



NOTICE OF OPEN MEETING
JUNE BOARD OF TRUSTEES
NBU Board Room, 263 Main Plaza, New Braunfels, Texas 78130
June 27, 2024, at 3:00 PM
www.nbutexas.com

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND INVOCATION

Board Trustee Yvette Villanueva Barrera

NBU MISSION

Greg Brown, Chief Technology Officer

PUBLIC COMMENT

ITEMS FROM THE CHAIR

1. American Public Power Association (APPA) National Conference and Day of Giving Update
2. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code

ITEMS FROM STAFF

1. CEO's Update
 - a. APPA National Conference and Day of Giving Update
 - b. Reliability Recognition from APPA
 - c. NBU All-Retiree Luncheon
 - d. Control Center Recognition Week
 - e. Leadership Announcement of New Hires: Mark Steelman, Chief Operations Officer, and Neil Borne, Cyber Security Manager
 - f. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code
2. Financial Update and Report, Including an Update on the Filing of the NBU Transmission Cost of Service Application with the Public Utility Commission of Texas
3. Water Supply Fee Report

CONSENT ITEMS FOR ACTION

- [1.](#) Approve Minutes of the NBU Board Budget Workshop of May 30, 2024
- [2.](#) Approve Minutes of the NBU Regular Board Meeting of May 30, 2024
- [3.](#) Approve the Change Order Log from April 15, 2024, through May 15, 2024
- [4.](#) Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through May 15, 2024
- [5.](#) Approve the Electric Line of Business Alternative Procurements from April 15, 2024, through May 15, 2024
- [6.](#) Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Raftelis Financial Consultants, Inc. DBA Raftelis for a Water, Wastewater, and Electric Rate Design Review
- [7.](#) Authorize CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Pawelek and Moy, Inc. for the Design of the Sewer Infrastructure Replacement Package Two Project for Four Construction Locations, Including Landa Street, Fredericksburg Road, Sundance Parkway, and Elizabeth Avenue, New Braunfels, Texas
- [8.](#) Authorize CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Arcadis U.S. Inc. for the Design of the NBU Surface Water Treatment Plant Expansion Project
- [9.](#) Authorize CEO or His Designee to Negotiate and Execute a Fifth Amendment to the Work Authorization with Quiddity Engineering, LLC, for the Design of the Kuehler Water Reclamation Facility Expansion Project
- [10.](#) Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Terracon Consultants, Inc. for Cultural Services for the Water and Wastewater Capital Improvements Program
- [11.](#) Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with MGC Contractors, Inc. for Construction of the North Kuehler Interceptor Odor Control Facility Project
- [12.](#) Authorize CEO or His Designee to Negotiate and Execute a Grant Agreement for Fiscal Year 2025 between New Braunfels Utilities and Headwaters at the Comal
- [13.](#) Authorize the CEO or His Designee to Execute a Change Order to the Guaranteed Maximum Price Amendment with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase 2 Sitework & Envelope
- [14.](#) Authorize the CEO or His Designee to Execute a Guaranteed Maximum Price Amendment with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase 2 for Additional Site Improvements and Fencing

- [15.](#) Authorize CEO or His Designee to Negotiate and Execute a Purchase Order Standard Terms and Conditions with Virginia Transformer Corp. for the Manufacture, Delivery, Assembly, and Testing of Three (3) Substation Power Transformers
- [16.](#) Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Lambda Construction I, LTD for Construction of the Hueco Springs Substation and Henne Substation Breaker Additions Project
- [17.](#) Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Environmental Improvements, Inc. for Water and Wastewater Systems Chlorine and Sulfur Dioxide Repair, Maintenance, and Replacement Services
- [18.](#) Authorize CEO or His Designee to Negotiate and Execute Professional Services Agreements with (i) Allen, Williford, and Seale, Inc.; (ii) Lowery Property Advisors, LLC; (iii) Titan Commercial Valuation, LLC; and (iv) Dugger Grafe Swanson, Inc., DBA Valbridge Property Advisors/San Antonio, Inc. for Real Property and Easement Appraisal Services for New Braunfels Utilities Capital Improvement Projects
- [19.](#) Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Public Relations Advertising Company dba Vladimir Jones for Communication and Marketing Support Services
- [20.](#) Authorize CEO or His Designee to Negotiate and Execute a Cooperative Agreement with SHI/Government Solutions, Inc. for the Renewal of Microsoft EA Licensing to Maintain Critical Software Usage
- [21.](#) Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Spiess Construction Co., Inc. for the Construction of the Infrastructure Replacement Package 1 Project
- [22.](#) Approve Resolution #2024-185 Authorizing (i) the Transfer of .4388 Acres of Real Property Located at 1032 W. Coll Street, New Braunfels, Texas, to the City of New Braunfels (the “City”) in Exchange for .581 Acres of Real Property Located along FM 1044, New Braunfels, Texas (near the intersection of Old Marion Road and FM 1044) from the City to NBU for Construction and Operation of an Elevated Storage Tank (the “EST”); (ii) Acceptance of an Access Easement, Utility Easement, Drainage Easement, and Temporary Construction Easements from the City for Construction and Operation of the EST; (iii) Execution of Any and All Documents Necessary to Effectuate the Conveyances; and (iv) Other Matters in Connection Therewith
- [23.](#) Ratification of the Statement of Intent to Change Transmission Cost of Service and Wholesale Transmission Rates Application, and in Support Thereof, on April 11, 2024

ACTION ITEMS

- [1.](#) Discuss and Consider Approval of the Fiscal Year 2025 Budget and Five-Year Operating Plan

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. Discuss Credit Risk Management Waiver
2. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney Client Privilege (Section 551.071 – Texas Government Code); Real Property (Section 551.072 – Texas Government Code)
 - a. Discuss Legal Options Relating to Status of Real Estate Negotiations to Secure Easements Regarding the McKenzie Interceptor Upgrade Project:
 - i. a 0.296 Acre Permanent Utility Easement, a 0.044 Acre Temporary Construction Easement, and a 0.213 Acre Temporary Construction Easement, all being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across Lot 18, Block J, Avery Park Subdivision, Unit 2 (Amended), as recorded in Volume 7, Page 267 of the Map and Plat Records of Guadalupe County, Texas (Guadalupe County Parcel No. 125092)
 - ii. a 0.632 Acre Permanent Utility Easement, situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across Lots 901 and 902, Block 4, Avery Park 13, as recorded in Document Number 201899025604 of the Map and Plat Records of Guadalupe County, Texas (Guadalupe County Parcel Nos. 171818 and 171819)
 - iii. a 0.312 Acre Temporary Construction Easement, and a 0.022 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across Lot 902, Block 4, Avery Park 13, as recorded in Document Number 201899025604 of the Map and Plat Records of Guadalupe County, Texas (Guadalupe County Parcel No. 171819)
 - iv. a 0.763 Acre Permanent Utility Easement, and a 0.500 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across the remainder of a 60.36 Acre Tract described in a Deed recorded in Volume 3037, Page 741 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 55555)
 - v. a 0.415 Permanent Utility Easement, a 0.028 Acre Temporary Construction Easement, and a 0.258 Acre Temporary Construction Easement, all being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across a 12.500 Acre Tract described in a Deed recorded in Volume 1783, Page 833 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 55553)

