metering (NM); and
 - (11) Interstate highway lighting rate (HL).
- (b) Upon application for service, NBU shall make the initial determination of the customer's service rate classification, which classification is subject to change in accordance with the provisions of this article.
- (c) Residential service rate (RE).
- (1) *Availability.* The residential rate (RE) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section.
 - (2) *Applicability.* The residential rate is applicable for electric service used solely for residential purposes, and related activities, consisting of service to single-family dwellings or individually metered multifamily dwellings. Where two residential units are billed through one meter, the Electric Service Availability Charge shall be doubled. Where more than two residential units or apartments are billed through one meter, the applicable general service rate shall be used.

This rate shall not be applicable for service to a residence also used for nonresidential purposes, including but not limited to boardinghouses, barbershops, beauty shops, general contractors, storing equipment or building materials on the property, child care centers, retail businesses, restaurants, technical repair services, professional services offered to the public on the premises, and other similar nonresidential activities. If the wiring is so arranged that the service for residential purposes and that for commercial purposes are separately metered, this rate is applicable to the service supplied for residential purposes.
 - (3) *Service conditions.* The service furnished under this section shall be nominal 120/240 volt single-phase, 60-hertz, three-wire. Other service voltages may, under certain specific conditions, be furnished with the approval of NBU's Chief Executive Officer.
 - (4) *Monthly rates.* The monthly rates for residential service are as follows:
 - a. Electric Service Availability Charge, \$20.00 per month effective August 1, 2023, and \$20.00 per month effective August 1, 2024
 - b. Delivery Charge, \$0.01954 per kilowatt-hour (kWh) effective August 1, 2023, and \$0.02646 per kWh effective August 1, 2024
 - c. Cost of Power Charge:

Base Generation Rate (BGR):

October—May billing period, \$0.04 per kWh

June—September billing period, \$0.05 per kWh

Base Transmission Rate (BTR):

\$0.0052 per kWh

- d. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
- (d) Small general service rate (SGS).
- (1) *Availability.* The small general service rate (SGS) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section.
 - (2) *Applicability.* The small general service rate is applicable for electric service to all nonresidential establishments, or where a residence is also used for nonresidential purposes and billed through one meter, or where the nonresidential part of a residence is separately metered from the part solely residential, or where three or more residential units are billed through one meter, and use does not exceed 25 kilowatt (kW) demand.
 - (3) *Service conditions.* The service furnished under this section shall be nominal 120/240 volt single-phase, 60-hertz, three-wire; or 120/208 volt three-phase, 60-hertz, four-wire; or 120/240 volt three-phase, 60-hertz, three-wire or four-wire; or 277/480 volt three-phase, 60-hertz, four-wire.
 - (4) *Monthly rates.* The monthly rates for small general service are as follows:
 - a. Electric Service Availability Charge, \$29.05 per month effective August 1, 2023, and \$35.46 per month effective August 1, 2024
 - b. Delivery Charge, \$0.01278 per kWh effective August 1, 2023, and \$0.0156 per kWh effective August 1, 2024
 - c. Cost of Power Charge:

Base Generation Rate (BGR):

October—May billing period, \$0.04 per kWh

June—September billing period, \$0.05 per kWh

Base Transmission Rate (BTR):

\$0.0052 per kWh
 - d. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
 - (5) *Determination of metered kW demand.* The customer's kW demand may be measured when the customer's monthly energy consumption exceeds 3,000 kWhs, and/or where customer's total connected load exceeds 25 kW in motors and other inductive-type equipment. Measurement shall be by maximum 15-minute demand. If after measurement it is determined that the customer's monthly demand has exceeded 25 kW, the customer shall be charged for kW billing demand under the appropriate rate class schedule.
- (e) Large general service rate (LGS).
- (1) *Availability.* The large general service rate (LGS) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section.

- (2) *Applicability.* The large general service rate is applicable for electric service to all nonresidential establishments, or where a residence is also used for nonresidential purposes and billed through one meter, or where the part of a residence is separately metered from the part solely residential, or where three or more residential units are billed through one meter, and use exceeds a maximum 15-minute measured demand of 25 kW during two billing periods for the June through September billing periods or for any four billing periods over a 12-month period, but does not exceed an estimated or measured 1,000 kW, maximum 15-minute measured demand during two billing periods.

When a customer is reclassified to the LGS rate from another rate schedule, the customer may not change to another rate classification within a 12-month period unless there is a substantial change in the character or conditions of service. A customer may request reclassification to another rate classification only after fulfilling all obligations of this rate.

- (3) *Service conditions.* The service furnished under this section shall be nominal 120/240 volt single-phase, 60-hertz, three-wire; or 120/208 volt three-phase, 60-hertz, four-wire; 120/240 volt three-phase, 60-hertz, three-wire or four-wire; or 277/480 volt, three-phase, 60-hertz, four-wire; or 7200/12470 volt, three-phase, 60-hertz, four-wire.

- (4) *Monthly rate.* The monthly rates for large general service are as follows:

- a. Electric Service Availability Charge, per month determined by installed kilovolt-amperes (kVA) aggregated per customer as follows:

Electric Availability Charge (kVA per month)	Effective August 1, 2023	Effective August 1, 2024
Greater than 12,999	\$ 5,728.27	\$ 7,621.16
Less than 13,000 and greater than 7,999	\$ 5,040.87	\$ 6,706.61
Less than 8,000 and greater than 3,999	\$ 3,780.66	\$ 5,029.97
Less than 4,000 and greater than 2,999	\$ 2,520.44	\$ 3,353.31
Less than 3,000 and greater than 1,999	\$ 1,680.29	\$ 2,235.54
Less than 2,000 and greater than 1,499	\$ 840.15	\$ 1,117.78
Less than 1,500 and greater than 750	\$ 504.09	\$ 670.67
Less than 751 and greater than 500	\$ 378.07	\$ 503.00
Less than 501 and greater than 300	\$ 294.05	\$ 391.22
Less than 301 and greater than 150	\$ 168.04	\$ 223.57
Less than 151	\$ 50.41	\$ 67.07

- b. Delivery Demand Charge, \$7.50 per kW effective August 1, 2023, and \$9.98 per kW effective August 1, 2024
- c. Cost of Power Charge:
Base Generation Rate (BGR):
October—May billing period, \$0.04 per kWh
June—September billing period, \$0.05 per kWh
- d. Power supply demand charge, \$1.15 per kW billing demand per month
- e. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
- (5) *Determination of billing kW demand.* The billing kW demand shall be the highest measured kW demand established in any 15-minute demand interval during the current month.
- (f) Very large power distribution rate (VLP-D).

- (1) *Availability.* Very large power-distribution service (VLP-D) shall be available, as approved by NBU's Board of Trustees, in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section.
- (2) *Applicability.* The very large power-distribution rate is applicable for electric service when the measured kW demand exceeds 1,000 kW during a 15-minute demand interval during two billing periods over a 12-month period.
- (3) *Service conditions.* The service furnished under this section shall be nominal 277/480 volt, three-phase, 60-hertz, four-wire; or 7200/12470 volt, three-phase, 60-hertz, four-wire.
- (4) *Monthly rate.* The monthly rates for very large power-distribution service are as follows:

- a. Electric Service Availability Charge, per month determined by installed kVA aggregated per customer as follows:

Electric Availability Charge (kVA per month)	Effective August 1, 2023	Effective August 1, 2024
Greater than 12,999	\$ 6,888.70	\$ 10,079.55
Less than 13,000 and greater than 7,999	\$ 5,510.95	\$ 8,063.62
Less than 8,000 and greater than 3,999	\$ 4,133.22	\$ 6,047.73
Less than 4,000 and greater than 2,999	\$ 2,755.48	\$ 4,031.82
Less than 3,000 and greater than 1,999	\$ 1,836.98	\$ 2,687.87
Less than 2,000 and greater than 1,499	\$ 918.49	\$ 1,343.93
Less than 1,500 and greater than 750	\$ 551.10	\$ 806.37
Less than 751 and greater than 500	\$ 413.32	\$ 604.77
Less than 501 and greater than 300	\$ 321.48	\$ 470.39
Less than 301 and greater than 150	\$ 183.70	\$ 268.79
Less than 151	\$ 55.12	\$ 80.65