- vi. a 1.079 Acre Permanent Utility Easement, 0.702 Acre Temporary Construction Easement, 0.107 Acre Access Easement, all being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across the remainder of a 32.77 Acre Tract described in a Deed recorded in Volume 670, Page 801 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 56231)
- vii. a 0.563 Acre Temporary Construction Easement, situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across a 105.316 Acre tract described in a Deed recorded in Document Number 202199040676 and also recorded in Document Number 202399020238 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 55904)
- viii. a 1.827 Acre Permanent Utility Easement, and a 1.025 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across that 34.27 acre tract described in a Common Area deed recorded in Document Number 202399024397 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 56337)
- ix. a 2.088 Acre Permanent Utility Easement, and a 1.395 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across a 52.50 Acre Tract described in a Deed recorded in Document Number 202399002975 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel Nos. 191564 and 108128)
- x. a 0.209 Acre Permanent Utility Easement, and a 0.162 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across a 10.37 Acre Tract described in a Deed recorded in Document Number 202399003051 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel Nos. 56079 and 106382)
- xi. a 1.879 Acre Permanent Utility Easement, and a 1.253 Acre Temporary Construction Easement, both being out of the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, and being over part of that remainder of a 32 acre tract described in a deed recorded in Volume 2502, Page 699, Official Public Records of Guadalupe County, Texas and being over part of that 4.307 acre tract, designated as Third Tract, described in a deed recorded in Volume 2659, Page 759, Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel Nos. 54767; 54768; and 56414)
- xii. a 1.937 Acre Permanent Utility Easement, and a 1.127 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 1, Comal County, Texas, over and across Lot 2, Block 1 of Titan Industrial NB Park Unit 2, as recorded in Document Number 201806048472 of the Map and Plat Records of Comal County, Texas, Lot 3, Block 1 of Titan Industrial NB Park Unit 3, as recorded in Document Number 201906003134 of the said Map and Plat Records, and the remainder of a 66.182 Acre tract, designated Tract 1, in a Deed recorded in Document Number 202106057346 of the Official Public Records of Comal County, Texas, and described in a Deed as recorded in Document Number 201506039028 of the Official

Public Records, Comal County Texas (Comal County Parcel Nos. 421640; 422735; and 441204);

- xiii. a 1.846 Acre Permanent Utility Easement, and a 0.847 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 1, Comal County, Texas, over and across a 40.37 Acre tract described in a Deed recorded in Document Number 202206025070 of the Official Public Records of Comal County, Texas (Comal County Parcel No. 71650)
3. Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege (Section 551.071 – Texas Government Code)
 - a. Discuss the Effects of the San Antonio Water System's Application for Water Use Permit No. 13098 on NBU's Water Rights in the Guadalupe River Basin

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

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

ADJOURN

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

CERTIFICATE OF POSTING

I, Ryan Kelso, Secretary to the Board of Trustees, do hereby certify that this Notice of Meeting was posted at the City of New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas, and New Braunfels Utilities Main Office, 263 Main Plaza, New Braunfels, Texas, on the **20th day of June 2024**, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.



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



Meeting Date: June 27, 2024

Agenda Type: Items from Staff

From: Kimberly Huffman
Accounting Manager

Reviewed by: Ashley Van Booven
Director of Finance

Submitted by: Dawn Schriewer
Chief Financial Officer

Approved by: Ryan Kelso
Chief Executive Officer

RECOMMENDED ACTION: Financial Update and Report, Including an Update on the Filing of the NBU Transmission Cost of Service Application with the Public Utility Commission of Texas

BACKGROUND

NBU's service territory experienced higher temperatures and lower rainfall during the month of May than historically. The average temperature was 81.3 degrees, which was 6 degrees higher than the historical average temperature of 75.3 degrees. Rainfall totaled 3.3 inches for the month of May, which was 0.8 inches lower than the historical average rainfall of 4.1 inches.

For the month of May 2024, NBU recorded a change in net position after contributions ("CNPAC") of \$10,175,000 which represents an increase of \$9,555,000 compared to the budgeted monthly CNPAC of \$620,000. Operating service revenues of \$23,135,000 were greater than budget by \$2,235,000, or 11%, for the month of May. A \$3,078,000 increase in electric revenue, \$565,000 decrease in water revenue, and a \$278,000 decrease in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$606,000 were greater than budget by \$186,000 for the month of May. Purchased power costs were \$80,000 greater than budget for May 2024 and \$365,000 less for Year-to-Date ("YTD"). A decrease in other operating expenses of \$976,000 resulted in total operating expenses to be \$896,000, or 4%, less than the budgeted amount of \$20,675,000. The net revenue and operating expense variances contributed to a favorable net operating income variance of \$3,317,000 from budget. Net non-operating items had a \$1,713,000 favorable variance compared to budget. Impact fees were greater than budget by \$4,583,000, services income was greater than budget by \$9,000, and capital participation fees was less than budget by \$66,000. May 2024 YTD CNPAC was \$47,676,000, which was \$31,786,000 greater than the budgeted amount of \$15,890,000.

FINANCIAL IMPACT

Electric

The Electric Line of Business reported total operating revenues of \$17,426,000, a \$3,218,000 increase, or 23%, from the May budgeted amount of \$14,208,000. The net rate realized per kWh was \$0.1200, which was 26% greater than the budgeted rate of \$0.0951 for the month of May. May kWh sales were 141.1 million kWh, a 4.7 million kWh decrease, or 3%, in comparison to the budgeted amount of 145.8 million kWh.

Purchased power costs totaled \$11,450,000, which was \$80,000 greater than the budgeted amount of \$11,370,000. Electric gross margin, which is total operating revenues minus purchased power, resulted in the amount of \$5,976,000 for the month of May and \$52,320,000 YTD. These amounts were \$3,138,000 greater and \$7,781,000 greater than the budgeted amount of \$2,838,000 Month-to-Date (“MTD”) and \$44,539,000 YTD. Other operating expenses were less than budget by \$385,000. These items resulted in the Electric Line of Business reporting net operating income of \$3,493,000, which was \$3,522,000 greater than the budgeted amount of (\$29,000). Net non-operating items provided a favorable variance from budget of \$820,000. Services income was less than budget by \$159,000. The Electric Line of Business reported May 2024 CNPAC of \$3,598,000 and YTD CNPAC of \$24,330,000. These amounts were \$4,184,000 greater and \$15,395,000 greater than their respective May 2024 MTD and May 2024 YTD budget amounts.

Water

The Water Line of Business reported total operating revenues of \$3,215,000, a \$526,000 decrease, or 14%, from the May budgeted amount of \$3,741,000. In May, water gallons sold of 330,835,000 was less than the budgeted amount of 368,308,000 (a 37,472,000-gallon variance from budget, or 10%). NBU’s net realized price per 1,000 gallons sold in May was \$9.43, which was less than the budgeted amount of \$10.01. Operating expenses for May were \$3,372,000, which was \$424,000 less than the budgeted amount of \$3,796,000. The net effect of less revenues and less operating expenses than budgeted resulted in the Water’s net operating income of (\$157,000), which was less than budget. Net non-operating items provided a favorable variance of \$642,000 from budget. Impact fees of \$4,188,000 were greater than budget by \$3,172,000, and services income was greater than budget by \$167,000. The Water Line of Business reported May 2024 CNPAC of \$4,417,000 and YTD CNPAC of \$13,164,000. These amounts were \$3,879,000 greater than and \$10,878,000 greater than their respective May 2024 MTD and May 2024 YTD budget amounts.

Wastewater

The Wastewater Line of Business reported total operating revenues of \$3,100,000, a \$271,000 decrease, or 8%, from the May budgeted amount of \$3,371,000. Total operating expenses of \$2,475,000 were \$167,000 less than the budgeted amount of \$2,642,000. As a result, the Wastewater Line of Business reported net operating income of \$625,000, which was \$104,000 less than the budgeted amount of \$729,000. Net non-operating items provided a favorable variance of \$250,000 from budget. Impact fees were greater than budget by \$1,411,000, and capital participation fees were less than budget by \$66,000. The Wastewater Line of Business reported May 2024 CNPAC of \$2,160,000 and YTD CNPAC of \$10,182,000. These amounts were \$1,492,000 greater than and \$5,513,000 greater than their respective May 2024 MTD and May 2024 YTD budget amounts.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

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

NEW BRAUNFELS UTILITIES
OVERVIEW COMPARISON TO BUDGET & PRIOR FISCAL YEAR
YTD - Amounts for the Period Ending May 31, 2024

| | | AMOUNT | VARIANCE* | % CHANGE | FAV/UNFAV | Variance Explanation +/-30% |
|---|------------|----------|-----------|----------|-----------|---|
| ELECTRIC | | | | | | |
| Sales Volume (MWh) | Actual | 1,407.0 | | | | |
| | Budget | 1,569.0 | (162.0) | -10% | | |
| | Prior Year | 1,408.8 | (1.8) | 0% | | |
| Revenues (\$M) | Actual | \$ 166.5 | | | | |
| | Budget | \$ 159.0 | \$ 7.4 | 5% | | |
| | Prior Year | \$ 160.8 | \$ 5.7 | 4% | | |
| Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Pwr)</i> | Actual | \$ 52.3 | | | | |
| | Budget | \$ 44.5 | \$ 7.8 | 17% | | |
| | Prior Year | \$ 44.0 | \$ 8.3 | 19% | | |
| Operating Income (\$M) | Actual | \$ 27.7 | | | | |
| | Budget | \$ 14.5 | \$ 13.2 | 91% | | Higher YTD operating revenues, primarily from residential. Lower operating expenses to-date. |
| | Prior Year | \$ 20.6 | \$ 7.0 | 34% | | Higher operating revenues year-over-year. Primarily from Power Pwr Costs. |
| WATER | | | | | | |
| Sales Volume (Million Gallons) | Actual | 3.6 | | | | |
| | Budget | 3.7 | (0.1) | -1% | | |
| | Prior Year | 3.4 | 0.2 | 7% | | |
| Revenues (\$M) | Actual | \$ 33.6 | | | | |
| | Budget | \$ 35.7 | \$ (2.1) | -6% | | |
| | Prior Year | \$ 28.2 | \$ 5.4 | 19% | | |
| Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Water)</i> | Actual | \$ 23.6 | | | | |
| | Budget | \$ 25.4 | \$ (1.8) | -7% | | |
| | Prior Year | \$ 21.9 | \$ 1.6 | 7% | | |
| Operating Income (\$M) | Actual | \$ (1.0) | | | | |
| | Budget | \$ (3.6) | \$ 2.7 | -74% | | Lower YTD operating expenses. |
| | Prior Year | \$ 1.5 | \$ (2.4) | * | | Higher YTD operating expenses compared to Prior Year. Primarily from Purchased Water costs and Support Service Allocation. |
| WASTEWATER | | | | | | |
| Revenues (\$M) | Actual | \$ 29.4 | | | | |
| | Budget | \$ 32.7 | \$ (3.2) | -10% | | |
| | Prior Year | \$ 26.5 | \$ 2.9 | 11% | | |
| Operating Income (\$M) | Actual | \$ 5.3 | | | | |
| | Budget | \$ 5.3 | \$ 0.0 | 0% | | |
| | Prior Year | \$ 5.6 | \$ (0.3) | -5% | | |
| COMBINED | | | | | | |
| Operating Expenses (\$M)** | Actual | \$ 41.4 | | | | |
| | Budget | \$ 50.9 | \$ (9.5) | -19% | | |
| | Prior Year | \$ 36.6 | \$ 4.7 | 13% | | |
| Operating Income (\$M) | Actual | \$ 32.0 | | | | |
| | Budget | \$ 16.1 | \$ 15.9 | 98% | | YTD Electric Service revenues are greater than budget, primarily from Residential, and Water & Wastewater expenses being lower than expected at this time. |
| | Prior Year | \$ 27.7 | \$ 4.3 | 16% | | |
| Change in Net Position Before Contributions (\$M) | Actual | \$ 21.1 | | | | |
| | Budget | \$ (1.4) | \$ 22.6 | * | | YTD Electric Service revenues are greater than budget, primarily from Residential, and Water & Wastewater expenses are lower than expected. Interest income is also higher than budget. |
| | Prior Year | \$ 15.3 | \$ 5.8 | 38% | | YTD Electric Operating expenses from the prior year are higher, primarily due to Purchase Power. |
| Impact Fees (\$M) | Actual | \$ 22.7 | | | | |
| | Budget | \$ 14.0 | \$ 8.7 | 62% | | Several apartment complexes contributed to higher impact fees. |
| | Prior Year | \$ 22.1 | \$ 0.6 | 3% | | |
| Change in Net Position After Contributions (\$M) | Actual | \$ 47.7 | | | | |
| | Budget | \$ 15.9 | \$ 31.8 | * | | |
| | Prior Year | \$ 41.6 | \$ 6.1 | 15% | | |

*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 May 31, 2024
Amounts Shown in Thousands

Item 2.