- b. Delivery Demand Charge, \$5.01 per kW effective August 1, 2023, and \$7.33 per kW effective August 1, 2024
- c. Cost of Power Charge:
Base Generation Rate (BGR):
October—May billing period, \$0.04 per kWh
June—September billing period, \$0.05 per kWh
- d. Power supply demand charge, \$1.15 per kW billing demand per month
- e. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments. The minimum monthly bill will not include the power factor penalty for the first six months to any new customer to this rate class.
- (5) *Determination of billing kW demand.* The kW billing demand shall be the highest measured kW demand established in any 15-minute period during the current month or 75 percent of the highest 15-minute kW demand in any of the preceding 11 months, but not less than 1,000 kW.
- (g) Transmission service rate (TSR).
- (1) *Availability.* Transmission service rate (TSR) shall be available, as approved by the NBU Board of Trustees, in the electric service area of NBU under the rules, regulations, and policies as established by NBU, which are subject to change from time to time, and as provided for in this article, at the rates set forth in this section.

- (2) *Applicability.* The transmission service rate is applicable only for electric service to customers which require transmission level service (operated at 60 kilovolts (kV), or above) at each specifically identified individual service location and which meet all of the service conditions provided in this article.
- (3) *Service conditions.* The transmission service rate is available in accordance with terms, conditions and rates established by NBU and reviewed by the NBU Board of Trustees.
- (4) *Monthly rate.* The monthly rates for transmission service shall be the sum of the following:
- ERCOT charges: The actual fees and rates for ERCOT transmission service as approved by the Public Utility Commission of Texas
 - Local transformation, metering and miscellaneous charges
 - Power supply charge: The monthly power supply charge shall be the total power supply costs as they are incurred by NBU. Such costs shall include, but are not limited to, costs for purchasing, scheduling, coordinating, and providing capacity and energy to the customer, facilities charges plus any special charges or adjustments.
- (h) Experimental electric rate (EER).
- Applicability.* The experimental electric rate shall be applicable to customers in any rate class at times selected by NBU. The time period for which the experimental electric rate may apply shall not exceed two years. At any time, the number of customers affected by the experimental electric rate shall not exceed one percent of the total number of customers served by NBU.
 - Purpose.* The purpose of the experimental rate is to aid in design of new rates. NBU shall have the authority to initiate or discontinue the experimental electric rate at NBU's discretion.
 - Selection.* The methods and criteria for selection for a rate class to be used for the experimental electric rate shall be chosen and defined by NBU. Participation in the experimental electric rate by customers shall be on a voluntary basis.
- (i) Lighting athletic fields (LAF).
- Applicability.* Service will be supplied through a single point of delivery and shall be used for lighting of outdoor athletic fields and facilities used exclusively in conjunction with athletic events on these fields.
 - Service conditions.* Single or three-phase service at the voltage of the available primary distribution lines of NBU (primary), or at the secondary voltage of transformation facilities supplied from NBU's distribution system (secondary).
 - Monthly rate.* The monthly rates for athletic field service are as follows:
 - Electric Service Availability Charge, per month determined by installed kVA aggregated per customer as follows:

Electric Availability Charge (kVA per month)	Effective August 1, 2023	Effective August 1, 2024
Greater than 12,999	\$ 5,107.50	\$ 5,892.08
Less than 13,000 and greater than 7,999	\$ 4,086.00	\$ 4,713.66
Less than 8,000 and greater than 3,999	\$ 3,064.50	\$ 3,535.25
Less than 4,000 and greater than 2,999	\$ 2,043.00	\$ 2,356.83
Less than 3,000 and greater than 1,999	\$ 1,362.00	\$ 1,571.22
Less than 2,000 and greater than 1,499	\$ 681.00	\$ 785.61
Less than 1,500 and greater than 750	\$ 408.60	\$ 471.37
Less than 751 and greater than 500	\$ 306.45	\$ 353.52
Less than 501 and greater than 300	\$ 238.35	\$ 274.96
Less than 301 and greater than 150	\$ 136.20	\$ 157.12
Less than 151	\$ 40.86	\$ 47.14

- b. Delivery Charge: \$0.05648 per kWh effective August 1, 2023, and \$0.06516 per kWh effective August 1, 2024
- c. Cost of Power Charge:
- Base Generation Rate (BGR):
- October—May billing period, \$0.04 per kWh
- June—September billing period, \$0.05 per kWh
- Base Transmission Rate (BTR):
- \$0.0052 per kWh
- d. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
- (j) Area lighting rate (AL).
- (1) *Availability.* The area lighting rate (AL) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section. Service under this tariff is subject to connection charges contained in the NBU Electrical Connection Policy.
- (2) *Applicability.* The area lighting rate is applicable for electric service for pole-mounted area security lighting near NBU's electric distribution lines.
- (3) *Service conditions.* The service furnished under this section shall be nominal 120/240 volt single phase, 60-hertz, three wire. Other service voltages may, under certain specific conditions, be furnished with the approval of NBU's Chief Executive Officer.
- (4) *Monthly rates.* The monthly rates for area lighting service are as follows:
- a. \$11.55 per lamp per month effective August 1, 2023, and \$11.55 per lamp per month effective August 1, 2024
- b. *Minimum monthly bill.* The minimum monthly bill shall be the charge per lamp plus any special charges or adjustments.
- (k) Second feeder service rate (SFS).
- (1) *Availability.* The second feeder service rate (SFS) is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section, provided NBU agrees that such service can be feasibly and economically provided by NBU. Service under this tariff is subject to connection charges and specifications contained in NBU Electrical Connection Policy.
- (2) *Applicability.* The second feeder service rate is applicable only for electric service to customers in LGS and VLP rate classes that require reserve capacity on a second distribution feeder at a specifically identified individual service location and that meet all of the service conditions provided in this article.
- (3) *Service conditions.* 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.
- a. Service will be provided only by long-term contract approved by the NBU Board of Trustees. This long-term contract will establish, in addition to other terms and conditions, the amount of capacity reserved on a second feeder for a customer and the adjustment of minimum reserve capacity permitted under this rate.

- b. Second feeder service does not guarantee continuous service availability and may be interrupted for maintenance activities or when necessary for operational or emergency reasons.
- c. Where appropriate, the customer will be required to maintain appropriate load balancing as determined by NBU.
- (4) *Monthly rates.* The monthly rates for second feeder service are as follows:
- a. Capacity reservation charge, \$5.10 per used kW per month effective August 1, 2023, and \$6.59 per used kW per month effective August 1, 2024
- (l) Net metering service rate (NM).
- (1) *Availability.* The net metering service rate is available in the electric service area of NBU under the rules, regulations, and policies as provided for in this article, at the rates set forth in this section. Service under this rate may be subject to additional connection charges and specifications contained in NBU Electrical Connection Policy.
- (2) *Applicability.* The net metering service rate is available to residential customers and small general service customers with grid-connected solar, wind or other distributed generation facility of less than 50 kW where the customer's load profile exceeds the generating capacity. A distributed generation facility is an electric generation facility of ten megawatts or less and related interconnecting facilities to be interconnected at a voltage less than 60 kilovolts.
- (3) *Service conditions.* Service will be provided in accordance with terms and conditions provided by NBU.
- (4) *Monthly rates.* Monthly net metering service rates are as follows:
- a. Electric Service Availability Charge:
- Residential Customers, \$20.00 per month effective August 1, 2023, and \$20.00 per month effective August 1, 2024
- Small General Service Customers, \$29.05 per month effective August 1, 2023, and \$35.46 per month effective August 1, 2024
- b. Delivery Charge, per kWh, as specified in the appropriate RE or SGS rate, plus a fixed cost per type of installed kW as shown below:
- Residential (RE) solar \$1.58
- Residential (RE) wind \$0.74
- Small General Service (SGS) solar \$0.87
- Small General Service (SGS) wind \$0.41
- c. Cost of Power Charge:
- October—May billing period, per kWh, as defined in the appropriate RE or SGS rate
- June—September billing period, per kWh, as defined in the appropriate RE or SGS rate
- d. *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus the Delivery Charge per installed kW of generation, and any special charges or adjustments.
- (5) *Determination of delivery charge kWh.* Customer's monthly delivery charge kWh shall equal the customer's kWh purchased from NBU less any kWh generated into the NBU delivery system, but never less than zero.
- (6) *Determination of power charge kWh.* Customer's monthly power charge kWh shall equal the actual kWh purchased from NBU.
- (m) Interstate highway lighting rate (HL).