| | May 31 2024 | April 30 2024 | Variance | % Change |
|---|---------------------|---------------------|--------------------|------------|
| ASSETS | | | | |
| UTILITY PLANT | | | | |
| Utility Plant in Service | \$ 1,215,646 | \$ 1,210,865 | \$ 4,781 | 0% |
| Less: Accumulated Depreciation | (373,535) | (370,240) | (3,295) | 1% |
| Construction in Progress | 174,884 | 163,964 | 10,920 | 7% |
| TOTAL UTILITY PLANT | \$ 1,016,995 | \$ 1,004,589 | \$ 12,406 | 1% |
| CURRENT & ACCRUED ASSETS | | | | |
| Cash & Temporary Investments | \$ 38,532 | \$ 40,006 | \$ (1,474) | -4% |
| Accounts Receivable - Customers (Net of Allowance for Bad Debt) | 13,702 | 11,362 | 2,340 | 21% |
| Accounts Receivable - Other | 7,526 | 6,992 | 534 | 8% |
| Accrued Unbilled Revenue | 14,667 | 13,956 | 710 | 5% |
| Inventory | 8,963 | 9,323 | (360) | -4% |
| Prepaid Expenses | 25,361 | 15,994 | 9,367 | 59% |
| Accrued Interest Receivable | 350 | 316 | 34 | 11% |
| Rents Receivable | 8 | 5 | 3 | 65% |
| TOTAL CURRENT & ACCRUED ASSETS | \$ 109,109 | \$ 97,953 | \$ 11,156 | 11% |
| RESTRICTED ASSETS & DEFERRED DEBITS | | | | |
| Restricted Funds | \$ 98,202 | \$ 107,935 | \$ (9,733) | -9% |
| Designated Funds | 62,580 | 72,201 | (9,622) | -13% |
| Pension Deferred Outflows | 16,755 | 16,755 | - | 0% |
| Mid-Basin Regulatory Asset | 3,475 | 3,405 | 70 | 2% |
| Other Deferred Debits | 3,574 | 3,574 | - | 0% |
| TOTAL RESTRICTED ASSETS & DEFERRED DEBITS | \$ 184,586 | \$ 203,870 | \$ (19,284) | -9% |
| TOTAL ASSETS | \$ 1,310,690 | \$ 1,306,413 | \$ 4,278 | 0% |
| LIABILITIES & NET POSITION | | | | |
| BONDS PAYABLE | | | | |
| Bonds Payable | 474,953 | \$ 474,945 | \$ 9 | 0% |
| Unamortized Bond Discount/Premium | 26,524 | 26,556 | (32) | 0% |
| TOTAL BONDS PAYABLE | \$ 501,477 | \$ 501,501 | \$ (24) | 0% |
| CURRENT & ACCRUED LIABILITIES | | | | |
| Accounts Payable | \$ 7,243 | \$ 14,022 | \$ (6,779) | -48% |
| Accrued Purchased Power | 8,430 | 6,507 | 1,923 | 30% |
| Commercial Paper Payable | - | - | - | 0% |
| Customer Deposits | 13,491 | 13,338 | 153 | 1% |
| Accrued Payroll & Benefits (Including Compensated Absences) | 3,885 | 3,806 | 79 | 2% |
| Interest Accrued on Long Term Debt | 8,022 | 6,323 | 1,699 | 27% |
| Current Portion of Long Term Debt | 8,045 | 8,045 | - | 0% |
| Other Payables | 3,492 | 3,098 | 395 | 13% |
| TOTAL CURRENT & ACCRUED LIABILITIES | \$ 52,608 | \$ 55,139 | \$ (2,531) | -5% |
| NONCURRENT LIABILITIES & DEFERRED CREDITS | | | | |
| Accumulated Provision for Pension | \$ 29,068 | \$ 29,068 | \$ - | 0% |
| Power Cost Adjustments - Over-Recovered | 8,300 | 9,099 | (799) | -9% |
| Other Deferred Credits | 20,263 | 23,878 | (3,615) | -15% |
| TOTAL NONCURRENT LIABILITIES & DEFERRED CREDITS | \$ 57,630 | \$ 62,044 | \$ (4,414) | -7% |
| TOTAL LIABILITIES | \$ 611,716 | \$ 618,684 | \$ (6,968) | -1% |
| NET POSITION | | | | |
| Reserve for Restricted Assets | \$ 87,978 | \$ 95,646 | \$ (7,668) | -8% |
| Reserve for Intergovernmental | 10,557 | 9,697 | 860 | 9% |
| Unrestricted Assets | 327,832 | 310,849 | 16,983 | 5% |
| Contributed Capital | 272,607 | 271,537 | 1,071 | 0% |
| TOTAL NET POSITION | \$ 698,975 | \$ 687,729 | \$ 11,246 | 2% |
| TOTAL LIABILITIES & NET POSITION | \$ 1,310,690 | \$ 1,306,413 | \$ 4,278 | 0% |

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

Item 2.

| | MTD Actual | MTD Budget | Variance | % Variance | YTD Actual | YTD Budget | Variance | % Variance |
|--|------------------|-------------------|-----------------|-------------|--------------------|--------------------|--------------------|-------------|
| VOLUME/RATES | | | | | | | | |
| Electric Sales kWh | 141,115 | 145,807 | (4,692) | -3% | 1,407,022 | 1,569,003 | (161,981) | -10% |
| Electric Sales Rate Per kWh | \$ 0.1200 | \$ 0.0951 | \$ 0.0250 | 26% | \$ 0.1155 | \$ 0.0992 | \$ 0.0163 | 16% |
| Purchased kWh | 187,856 | 169,368 | 18,488 | 11% | 1,563,297 | 1,610,906 | (47,609) | -3% |
| Purchased Rate per kWh | \$ 0.0610 | \$ 0.0671 | \$ (0.0062) | -9% | \$ 0.0730 | \$ 0.0711 | \$ 0.0019 | 3% |
| Gallons Sold | 330,835 | 368,308 | (37,472) | -10% | 3,612,106 | 3,663,356 | (51,250) | -1% |
| Rate per 1,000 Gallons Sold | \$ 9.43 | \$ 10.01 | \$ (0.57) | -6% | \$ 9.07 | \$ 9.60 | \$ (0.53) | -5% |
| OPERATING REVENUES | | | | | | | | |
| SERVICE REVENUE | | | | | | | | |
| Electric Service | \$ 16,940 | \$ 13,862 | \$ 3,078 | 22% | \$ 162,518 | \$ 155,583 | \$ 6,935 | 4% |
| Water Service | 3,120 | 3,685 | (565) | -15% | 32,754 | 35,152 | (2,398) | -7% |
| Wastewater Service | 3,075 | 3,353 | (278) | -8% | 29,125 | 32,476 | (3,351) | -10% |
| TOTAL SERVICE REVENUE | \$ 23,135 | \$ 20,900 | \$ 2,235 | 11% | \$ 224,397 | \$ 223,211 | \$ 1,186 | 1% |
| OTHER OPERATING REVENUE | | | | | | | | |
| Electric Other | \$ 75 | \$ 100 | \$ (25) | -25% | \$ 1,141 | \$ 1,000 | \$ 141 | 14% |
| Water Other | 73 | 42 | 31 | 74% | 655 | 417 | 238 | 57% |
| Wastewater Other | 25 | 17 | 8 | 47% | 280 | 175 | 105 | 60% |
| Transmission System Revenue | 370 | 217 | 153 | 71% | 2,433 | 2,169 | 264 | 12% |
| Electric Pole Attachments | 41 | 29 | 12 | 41% | 367 | 291 | 76 | 26% |
| Water Tower Antenna Lease | 21 | 15 | 6 | 40% | 210 | 146 | 64 | 44% |
| TOTAL OTHER OPERATING REVENUE | \$ 606 | \$ 420 | \$ 186 | 44% | \$ 5,086 | \$ 4,197 | \$ 889 | 21% |
| TOTAL OPERATING REVENUE | \$ 23,741 | \$ 21,320 | \$ 2,421 | 11% | \$ 229,483 | \$ 227,408 | \$ 2,075 | 1% |
| OPERATING EXPENSES | | | | | | | | |
| ELECTRIC | | | | | | | | |
| Purchased Power | \$ 11,450 | \$ 11,370 | \$ 80 | 1% | \$ 114,139 | \$ 114,504 | \$ (365) | 0% |
| Electric O&M Expenses | 575 | 766 | (191) | -25% | 5,461 | 8,258 | (2,797) | -34% |
| Electric Depreciation & Amortization | 1,146 | 1,215 | (69) | -6% | 11,009 | 12,151 | (1,142) | -9% |
| Electric Support Services Allocated Operating Expenses | 762 | 886 | (124) | -14% | 8,189 | 9,628 | (1,439) | -15% |
| TOTAL ELECTRIC OPERATING EXPENSE | \$ 13,933 | \$ 14,237 | \$ (304) | -2% | \$ 138,798 | \$ 144,540 | \$ (5,742) | -4% |
| WATER | | | | | | | | |
| Purchased Water | \$ 991 | \$ 1,032 | \$ (41) | -4% | \$ 10,049 | \$ 10,321 | \$ (272) | -3% |
| Water O&M Expenses | 606 | 794 | (188) | -24% | 6,450 | 8,507 | (2,057) | -24% |
| Water Depreciation & Amortization | 958 | 1,032 | (74) | -7% | 9,316 | 10,320 | (1,004) | -10% |
| Water Support Services Allocated Operating Expenses | 817 | 938 | (121) | -13% | 8,757 | 10,209 | (1,452) | -14% |
| TOTAL WATER OPERATING EXPENSE | \$ 3,372 | \$ 3,796 | \$ (424) | -11% | \$ 34,572 | \$ 39,358 | \$ (4,786) | -12% |
| WASTEWATER | | | | | | | | |
| Wastewater O&M Expenses | \$ 720 | \$ 695 | \$ 25 | 4% | \$ 6,479 | \$ 7,367 | \$ (888) | -12% |
| Wastewater Depreciation & Amortization | 1,191 | 1,306 | (115) | -9% | 11,594 | 13,063 | (1,469) | -11% |
| Wastewater Support Services Allocated Operating Expenses | 563 | 641 | (78) | -12% | 6,053 | 6,945 | (892) | -13% |
| TOTAL WASTEWATER OPERATING EXPENSE | \$ 2,474 | \$ 2,642 | \$ (168) | -6% | \$ 24,126 | \$ 27,376 | \$ (3,250) | -12% |
| TOTAL OPERATING EXPENSES | \$ 19,779 | \$ 20,675 | \$ (896) | -4% | \$ 197,496 | \$ 211,274 | \$ (13,778) | -7% |
| NET OPERATING INCOME | | | | | | | | |
| ELECTRIC | \$ 3,493 | \$ (29) | \$ 3,522 | * | \$ 27,661 | \$ 14,502 | \$ 13,159 | 91% |
| WATER | (157) | (55) | (102) | * | (953) | (3,643) | 2,690 | -74% |
| WASTEWATER | 625 | 728 | (103) | -14% | 5,279 | 5,275 | 4 | 0% |
| TOTAL NET OPERATING INCOME | \$ 3,961 | \$ 644 | \$ 3,317 | * | \$ 31,988 | \$ 16,134 | \$ 15,854 | 98% |
| NONOPERATING REVENUES (EXPENSES) | | | | | | | | |
| Interest Income | \$ 1,003 | \$ 431 | \$ 572 | * | \$ 8,151 | \$ 4,311 | \$ 3,840 | 89% |
| Intergovernmental Expense | - | (989) | 989 | -100% | (8,490) | (9,889) | 1,399 | -14% |
| Interest and Amortization Expense | (1,675) | (1,376) | (299) | 22% | (14,773) | (13,762) | (1,011) | 7% |
| Other | 629 | 178 | 451 | * | 4,251 | 1,776 | 2,475 | * |
| TOTAL NONOPERATING REVENUES (EXPENSES) | \$ (43) | \$ (1,756) | \$ 1,713 | -98% | \$ (10,861) | \$ (17,564) | \$ 6,703 | 38% |
| CHANGE IN NET POSITION BEFORE CONTRIBUTIONS | \$ 3,918 | \$ (1,112) | \$ 5,030 | * | \$ 21,127 | \$ (1,430) | \$ 22,557 | * |
| CAPITAL CONTRIBUTIONS | | | | | | | | |
| Impact Fees | \$ 5,982 | \$ 1,399 | \$ 4,583 | * | \$ 22,712 | \$ 13,993 | \$ 8,719 | 62% |
| Services | 275 | 266 | 9 | 3% | 3,837 | 2,664 | 1,173 | 44% |
| GBRA Capital Participation Fee | - | 66 | (66) | -100% | - | 663 | (663) | -100% |
| TOTAL CAPITAL CONTRIBUTIONS | \$ 6,257 | \$ 1,732 | \$ 4,525 | * | \$ 26,549 | \$ 17,320 | \$ 9,229 | 53% |
| CHANGE IN NET POSITION AFTER CONTRIBUTIONS | \$ 10,175 | \$ 620 | \$ 9,555 | * | \$ 47,676 | \$ 15,890 | \$ 31,786 | * |