- (1) *Applicability.* The interstate highway lighting rate (HL) is applicable for electric service for pole mounted interstate highway lighting located in the electric service area of NBU, but within the corporate limits or extra-territorial jurisdiction of another municipality, pursuant to the terms and conditions of a contract between that municipality and NBU and at the rates set forth in this section.
- (2) *Monthly rate.* The monthly rates for interstate highway lighting service are as follows:
- a. Electric Service Availability Charge, \$17.33 per month
 - b. Cost of Power Charge:
 - Base Generation Rate (BGR):
 - October—May billing period, \$0.04 per kWh
 - June—September billing period, \$0.05 per kWh
 - Base Transmission Rate (BTR):
 - \$0.0052 per kWh
- (3) *Minimum monthly bill.* The minimum monthly bill shall be the Electric Service Availability Charge plus any special charges or adjustments.
- (n) NBU is directed to provide updates to City Council and the NBU Board on NBU's financial status. City Council retains the power to consider a review of NBU's rates at any time.
- (Ord. No. 2003-74, § I(Exh. A), 10-27-03; Ord. No. 2006-05, §§ I, II, 1-23-06; Ord. No. 2006-49, § I(Exh. A), 6-12-06; Ord. No. 2009-15, § 2(Exh. A), 3-23-09; Ord. No. 2014-81, § I(Exh. A), 12-8-14; Ord. No. 2015-60, § I(Exh. A), 11-9-15; Ord. No. 2020-65, § 3, 10-26-20)

Sec. 130-57. Power factor penalty.

- (a) NBU shall assess a power factor penalty on all customers if the necessary equipment for determining power factor is installed and operational and if the measured power factor during the non-coincident peak kW demand is less than 0.95.
- (b) The power factor penalty shall be calculated by increasing the measured billing demand such that the adjusted billing demand and measured kilovolt-amperes reactive (kVAR) yield a calculated power factor of 0.95. If the measured power factor is 0.95 or greater, the billing kW demand shall be the kW demand in accordance with the appropriate rate schedule. Any additional metering equipment necessary to measure or compute kVAR or power factor may be installed at any demand metered customer, without notice, at the discretion of NBU.
- (c) *Monthly rate.* \$3.305 per kW effective August 1, 2023, and \$4.397 per kW effective August 1, 2024
- (Ord. No. 2003-74, § I(Exh. A), 10-27-03; Ord. No. 2006-49, § I(Exh. A), 6-12-06; Ord. No. 2015-60, § I(Exh. A), 11-9-15; Ord. No. 2020-65, § 3, 10-26-20)

Sec. 130-58. Billing adjustments.

- (a) *Generation cost recovery factor (GCRF).* GCRF is the generation cost recovery factor expressed as dollars per kWh, to be multiplied by the energy (kWh) sold during a billing period to each customer.

$$\text{GCRF} = \frac{\{A+C\}}{S} - \text{BGR}$$

A is the total estimated cost of generation for purchases from all NBU power suppliers. Generation Cost includes, but is not limited to, all power costs to serve retail and transmission level loads such as energy purchases from the ERCOT market, Load Serving Entity obligations or related capacity costs, reserves and ERCOT market fees.

C is the additional amount in dollars to be added to or subtracted from the total estimated cost of generation to adjust for differences between the actual cost of generation and the recovery of generation revenue in previous periods.

S is the estimated energy (kWh) sales in the billing period to all customers.

BGR is the base generation rate, expressed as dollars per kWh, included in the base rates for all customers. BGR shall be:

\$0.04 per kWh sold for the October—May billing periods.

\$0.05 per kWh sold for the June—September billing periods.

The GCRF factors calculated may be adjusted accordingly as actual monthly data is available or notification of changes in rates are supplied by generation service providers.

- (b) *Transmission cost recovery factor (TCRF)*. TCRF is the transmission system cost recovery factor expressed as dollars per kWh, to be multiplied by the energy (kWh) sold during a billing period to each customer (except TSR customers).

$$TCRF = \frac{\{T\{A \pm C\}TC\}}{ST} - BTR$$

T is the estimated total cost of transmission services (including transmission and transformation charges, ERCOT ISO fees, other ERCOT charges, delivery point charges, and other miscellaneous transmission charges), excluding transmission costs directly billed to TSR customers.

ST is the estimated energy (kWh) sales in the billing period to all customers excluding TSR customers.

BTR is the base transmission rate, expressed as dollars per kW for LGS and VLP and as dollars per kWh in other rate classes, included in the base rates for all customers, excluding the TSR customers. BTR shall be:

\$0.0052 per kWh per month.

TC is the additional amount in dollars to be added to or subtracted from the total estimated cost of transmission and transportation services to adjust for differences between the actual total cost of transmission and transformation services and the recovery of transmission and transformation services revenue in previous periods.

The TCRF factors calculated may be adjusted accordingly as actual monthly data is available or notification of changes in rates are supplied by transmission service providers.

- (c) Glossary

The following charges are reflected as line items on customer bills:

Distribution Charge. This charge covers the operation and maintenance of NBU's local distribution infrastructure and the base costs incurred in making service available for customers. The Electric Service Availability Charge and Delivery Charge make up the total Distribution Charge. The Electric Service Availability Charge was formerly known as the customer charge.

Generation Charge. This charge reflects the pass-through amount of the cost of power and is equal to the GCRF plus the BGR.

Replenish Reserves Charge. This charge is designed to replenish NBU's reserves for emergency events and provide rate stability.

Transmission Charge. This charge reflects the costs of transmitting energy to the NBU service territory and is equal to the TCRF plus the BTR.

Discuss and Consider Adopting Resolution #2023-169 by the Board of Trustees of New Braunfels Utilities Approving Proposed Amendments to Chapter 130, Article III, Sections 130-56, 130-57, and 130-58 of the Code of Ordinances of the City of New Braunfels (i) Adjusting Electric Rates and Charges for Fiscal Year 2024; (ii) Providing for Adjustments of Electric Rates and Charges for Fiscal Year 2025; (iii) Resolving Other Matters Incident and Related Thereto; and (iv) Authorizing Presentation of Same to The City Council of New Braunfels for its Consideration and Passage



Electric Rate Recommendations

Revenue Sufficiency

Overall rates set to recover the total Cost of Service (COS) and Revenue Requirement

Equity and Fairness in Rate Making

Gradualism (phase-in of increases)

Similar rate increases for most classes. Existing rates align with COS results.