*Denotes variance greater than 100%

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

| | MTD Actual | MTD Budget | Variance | % Variance | YTD Actual | YTD Budget | Variance | % Variance |
|--|------------------|------------------|-----------------|---------------|-------------------|-------------------|-------------------|---------------|
| ELECTRIC OPERATING REVENUES | | | | | | | | |
| ELECTRIC SERVICE REVENUE | | | | | | | | |
| Electric Service | \$ 16,940 | \$ 13,862 | \$ 3,078 | 22% | \$ 162,518 | \$ 155,583 | \$ 6,935 | 4% |
| TOTAL ELECTRIC SERVICE REVENUE | \$ 16,940 | \$ 13,862 | \$ 3,078 | 22% | \$ 162,518 | \$ 155,583 | \$ 6,935 | 4% |
| OTHER ELECTRIC OPERATING REVENUE | | | | | | | | |
| Electric Other | \$ 75 | \$ 100 | \$ (25) | -25% | \$ 1,141 | \$ 1,000 | \$ 141 | 14% |
| Transmission System Revenue | 370 | 217 | 153 | 71% | 2,433 | 2,169 | 264 | 12% |
| Electric Pole Attachments | 41 | 29 | 12 | 41% | 367 | 291 | 76 | 26% |
| TOTAL OTHER ELECTRIC OPERATING REVENUE | \$ 486 | \$ 346 | \$ 140 | 40% | \$ 3,941 | \$ 3,460 | \$ 481 | 14% |
| TOTAL ELECTRIC OPERATING REVENUE | \$ 17,426 | \$ 14,208 | \$ 3,218 | 23% | \$ 166,459 | \$ 159,043 | \$ 7,416 | 5% |
| ELECTRIC OPERATING EXPENSES | | | | | | | | |
| Purchased Power & Other Power Supply | \$ 11,450 | \$ 11,370 | \$ 80 | 1% | \$ 114,139 | \$ 114,504 | \$ (365) | 0% |
| Transmission & Distribution | 512 | 715 | (203) | -28% | 4,997 | 7,733 | (2,736) | -35% |
| Customer Service | 45 | 35 | 10 | 29% | 245 | 352 | (107) | -30% |
| Administrative & General | 17 | 16 | 1 | 6% | 219 | 173 | 46 | 27% |
| Depreciation & Amortization | 1,146 | 1,215 | (69) | -6% | 11,009 | 12,151 | (1,142) | -9% |
| Support Services Allocated Operating Expenses | 762 | 886 | (124) | -14% | 8,189 | 9,628 | (1,439) | -15% |
| TOTAL ELECTRIC OPERATING EXPENSE | \$ 13,932 | \$ 14,237 | \$ (305) | -2% | \$ 138,798 | \$ 144,541 | \$ (5,743) | -4% |
| ELECTRIC NET OPERATING INCOME | \$ 3,493 | \$ (29) | \$ 3,522 | * | \$ 27,661 | \$ 14,502 | \$ 13,159 | 91% |
| NONOPERATING REVENUES (EXPENSES) | | | | | | | | |
| Interest Income | \$ 475 | \$ 183 | \$ 292 | * | \$ 3,797 | \$ 1,832 | \$ 1,965 | * |
| Intergovernmental Expense | - | (799) | 799 | -100% | (6,759) | (7,994) | 1,235 | -15% |
| Interest and Amortization Expense | (565) | (246) | (319) | * | (4,175) | (2,464) | (1,711) | 69% |
| Other | 138 | 90 | 48 | 53% | 1,297 | 902 | 395 | 44% |
| TOTAL NONOPERATING REVENUES (EXPENSES) | \$ 48 | \$ (772) | \$ 820 | * | \$ (5,839) | \$ (7,724) | \$ 1,885 | 24% |
| CHANGE IN NET POSITION BEFORE CONTRIBUTIONS | \$ 3,541 | \$ (801) | \$ 4,342 | * | \$ 21,822 | \$ 6,778 | \$ 15,044 | * |
| ELECTRIC CAPITAL CONTRIBUTIONS | | | | | | | | |
| Services | \$ 57 | \$ 216 | \$ (159) | -74% | \$ 2,508 | \$ 2,158 | \$ 350 | 16% |
| TOTAL ELECTRIC CAPITAL CONTRIBUTIONS | \$ 57 | \$ 216 | \$ (159) | -74% | \$ 2,508 | \$ 2,158 | \$ 350 | 16% |
| CHANGE IN NET POSITION AFTER CONTRIBUTIONS | \$ 3,598 | \$ (586) | \$ 4,184 | * | \$ 24,330 | \$ 8,935 | \$ 15,395 | * |

*Denotes variance greater than 100%

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

| | MTD Actual | MTD Budget | Variance | % Variance | YTD Actual | YTD Budget | Variance | % Variance |
|--|-----------------|-----------------|-----------------|---------------|-------------------|-------------------|-------------------|---------------|
| WATER OPERATING REVENUES | | | | | | | | |
| WATER SERVICE REVENUE | | | | | | | | |
| Water Service | \$ 3,120 | \$ 3,685 | \$ (565) | -15% | \$ 32,754 | \$ 35,152 | \$ (2,398) | -7% |
| TOTAL WATER SERVICE REVENUE | \$ 3,120 | \$ 3,685 | \$ (565) | -15% | \$ 32,754 | \$ 35,152 | \$ (2,398) | -7% |
| OTHER WATER OPERATING REVENUE | | | | | | | | |
| Water Other | \$ 73 | \$ 42 | \$ 31 | 74% | \$ 655 | \$ 417 | \$ 238 | 57% |
| Water Tower Antenna Lease | 21 | 15 | 6 | 40% | 210 | 146 | 64 | 44% |
| TOTAL OTHER WATER OPERATING REVENUE | \$ 95 | \$ 56 | \$ 39 | 70% | \$ 865 | \$ 563 | \$ 302 | 54% |
| TOTAL WATER OPERATING REVENUE | \$ 3,215 | \$ 3,741 | \$ (526) | -14% | \$ 33,619 | \$ 35,715 | \$ (2,096) | -6% |
| WATER OPERATING EXPENSES | | | | | | | | |
| Purchased Water | \$ 991 | \$ 1,032 | \$ (41) | -4% | \$ 10,049 | \$ 10,321 | \$ (272) | -3% |
| Supply Source | 3 | 9 | (6) | -67% | 78 | 94 | (16) | -17% |
| Transmission & Distribution | 177 | 287 | (110) | -38% | 2,192 | 3,128 | (936) | -30% |
| Pumping | 176 | 235 | (59) | -25% | 1,901 | 2,408 | (507) | -21% |
| Water Treatment | 188 | 210 | (22) | -10% | 1,808 | 2,260 | (452) | -20% |
| Customer Service | 18 | 9 | 9 | 100% | 71 | 85 | (14) | -16% |
| Administrative & General | 43 | 44 | (1) | -2% | 401 | 531 | (130) | -24% |
| Depreciation & Amortization | 958 | 1,032 | (74) | -7% | 9,316 | 10,320 | (1,004) | -10% |
| Support Services Allocated Operating Expenses | 817 | 938 | (121) | -13% | 8,757 | 10,209 | (1,452) | -14% |
| TOTAL WATER OPERATING EXPENSE | \$ 3,372 | \$ 3,796 | \$ (424) | -11% | \$ 34,572 | \$ 39,357 | \$ (4,785) | -12% |
| WATER NET OPERATING INCOME | \$ (157) | \$ (55) | \$ (102) | * | \$ (953) | \$ (3,643) | \$ 2,690 | -74% |
| NONOPERATING REVENUES (EXPENSES) | | | | | | | | |
| Interest Income | \$ 256 | \$ 120 | \$ 136 | * | \$ 2,111 | \$ 1,202 | \$ 909 | 76% |
| Intergovernmental Expense | - | (90) | 90 | -100% | (839) | (900) | 61 | -7% |
| Interest and Amortization Expense | (558) | (578) | 20 | -3% | (5,759) | (5,775) | 16 | 0% |
| Other | 471 | 73 | 398 | * | 1,887 | 734 | 1,153 | * |
| TOTAL NONOPERATING REVENUES (EXPENSES) | \$ 168 | \$ (474) | \$ 642 | * | \$ (2,600) | \$ (4,739) | \$ 2,139 | -45% |
| CHANGE IN NET POSITION BEFORE CONTRIBUTIONS | \$ 11 | \$ (529) | \$ 540 | * | \$ (3,553) | \$ (8,383) | \$ 4,830 | -58% |
| WATER CAPITAL CONTRIBUTIONS | | | | | | | | |
| Impact Fees | \$ 4,188 | \$ 1,016 | \$ 3,172 | * | \$ 15,388 | \$ 10,162 | \$ 5,226 | 51% |
| Services | 218 | 51 | 167 | * | 1,329 | 507 | 822 | * |
| TOTAL WATER CAPITAL CONTRIBUTIONS | \$ 4,406 | \$ 1,067 | \$ 3,339 | * | \$ 16,717 | \$ 10,669 | \$ 6,048 | 57% |
| CHANGE IN NET POSITION AFTER CONTRIBUTIONS | \$ 4,417 | \$ 538 | \$ 3,879 | * | \$ 13,164 | \$ 2,286 | \$ 10,878 | * |

*Denotes variance greater than 100%

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

| | MTD Actual | MTD Budget | Variance | % Variance | YTD Actual | YTD Budget | Variance | % Variance |
|--|-----------------|-----------------|-----------------|-------------|-------------------|-------------------|-------------------|-------------|
| WASTEWATER OPERATING REVENUES | | | | | | | | |
| WASTEWATER SERVICE REVENUE | | | | | | | | |
| Wastewater Service | \$ 3,075 | \$ 3,353 | \$ (278) | -8% | \$ 29,125 | \$ 32,476 | \$ (3,351) | -10% |
| TOTAL WASTEWATER SERVICE REVENUE | \$ 3,075 | \$ 3,353 | \$ (278) | -8% | \$ 29,125 | \$ 32,476 | \$ (3,351) | -10% |
| OTHER WASTEWATER OPERATING REVENUE | | | | | | | | |
| Wastewater Other | \$ 25 | \$ 18 | \$ 7 | 39% | \$ 280 | \$ 175 | \$ 105 | 60% |
| TOTAL OTHER WASTEWATER OPERATING REVENUE | \$ 25 | \$ 18 | \$ 7 | 39% | \$ 280 | \$ 175 | \$ 105 | 60% |
| TOTAL WASTEWATER OPERATING REVENUE | \$ 3,100 | \$ 3,371 | \$ (271) | -8% | \$ 29,405 | \$ 32,651 | \$ (3,246) | -10% |
| WASTEWATER OPERATING EXPENSES | | | | | | | | |
| Transmission & Distribution | \$ - | \$ - | \$ - | 100% | \$ 2 | \$ - | \$ 2 | 100% |
| Wastewater Operations & Maintenance | 692 | 670 | 22 | 3% | 6,160 | 6,960 | (800) | -11% |
| Customer Service | 20 | 9 | 11 | * | 90 | 90 | - | 0% |
| Administrative & General | 9 | 16 | (7) | -44% | 227 | 317 | (90) | -28% |
| Depreciation & Amortization | 1,191 | 1,306 | (115) | -9% | 11,594 | 13,063 | (1,469) | -11% |
| Support Services Allocated Operating Expenses | 563 | 641 | (78) | -12% | 6,053 | 6,945 | (892) | -13% |
| TOTAL WASTERWATER OPERATING EXPENSE | \$ 2,475 | \$ 2,642 | \$ (167) | -6% | \$ 24,126 | \$ 27,376 | \$ (3,250) | -12% |
| WASTEWATER NET OPERATING INCOME | \$ 625 | \$ 729 | \$ (104) | -14% | \$ 5,279 | \$ 5,276 | \$ 3 | 0% |
| NONOPERATING REVENUES (EXPENSES) | | | | | | | | |
| Interest Income | \$ 272 | \$ 128 | \$ 144 | * | \$ 2,243 | \$ 1,277 | \$ 966 | 76% |
| Intergovernmental Expense | - | (100) | 100 | -100% | (892) | (995) | 103 | -10% |
| Interest and Amortization Expense | (552) | (552) | 0 | 0% | (4,839) | (5,522) | 683 | -12% |
| Other | 20 | 14 | 6 | 43% | 1,067 | 140 | 927 | * |
| TOTAL NONOPERATING REVENUES (EXPENSES) | \$ (260) | \$ (510) | \$ 250 | -49% | \$ (2,421) | \$ (5,101) | \$ 2,680 | -53% |
| CHANGE IN NET POSITION BEFORE CONTRIBUTIONS | \$ 365 | \$ 219 | \$ 146 | 67% | \$ 2,858 | \$ 175 | \$ 2,683 | * |
| WASTEWATER CAPITAL CONTRIBUTIONS | | | | | | | | |
| Impact Fees | \$ 1,794 | \$ 383 | \$ 1,411 | * | \$ 7,324 | \$ 3,831 | \$ 3,493 | 91% |
| GBRA Capital Participation Fee | - | 66 | (66) | -100% | - | 663 | (663) | -100% |
| TOTAL WASTEWATER CAPITAL CONTRIBUTIONS | \$ 1,794 | \$ 449 | \$ 1,345 | * | \$ 7,324 | \$ 4,494 | \$ 2,830 | 63% |
| CHANGE IN NET POSITION AFTER CONTRIBUTIONS | \$ 2,160 | \$ 668 | \$ 1,492 | * | \$ 10,182 | \$ 4,669 | \$ 5,513 | * |