Utility Financial Stability and Strength

Moves to balanced 50/50 debt and rate funded capital

Reduced cost of debt; ensures financial strength, flexibility for NBU

FY 2024/2025 Electric Rate Design

- Over two-year rate plan:
 - Positions NBU to cash fund a portion of capital improvements (rather than 100% debt), there are no surplus or excess funds
- Rate increases are not driven by ERCOT market prices; power supply and transmission costs are a direct pass-through.
- Bridge to ERCOT market redesign (timing)
- Average System Revenue Increase
 - 2024: 4.8% | 2025: 5.9%
- Drivers: ~67% capital; ~<1% personnel; ~32% other O&M

Recommendations – Residential Electric Usage at 1,200 kWh

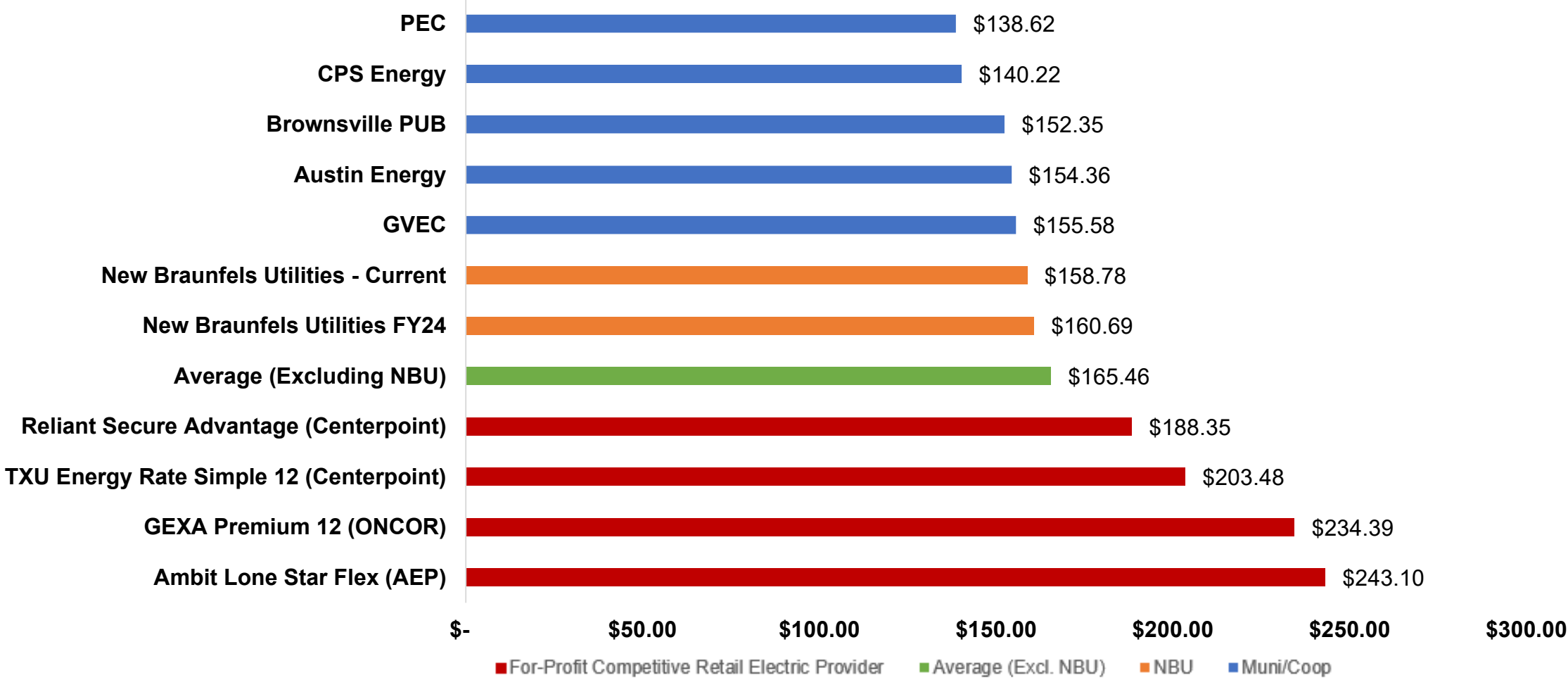
ELECTRIC - AVERAGE RESIDENTIAL BILL*			
	Current	FY 2024	FY 2025
Customer Bill	\$158.78	\$167.29	\$175.64
YOY % Change		5.4%	5.0%

***Assuming winter generation rate and April 2023 GCRF**

Note: This bill comparison does not reflect the planned decrease to the Replenish Reserves rate in FY24 in order to show the impacts of the rate adjustments as a result of the rate design.

Residential Electric Bill Comparison

Average Use – 1,200 kWh



*Assumes planned decrease in reserve replenishment - March current monthly rates all entities, except NBU at April rate

This is especially true when compared to the evaluation that well-maintained pools can save water when compared to similar areas that would contain turf grass. Additionally, NBU does not have the resources to inspect new pools to ensure they have not been filled.

New Pools, Filling New Pools, Hot Tubs etc.	I, II, III	Construction, installation, and filling of new pools will be allowed.
	III	Construction, installation, and filling of new pools will not be allowed. If a building permit has already been issued for pool construction, before the drought management stage was declared, construction, installation, and filling of new pools is allowed. Property owners, prior to construction, installation, or filling of pools should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new pool is to be installed, the date of installation, and copy of the approved building permit in order to receive an approval letter from NBU.

Language within the current Drought Ordinance would allow additional restrictions during periods of exceptional drought, beyond stage III, to include not issuing pool permits.

Sec. 130-226. - Implementation of additional water use reduction measures, ("aquifer risk").

- (a) Implementation of additional water use reduction measures, such as declaring stage IV in periods of exceptional drought conditions, need not be based on the trigger levels set forth in [section 130-224](#) but may instead be based on consideration of aquifer water quality or on other aquifer, seasonal or weather conditions not based on water levels in J-17.
- (b) Whenever aquifer quality measures 30 percent TDS above historical average and above the maximum TDS value for any public supply water well, the mayor of the city, in consultation with NBU, shall declare additional measures to protect the aquifer and shall be implemented by the city council as necessary.
- (c) Regardless of consideration of aquifer quality, whenever the mayor of the city in consultation with NBU may determine that the NBU water supply, or other aquifer, seasonal, or weather conditions not based on water levels in J-17 warrant, the mayor may also impose additional restrictions for all water uses.

FINANCIAL IMPACT

The financial impact of authorizing Resolution #2023-170 is \$0.

LINK TO STRATEGIC PLAN

Customers and Community

Stewardship

EXHIBITS

1. Resolution #2023-170
2. Ordinance

R-2023-170**A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING PROPOSED AMENDMENTS TO CHAPTER 130, ARTICLE IV, SECTION 130-228, CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS RELATING TO DROUGHT MANAGEMENT PLAN, AND AUTHORIZING THE PRESENTATION OF SAME TO THE NEW BRAUNFELS CITY COUNCIL FOR CONSIDERATION AND PASSAGE**

WHEREAS, the New Braunfels City Council has enacted an ordinance containing the rules, regulations, and policies for water conservation and drought management for the service area of New Braunfels Utilities and that ordinance has been codified in Chapter 130, Article IV, Code of Ordinances of said City;

WHEREAS, the Board of Trustees of New Braunfels Utilities recommended updates to the Drought Management Plan codified as Chapter 130, Article IV, New Braunfels Code of Ordinances in 2014 to include prohibiting the construction, installation, and filling of new pools while in stage III drought restrictions;

WHEREAS, NBU is committed to resilient management of NBU water resources and promoting water conservation;

WHEREAS, the City of New Braunfels entered stage III drought restrictions on June 21, 2022, which restrictions prohibit the construction, installation, and filling of new pools;

WHEREAS, NBU's water supply has greater diversification and supply than it did in 2014;

WHEREAS, prohibiting the construction, installation, and filling of new pools is an important water reduction measure but is only a temporary water reduction mechanism that does not encourage water conservation behavioral changes;

WHEREAS, prohibiting the construction, installation, and filling of new pools is more appropriately implemented as a tool in later stages of drought restrictions;

WHEREAS, the Board of Trustees of the New Braunfels Utilities is of the opinion that it is now necessary and advisable that Section 130-228 of the Code of Ordinances be amended; and

WHEREAS, the Board of Trustees has reviewed the proposed amendment to Section 130-228, and is of the opinion that the same should be approved and submitted to the City Council of New Braunfels for its consideration and passage.

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

SECTION 1: That the proposed amendment to Section 130-228 of the Code of

Ordinances of the City of New Braunfels as set forth in "Exhibit A" attached hereto is approved and approval by the City Council is recommended.

SECTION 2: That the Chief Executive Officer of New Braunfels Utilities is hereby authorized and directed to present the proposed ordinance amendment in ordinance form to the City Council of New Braunfels for its consideration and passage, as provided by law.

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

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PASSED AND APPROVED this 30th day of March, 2023.

DR. JUDITH DYKES-HOFFMANN, President
Board of Trustees
NEW BRAUNFELS UTILITIES

ATTEST:

IAN TAYLOR, Secretary
Board of Trustees
NEW BRAUNFELS UTILITIES

EXHIBIT A

Sec. 130-228. Specific water use reduction measures.

Specific water use reduction measures, their corresponding stages and scope are set out in the table, below:

Measures for	Stages	Scope of Restrictions
Essential Services	I, II, III	Fire-fighting and medical uses — no restrictions.
	I	Reduction in fire hydrant; sewer line flushing recommended.
	II, III	Hydrant flushing and sewer line flushing — only on emergency basis.
Water Purveyor Use	I, II, III	Water purveyors are encouraged to implement voluntary measures, such as improving leak detection surveys and repair programs and stabilizing and equalizing system pressure.
Power Production	I, II, III	Water used for power production shall be voluntarily reduced.
Agricultural	I	Reduction of water use by any means available is encouraged.
	II, III	The escape of irrigation tail water, as that term is commonly used in the agricultural community, is prohibited. Water loss through percolation in transmission canals is prohibited.
	III	Additional reductions may be imposed by the city council if conditions warrant.
Livestock Use	I, II, III	Reduction of water use by any means available is encouraged.
Industrial, Commercial, and Other	I, II, III	Reduction of water use by any means available is encouraged. Compliance with the mandatory demand reduction measures is required for those uses in the outdoor category, including landscape watering, swimming pools, hot tubs and similar facilities, golf courses, aesthetic uses such as fountains; such restrictions specifically include industrial users, as well as all others. Use of gray water, treated wastewater or reuse water is a defense to prosecution.
	III	Additional reductions may be imposed by the mayor if conditions warrant. Use of treated wastewater or recycled water is a defense to prosecution.
Restaurants, or other Eating Establishments	Year Round	NBU strongly encourages that water be served to guests only upon request.
Household	I, II, III	Reduction of water use by any means available is encouraged. Compliance with the mandatory demand

		reduction measures shall be achieved for those uses in the outdoor category, such as landscape watering, swimming pools, hot tubs, and similar facilities.
Swimming Pools, Hot Tubs, etc.	I, II, III	NBU strongly encourages that all swimming pools, other than public swimming pools, be covered with an effective evaporation cover or screen or evaporation shields covering at least 25 percent of the surface of the pool when the pool is not in active use. Active use includes necessary maintenance that requires removal of the cover, screen, or shields. Active use of public, commercial and apartment pools is whenever the pool is not officially closed.
Replenishing Pool, Hot Tubs, etc. water levels	I, II, III	Replenishing to maintenance level permitted within watering hours.
New Pools, Filling New Pools, Hot Tubs etc.	I, II, III	Construction, installation, and filling of new pools will be allowed.
Draining Pools, Hot Tubs, etc.	I, II, III	Draining permitted only onto pervious surface, or onto pool deck where the water is transmitted directly to a previous surface, only if: 1. Draining excess water from pool due to rain in order to lower water to maintenance level; 2. Repairing, maintaining or replacing pool component that has become hazardous; or 3. Repairing pool leak 4. Refilling of public swimming pool permitted only if pool has been drained for the repairs, maintenance or replacement set out in items 2 or 3 above. It is prohibited to drain swimming pools into the street, alley, gutter or other public right-of-way, ditch, or storm water drainage system or facility. It is considered water waste to drain a pool and allow the water to leave the property in which the pool is located.
Aesthetics (fountains, waterfalls, etc.)	I, II, III	Outside prohibited. The 100 percent use of treated wastewater, condensate, or cooling tower blow down is defense to prosecution under this paragraph. Alternate on-site reclaimed sources may be approved through variance on a case-by-case basis. If 100 percent use of gray water, treated wastewater or reuse water, condensate water, cooling tower blow will be used, signs identifying this property as using recycled or reclaimed water source must be posted on site at a location for the general public view.
Ornamental lakes and ponds, etc.	I, II, III	Re-filling of ornamental lakes or ponds is prohibited; except to the extent needed to sustain aquatic life,

		provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a drought response level under this article. A user may file, in writing, with NBU a request for an aquatic life variance. The request must include: (1) a statement indicating compelling reasons why the users aquatic life qualifies as significant value; and (2) the amount of time the aquatic life have been present in the said lake/pond; and (3) a management plan for the aquatic life.
Foundation Watering	I, II, III	Foundations may be watered up to two hours on any day, during watering times, by handheld hose; or using a soaker hose or drip system placed within 24 inches of the foundation that does not produce a spray of water above the ground.
Other Outdoor Uses	I, II, III	Waste is prohibited. No person may allow irrigation tail water to escape from that person's land. Non-commercial washing of vehicles and mobile equipment (e.g., washing vehicle at a residence) is permitted only on assigned residential landscape sprinkling watering days and times (see section 130-225) with hand-held hose (with automatic shut-off nozzle) or bucket of five gallons or less, but is prohibited between the hours of 10:00 a.m. and 8:00 p.m. every day. Use of commercial vehicle wash facility permitted any day. Citizens are encouraged to wash their cars no more than twice a month. Use of gray water, treated wastewater or recycled water is a defense to prosecution.
Pressure Washing	I, II, III	Washing sidewalks, walkways, driveways, parking lots, street, tennis courts, and other impervious surfaces is prohibited except in emergencies to remove spills of hazardous materials or to eliminate dangerous conditions which threaten the public health, safety, or welfare. Washing buildings, houses or structures with a pressure washer or garden hose is prohibited for aesthetic purposes but allowable for surface preparation of maintenance work to be performed. A variance from NBU must be obtained for any pressure washing performed during drought stage.
Landscape Irrigation: Established Plants	I	Landscape watering using sprinkler or irrigation systems is permitted only on designated landscape watering days and times (see section 130-225). The use of gray water, treated wastewater or reuse water is a defense

		<p>to prosecution. Voluntary irrigation system audits encouraged. A user may file, in writing, with NBU a request for an exception to the designated days and times. The request must include: (1) a statement indicating compelling reasons why the user is unable to meet the specific designated watering times and days; and (2) a water conservation plan. The water conservation plan must also include proof of irrigation efficiency of 60 percent or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for stage I. NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan. Upon the approval of the water conservation plan as set forth herein, the user may be granted an exception.</p>
	<p>II, III</p>	<p>Landscape watering using sprinklers or irrigation systems is permitted only on designated landscape watering days and times (see section 130-225). The use of gray water, treated wastewater or reuse water is a defense to prosecution. Voluntary irrigation system audits encouraged. A user may file, in writing, with NBU a request for an exception to the designated days and times. The request must include: (1) a statement indicating compelling reasons why the user is unable to meet the specific designated watering times and days; and (2) a water conservation plan. The water conservation plan must also include proof of irrigation efficiency of 60 percent or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for stage II or III. NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan. Upon the approval of the water conservation plan as set forth herein, the user may be granted an exception.</p>
<p>Landscape Irrigation: New Landscaping Plants</p>	<p>I</p>	<p>Landscape watering permitted with variance confirmation letter to maintain adequate growth until established, generally three weeks. Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and</p>

		<p>the date of installation in order to receive a confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times (see subsections 130-225(a) and (d)). Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five gallons or less, or drip irrigation system is permitted at any time. The use of gray water, treated wastewater or reuse water is a defense to prosecution.</p>
	<p>II</p>	<p>New landscape installation restricted: during stage II drought restrictions, variance requests must be approved prior to new landscape installation. Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name and address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times (see subsections 130-225(a) and (d)). Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five gallons or less, or drip irrigation system is permitted at any time, but only until adequate growth is established as set out in NBU's confirmation letter. Use of gray water, treated wastewater or reused water is a defense to prosecution. Voluntary irrigation system audits encouraged. Once variance letter has been received, landscape watering permitted, to maintain adequate growth until established, generally three weeks.</p>
	<p>III</p>	<p>New landscape installation restricted: during stage III drought restrictions variances requests must be approved prior to new landscape installation. Installation of new landscapes is permitted only if not more than 50 percent of the available landscape area is planted with turf and if proper horticultural practices are followed, including use of mulch and zonal irrigation systems if a permanent irrigation system is installed. A user may file with NBU a request to install more than 50</p>

		<p>percent turf. The request must include:</p> <p>(1) a statement or plan describing the landscaping plan; and</p> <p>(2) a statement indicating how the landscaping plan will achieve the goals of this chapter. Upon the approval of the alternate landscaping plan as set forth herein, the user may be granted an exception. Landscape renovation is allowed only if proper horticultural practices are followed, including use of mulch. Additionally, if the newly renovated landscaped area is watered with an irrigation system, then a zonal irrigation system must be installed.</p> <p>Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times (see subsections 130-225(a) and (d)). Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five gallons or less, or drip irrigation system is permitted at any time, but only until adequate growth is established as set out in NBU's confirmation letter. Use of gray water, treated wastewater or reused water is a defense to prosecution. Voluntary irrigation system audits encouraged.</p> <p>Once variance letter has been received, landscape watering permitted, to maintain adequate growth until established, generally three weeks.</p>
<p>Parks/Athletic Fields</p>	<p>I, II, III</p>	<p>Park and athletic field owner/operators shall be required to submit a water conservation plan and shall be defined as "conforming" or "non-conforming". An athletic field or park will be deemed "conforming" if there is a CCIS in place and the owner/operator is utilizing the system to achieve maximum conservation and the goals of this division. Conforming facilities should have a conservation plan approved and on file with NBU. A park or athletic field that is not conforming is deemed "non-conforming" for the purposes of this division. Owners/operators of athletic fields or parks</p>

		shall reduce water usage under the following terms:
	I, II, III	Use of gray water, treated wastewater or recycled water is a defense to prosecution.
	I	A. A conforming park/athletic fields shall implement a ten percent reduction in the replacement of daily evapotranspiration rate ("ET rate") or daily soil-holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals.
		B. A non-conforming park/athletic fields shall not use more than 1.8 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.
	II	A. A conforming park/athletic field shall implement a 20 percent reduction in replacement of daily ET rate or daily soil holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals;
		B. A non-conforming park/athletic field shall not use more than 1.6 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.
	III	A. A conforming park/athletic field shall implement a 30 percent reduction in replacement of daily ET rate or daily soil holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals;
		B. A non-conforming park/athletic field shall not use more than 1.4 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.

Construction	I, II, III	Construction operations receiving water from a construction meter, fire hydrant meter or water truck shall not use water unnecessarily for any purpose other than those required by regulatory agencies. Construction projects requiring watering for new landscaping materials shall adhere to the designated irrigation requirements set forth herein.
Hotels, Motels, Bed and Breakfasts	I, II	Hotels, motels and B&B's must offer and clearly notify guests of a "no linen/towel change" program.
	III	Hotels, motels, B&B's must limit linen/towel changes to once every three nights or for the entire stay, whichever is shorter, except for health and safety.
Leaks	Year Round	Repair all water leaks within 72 hours of notification from NBU unless other arrangements are made with the conservation coordinator.
	I, II	Repair all leaks within 48 hours of notification from NBU unless other arrangements are made with the conservation coordinator.
	III	Repair all water leaks within 24 hours of notification from NBU unless other arrangements are made with the conservation coordinator.

ORDINANCE NO. 2023-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS AMENDING CHAPTER 130, ARTICLE IV, SECTION 130-228, CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS RELATING TO DROUGHT MANAGEMENT PLAN

WHEREAS, the City Council of New Braunfels, Texas, owns and operates by and through New Braunfels Utilities its own water and wastewater systems in accordance with the laws of the State of Texas and the charter of said City;

WHEREAS, the Board of Trustees of New Braunfels Utilities recommended updates to the Drought Management Plan codified as Chapter 130, Article IV, New Braunfels Code of Ordinances in 2014 to include prohibiting the construction, installation, and filling of new pools while in stage III drought restrictions;

WHEREAS, NBU is committed to resilient management of NBU water resources and promoting water conservation;

WHEREAS, the City of New Braunfels entered stage III drought restrictions on June 21, 2022, which restrictions prohibit the construction, installation, and filling of new pools;

WHEREAS, NBU's water supply has greater diversification and supply than it did in 2014;

WHEREAS, prohibiting the construction, installation, and filling of new pools is an important water reduction measure but is only a temporary water reduction mechanism that does not encourage water conservation behavioral changes;

WHEREAS, prohibiting the construction, installation, and filling of new pools is more appropriately implemented as a tool in later stages of drought restrictions; and

WHEREAS, the New Braunfels Utilities Board of Trustees has recommended that the ordinance be amended.

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

SECTION 1.

THAT, the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

THAT, Sections 130-228 of Chapter 130, Article IV, New Braunfels Code of Ordinances, as heretofore established by ordinance, be and are hereby amended in the following section with deleted language signified by strikethrough font and new language signified by underlined font:

Sec. 130-228. Specific water use reduction measures.

Specific water use reduction measures, their corresponding stages and scope are set out in the table, below:

Measures for	Stages	Scope of Restrictions
Essential Services	I, II, III	Fire-fighting and medical uses — no restrictions.
	I	Reduction in fire hydrant; sewer line flushing recommended.
	II, III	Hydrant flushing and sewer line flushing — only on emergency basis.
Water Purveyor Use	I, II, III	Water purveyors are encouraged to implement voluntary measures, such as improving leak detection surveys and repair programs and stabilizing and equalizing system pressure.
Power Production	I, II, III	Water used for power production shall be voluntarily reduced.
Agricultural	I	Reduction of water use by any means available is encouraged.
	II, III	The escape of irrigation tail water, as that term is commonly used in the agricultural community, is prohibited. Water loss through percolation in transmission canals is prohibited.
	III	Additional reductions may be imposed by the city council if conditions warrant.
Livestock Use	I, II, III	Reduction of water use by any means available is encouraged.
Industrial, Commercial, and Other	I, II, III	Reduction of water use by any means available is encouraged. Compliance with the mandatory demand reduction measures is required for those uses in the outdoor category, including landscape watering, swimming pools, hot tubs and similar facilities, golf courses, aesthetic uses such as fountains; such restrictions specifically include industrial users, as well as all others. Use of gray water, treated wastewater or reuse water is a defense to prosecution.

	III	Additional reductions may be imposed by the mayor if conditions warrant. Use of treated wastewater or recycled water is a defense to prosecution.
Restaurants, or other Eating Establishments	Year Round	NBU strongly encourages that water be served to guests only upon request.
Household	I, II, III	Reduction of water use by any means available is encouraged. Compliance with the mandatory demand reduction measures shall be achieved for those uses in the outdoor category, such as landscape watering, swimming pools, hot tubs, and similar facilities.
Swimming Pools, Hot Tubs, etc.	I, II, III	NBU strongly encourages that all swimming pools, other than public swimming pools, be covered with an effective evaporation cover or screen or evaporation shields covering at least 25 percent of the surface of the pool when the pool is not in active use. Active use includes necessary maintenance that requires removal of the cover, screen, or shields. Active use of public, commercial and apartment pools is whenever the pool is not officially closed.
Replenishing Pool, Hot Tubs, etc. water levels	I, II, III	Replenishing to maintenance level permitted within watering hours.
New Pools, Filling New Pools, Hot Tubs etc.	I, II, III	Construction, installation, and filling of new pools will be allowed.
	III	Construction, installation, and filling of new pools will not be allowed. If a building permit has already been issued for pool construction, before the drought management stage was declared, construction, installation, and filling of new pools is allowed. Property owners, prior to construction, installation, or filling of pools should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new pool is to be installed, the date of installation, and copy of the approved building permit in order to receive an approval letter from NBU.
Draining Pools, Hot Tubs, etc.	I, II, III	Draining permitted only onto pervious surface, or onto pool deck where the water is transmitted directly to a previous surface, only if: 1. Draining excess water from pool due to rain in order to lower water to maintenance level; 2. Repairing, maintaining or replacing pool component that has become hazardous; or 3. Repairing pool leak 4. Refilling of public swimming pool permitted only if pool has been drained for the repairs, maintenance or replacement set out in items 2 or 3

		above. It is prohibited to drain swimming pools into the street, alley, gutter or other public right-of-way, ditch, or storm water drainage system or facility. It is considered water waste to drain a pool and allow the water to leave the property in which the pool is located.
Aesthetics (fountains, waterfalls, etc.)	I, II, III	Outside prohibited. The 100 percent use of treated wastewater, condensate, or cooling tower blow down is defense to prosecution under this paragraph. Alternate on-site reclaimed sources may be approved through variance on a case-by-case basis. If 100 percent use of gray water, treated wastewater or reuse water, condensate water, cooling tower blow will be used, signs identifying this property as using recycled or reclaimed water source must be posted on site at a location for the general public view.
Ornamental lakes and ponds, etc.	I, II, III	Re-filling of ornamental lakes or ponds is prohibited; except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a drought response level under this article. A user may file, in writing, with NBU a request for an aquatic life variance. The request must include: (1) a statement indicating compelling reasons why the users aquatic life qualifies as significant value; and (2) the amount of time the aquatic life have been present in the said lake/pond; and (3) a management plan for the aquatic life.
Foundation Watering	I, II, III	Foundations may be watered up to two hours on any day, during watering times, by handheld hose; or using a soaker hose or drip system placed within 24 inches of the foundation that does not produce a spray of water above the ground.
Other Outdoor Uses	I, II, III	Waste is prohibited. No person may allow irrigation tail water to escape from that person's land. Non-commercial washing of vehicles and mobile equipment (e.g., washing vehicle at a residence) is permitted only on assigned residential landscape sprinkling watering days and times (see section 130-225) with hand-held hose (with automatic shut-off nozzle) or bucket of five gallons or less, but is prohibited between the hours of 10:00 a.m. and 8:00 p.m. every day. Use of commercial vehicle wash facility permitted any day. Citizens are encouraged to wash their cars no more than twice a

		month. Use of gray water, treated wastewater or recycled water is a defense to prosecution.
Pressure Washing	I, II, III	Washing sidewalks, walkways, driveways, parking lots, street, tennis courts, and other impervious surfaces is prohibited except in emergencies to remove spills of hazardous materials or to eliminate dangerous conditions which threaten the public health, safety, or welfare. Washing buildings, houses or structures with a pressure washer or garden hose is prohibited for aesthetic purposes but allowable for surface preparation of maintenance work to be performed. A variance from NBU must be obtained for any pressure washing performed during drought stage.
Landscape Irrigation: Established Plants	I	Landscape watering using sprinkler or irrigation systems is permitted only on designated landscape watering days and times (see section 130-225). The use of gray water, treated wastewater or reuse water is a defense to prosecution. Voluntary irrigation system audits encouraged. A user may file, in writing, with NBU a request for an exception to the designated days and times. The request must include: (1) a statement indicating compelling reasons why the user is unable to meet the specific designated watering times and days; and (2) a water conservation plan. The water conservation plan must also include proof of irrigation efficiency of 60 percent or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for stage I. NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan. Upon the approval of the water conservation plan as set forth herein, the user may be granted an exception.
	II, III	Landscape watering using sprinklers or irrigation systems is permitted only on designated landscape watering days and times (see section 130-225). The use of gray water, treated wastewater or reuse water is a defense to prosecution. Voluntary irrigation system audits encouraged. A user may file, in writing, with NBU a request for an exception to the designated days and times. The request must include: (1) a statement indicating compelling reasons why the user is unable to meet the specific designated watering times and days;

		<p>and (2) a water conservation plan. The water conservation plan must also include proof of irrigation efficiency of 60 percent or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for stage II or III. NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan. Upon the approval of the water conservation plan as set forth herein, the user may be granted an exception.</p>
<p>Landscape Irrigation: New Landscaping Plants</p>	<p>I</p>	<p>Landscape watering permitted with variance confirmation letter to maintain adequate growth until established, generally three weeks. Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times (see subsections 130-225(a) and (d)). Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five gallons or less, or drip irrigation system is permitted at any time. The use of gray water, treated wastewater or reuse water is a defense to prosecution.</p>
	<p>II</p>	<p>New landscape installation restricted: during stage II drought restrictions, variance requests must be approved prior to new landscape installation. Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name and address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times (see subsections 130-225(a) and (d)). Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five gallons or less, or drip irrigation system is permitted at any time, but only until</p>

		<p>adequate growth is established as set out in NBU's confirmation letter. Use of gray water, treated wastewater or reused water is a defense to prosecution. Voluntary irrigation system audits encouraged.</p> <p>Once variance letter has been received, landscape watering permitted, to maintain adequate growth until established, generally three weeks.</p>
	<p>III</p>	<p>New landscape installation restricted: during stage III drought restrictions variances requests must be approved prior to new landscape installation. Installation of new landscapes is permitted only if not more than 50 percent of the available landscape area is planted with turf and if proper horticultural practices are followed, including use of mulch and zonal irrigation systems if a permanent irrigation system is installed. A user may file with NBU a request to install more than 50 percent turf. The request must include:</p> <ul style="list-style-type: none"> (1) a statement or plan describing the landscaping plan; and (2) a statement indicating how the landscaping plan will achieve the goals of this chapter. Upon the approval of the alternate landscaping plan as set forth herein, the user may be granted an exception. Landscape renovation is allowed only if proper horticultural practices are followed, including use of mulch. Additionally, if the newly renovated landscaped area is watered with an irrigation system, then a zonal irrigation system must be installed. <p>Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times (see subsections 130-225(a) and (d)). Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five gallons or less, or drip irrigation system is permitted at any time, but only until adequate growth is established as set out in NBU's confirmation letter. Use of gray water, treated</p>

		<p>wastewater or reused water is a defense to prosecution. Voluntary irrigation system audits encouraged.</p> <p>Once variance letter has been received, landscape watering permitted, to maintain adequate growth until established, generally three weeks.</p>
Parks/Athletic Fields	I, II, III	<p>Park and athletic field owner/operators shall be required to submit a water conservation plan and shall be defined as "conforming" or "non-conforming". An athletic field or park will be deemed "conforming" if there is a CCIS in place and the owner/operator is utilizing the system to achieve maximum conservation and the goals of this division. Conforming facilities should have a conservation plan approved and on file with NBU. A park or athletic field that is not conforming is deemed "non-conforming" for the purposes of this division. Owners/operators of athletic fields or parks shall reduce water usage under the following terms:</p>
	I, II, III	<p>Use of gray water, treated wastewater or recycled water is a defense to prosecution.</p>
	I	<p>A. A conforming park/athletic fields shall implement a ten percent reduction in the replacement of daily evapotranspiration rate ("ET rate") or daily soil-holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals.</p>
		<p>B. A non-conforming park/athletic fields shall not use more than 1.8 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.</p>
	II	<p>A. A conforming park/athletic field shall implement a 20 percent reduction in replacement of daily ET rate or daily soil holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals;</p>
		<p>B. A non-conforming park/athletic field shall not use more than 1.6 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates</p>

		and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.
	III	A. A conforming park/athletic field shall implement a 30 percent reduction in replacement of daily ET rate or daily soil holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals;
		B. A non-conforming park/athletic field shall not use more than 1.4 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.
Construction	I, II, III	Construction operations receiving water from a construction meter, fire hydrant meter or water truck shall not use water unnecessarily for any purpose other than those required by regulatory agencies. Construction projects requiring watering for new landscaping materials shall adhere to the designated irrigation requirements set forth herein.
Hotels, Motels, Bed and Breakfasts	I, II	Hotels, motels and B&B's must offer and clearly notify guests of a "no linen/towel change" program.
	III	Hotels, motels, B&B's must limit linen/towel changes to once every three nights or for the entire stay, whichever is shorter, except for health and safety.
Leaks	Year Round	Repair all water leaks within 72 hours of notification from NBU unless other arrangements are made with the conservation coordinator.
	I, II	Repair all leaks within 48 hours of notification from NBU unless other arrangements are made with the conservation coordinator.
	III	Repair all water leaks within 24 hours of notification from NBU unless other arrangements are made with the conservation coordinator.

SECTION 3.

THAT, this ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to specific water use reduction measures, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 4.

THAT, if any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 5.

THAT, this ordinance shall be effective on _____, 2023.

SECTION 6.

PASSED AND APPROVED: First Reading this ___th day of April, 2023.

PASSED AND APPROVED: Second Reading this ____th day of April, 2023.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

GAYLE WILKINSON, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney



Drought Management Plan Proposed Update



Andrew Cummings

Conservation and Customer Solutions Manager



Ordinance History

- Current Ordinance language became effective in 2006.
- In 2008, the Ordinance was updated to remove language that allowed for a prohibition on sprinkler irrigation, but still allowed “additional measures to protect the aquifer”.
- In 2014, the Ordinance was updated to disallow installation and filling of new pools during Stage III drought restrictions.

Drought History

NBU has been in Stage III drought restrictions four times since 2006:

- Friday, August 10, 2012 duration of 45 days
- Monday, July 29, 2013 duration of 179 days
- Thursday, April 3, 2014 duration of 330 days
- Tuesday, June 21, 2022 current duration of 269 days

Drought Stage III

- In July 2022, following declaration of Stage III restrictions, NBU and City staff held a public meeting with builders and pool installers to educate the groups on effects of Stage III restrictions.
- Following a great concern from pool installers, NBU and City staff worked on a concession that still met the intention of the ordinance. Permits could be issued for pools through the variance process as long as installers and owners didn't fill the pools. This was augmented by the agreement not to plaster the pools.

Variations (calculations assume comparable sq. ft.)

- In the nine months since Stage III restrictions were implemented, NBU has received 91 pool variations;
 - Average pool water to fill requirements ----- 18,000 gal
 - Total water requirement to fill all 91 ----- 1,638,000 gal
 - Estimated total water use over 9 months ----- 2,024,978 gal
- In the same period NBU has received 1059 yard variations
 - Average water requirement for first 21 days per lawn of similar size 8,938 gal
 - Total water requirement for all lawns first 21 days ----- 9,465,342 gal
 - Estimated total water usage over 9 months ----- 20,282,674 gal

Recommended Ordinance Change

- NBU is recommending a single change to the Drought Management Plan
 - Allow installations of pools during Stage III drought restrictions
 - Reserve ability to prohibit issuance of permit during periods of exceptional drought

New Pools, Filling New Pools, Hot Tubs etc.	I, II, <u>III</u>	Construction, installation, and filling of new pools will be allowed.
	III	Construction, installation, and filling of new pools will not be allowed. If a building permit has already been issued for pool construction, before the drought management stage was declared, construction, installation, and filling of new pools is allowed. Property owners, prior to construction, installation, or filling of pools should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new pool is to be installed, the date of installation, and copy of the approved building permit in order to receive an approval letter from NBU.

Justification

- Prohibiting installation of pools is only a temporary water savings mechanism.
- Properly maintained pools use less water than turf of similar square foot area.
- Higher impact water savings is seen in reducing turf watering.
- Drought Management Plan was written prior to larger diversification of NBU water supplies.
- NBU lacks resources to address full-time management of this section.

High Impact Water Savings vs Pools

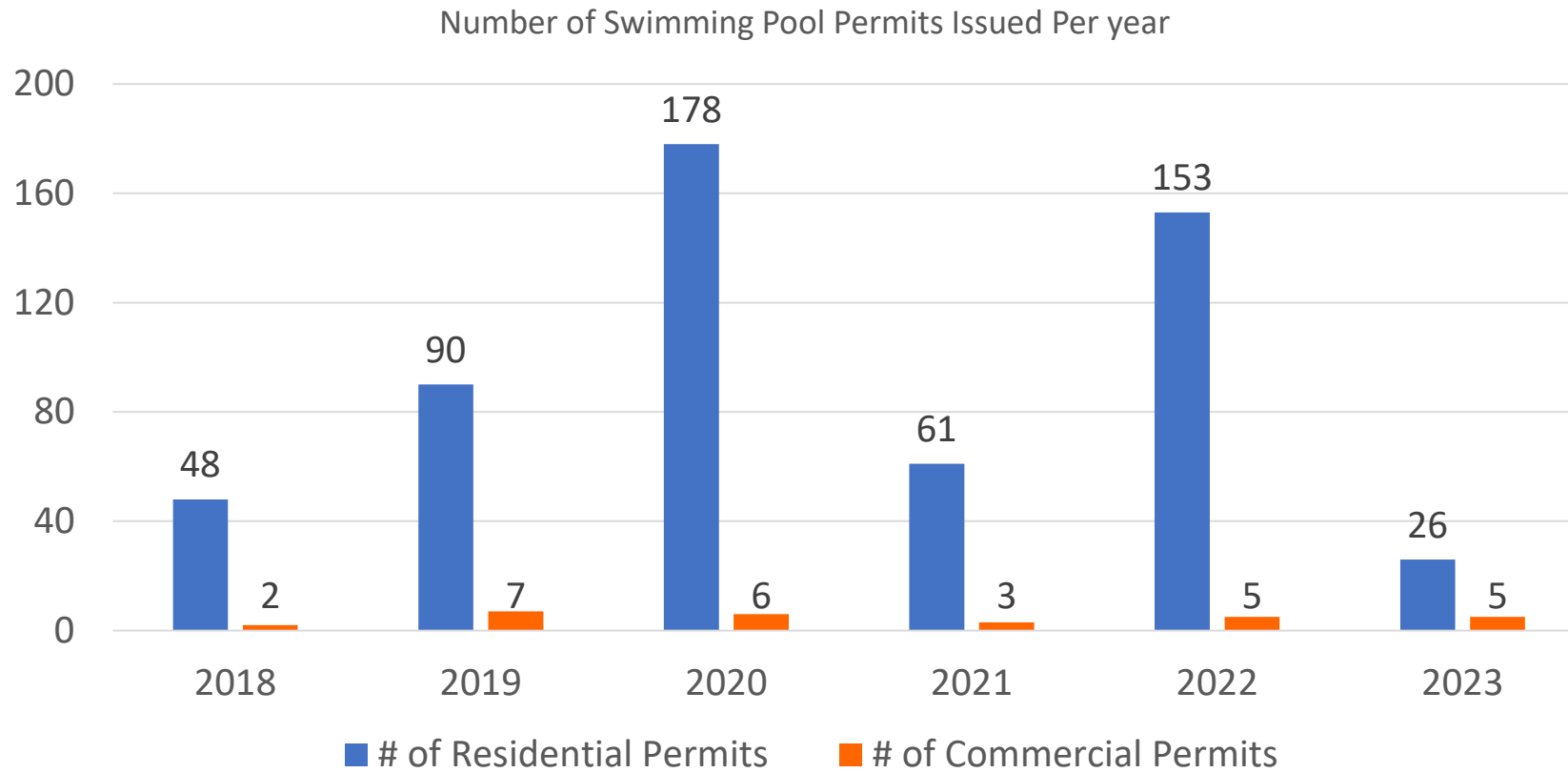
The average turf lawn in New Braunfels is 4,000 sq.ft.

- Estimated water use for average new lawn over last 9 months ----- 84,056 gal
- Estimated water use all 1059 lawns with variance over 9 months ----- 89,015,304 gal

Stage III

- Water saved, stage III 50% turf reduction, 2,000 sq.ft. per lawn ----- 42,028 gal
- Water saved by all 1059 lawns with variance ----- 44,507,652 gal
- Water saved by 91 pool variances ----- 2,024,895 gal

Pool Permit History



Next Steps

If resolution is approved:

- NBU staff will present proposed change to council on April 10th.
- If approved, second reading would be April 24th.

Questions?