*Denotes variance greater than 100%

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

| | MTD | YTD |
|---|-------------------|---------------------|
| NET POSITION BEFORE CONTRIBUTIONS | \$ 3,918 | \$ 21,127 |
| <i>Operating activities, cash flows provided by or used in:</i> | | |
| Depreciation | \$ 3,295 | \$ 31,919 |
| Decrease (increase) in accounts receivable | (3,585) | 12,848 |
| Decrease (increase) in inventories | 360 | (2,426) |
| Decrease (increase) in other assets | (2,110) | 30,386 |
| Increase (decrease) in current liabilities | (2,488) | (45,759) |
| Increase (decrease) in other liabilities | (4,414) | (4,671) |
| Net Cash Flow from Operating Activities | \$ (5,023) | \$ 43,423 |
| <i>Investing activities, cash flows provided by or used in:</i> | | |
| Capital Expenditures | \$ (15,701) | \$ (138,044) |
| Investments | 19,354 | (20,696) |
| Rents/Interest Receivable | (38) | 219 |
| Net Cash Flow from Investing Activities | \$ 3,616 | \$ (158,521) |
| <i>Financing activities, cash flows provided by or used in:</i> | | |
| Transfers to City of New Braunfels | \$ (43) | \$ (10,861) |
| Increase (decrease) in long-term debt | (24) | 104,002 |
| Net Cash Flow from Financing Activities | \$ (67) | \$ 93,141 |
| Net Increase (Decrease) in Cash and Cash Equivalents | \$ (1,474) | \$ (21,958) |

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

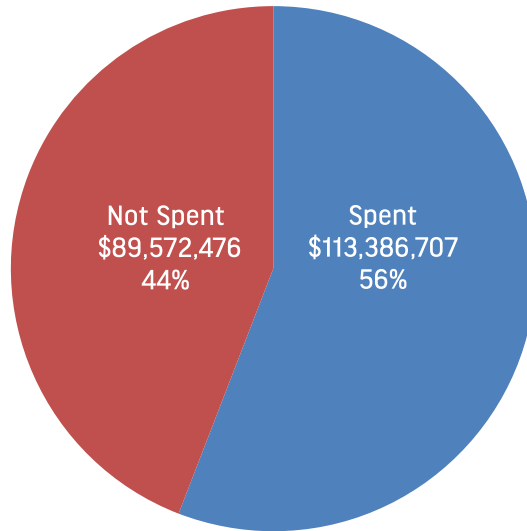


| Department | Capital Equipment Description | YTD Actual | FY 2024 Budget | Budget Remaining |
|--|--|---------------------|---------------------|---------------------|
| ELECTRIC | | | | |
| 117 | SEA Air Excavation Unit | - | 650,000 | 650,000 |
| 117 | Altec Pressure Dipper | 429,317 | 400,000 | (29,317) |
| 117 | Altec AM 60E | - | 300,000 | 300,000 |
| 117 | Altec 5F Articulating Boom | - | 300,000 | 300,000 |
| 117 | Altec AM 60E | 21,900 | 85,000 | 63,100 |
| 117 | Acc Demo Trailer | - | 120,000 | 120,000 |
| 117 | Ford F-550 | 111,982 | - | - |
| 117 | Ford F-550 | - | 11,982 | 11,982 |
| 117 | Ford F-550 | - | 11,982 | 11,982 |
| 117 | Ford F-150 | - | 55,000 | 55,000 |
| 117 | Ford F-150 | - | 55,000 | 55,000 |
| 117 | Ford F-150 | - | 55,000 | 55,000 |
| 117 | Ford F-150 | - | 55,000 | 55,000 |
| 117 | Locator Unit | - | 45,000 | 45,000 |
| 117 | Dump Trailer | 12,733 | 15,000 | 2,267 |
| 119 | Ford F-550 w/Drum | - | 150,437 | 150,437 |
| 119 | Ford F-550 Electric | - | 61,393 | 61,393 |
| | TOTAL ELECTRIC | \$ 575,942 | \$ 2,894,750 | \$ 2,318,816 |
| WATER | | | | |
| 216 | Ford F-150 | 26,995 | 55,000 | 28,005 |
| 220 | Ford F-550 w/Crane | 151,567 | 150,437 | (1,130) |
| 220 | Ford F-150 | 54,845 | 55,000 | 155 |
| | TOTAL WATER | \$ 233,407 | \$ 260,437 | \$ 27,920 |
| WASTEWATER | | | | |
| 320 | Ford F-550 w/Crane | - | 150,437 | 150,437 |
| 320 | Ford F-150 | 54,845 | 175,000 | 120,155 |
| 320 | Small Utility Unit | - | 15,000 | 15,000 |
| | TOTAL WASTEWATER | \$ 54,845 | \$ 220,437 | \$ 165,592 |
| SHARED WATER/WASTEWATER | | | | |
| 217/317 | CAT 313 Excavator | 214,865 | 250,000 | 35,135 |
| 217/317 | Ford F-550 | 388,120 | 244,534 | (143,586) |
| 217/317 | International Dump Truck | - | 230,000 | 230,000 |
| 217/317 | International HST | 85,749 | 175,000 | 89,251 |
| 217/317 | SEA Truck Mounted letter | 152,947 | 150,000 | (2,947) |
| 217/317 | CAT Backhoe w/Ext | 158,995 | 125,000 | (33,995) |
| 217/317 | Ford F-550 | 123,417 | 122,267 | (1,150) |
| 217/317 | Ford F-550 | - | 122,267 | 122,267 |
| 217/317 | Ford F-550 | - | 122,267 | 122,267 |
| 217/317 | International Dump Truck | - | 115,000 | 115,000 |
| 217/317 | CAT Backhoe | 137,855 | 115,000 | (22,855) |
| 217/317 | CAT Backhoe | 137,855 | 115,000 | (22,855) |
| 217/317 | CAT Backhoe | 158,995 | 115,000 | (43,995) |
| 217/317 | E.H. Wachs Large VE | 83,732 | 85,000 | 2,268 |
| 217/317 | E.H. Wachs Large VE | 83,732 | 85,000 | 2,268 |
| 217/317 | 1500' of Bypass Hose | 72,898 | 85,000 | 12,102 |
| 217/317 | CAT Skid Steer | 57,985 | 65,000 | 7,015 |
| 217/317 | Ford F-150 | 54,845 | 55,000 | 155 |
| 217/317 | Scorpion Towable Attenuator | - | 35,000 | 35,000 |
| 217/317 | Towable Air Compressor | 23,444 | 25,000 | 1,556 |
| 217/317 | Tools for F-550 | - | 15,000 | 15,000 |
| 217/317 | DTS Trailer | 6,637 | 10,000 | 3,363 |
| | TOTAL SHARED WATER/WASTEWATER | \$ 2,062,070 | \$ 2,463,335 | \$ 401,265 |
| BUSINESS PLANNING | | | | |
| 425 | Ford Escape | - | 30,000 | 30,000 |
| 425 | GPS Unit | - | 30,000 | 30,000 |
| | TOTAL BUSINESS PLANNING | \$ - | \$ 60,000 | \$ 60,000 |
| SAFETY | | | | |
| 524 | Ford Explorer | 54,845 | 38,000 | (16,845) |
| | TOTAL SAFETY | \$ 54,845 | \$ 38,000 | \$ (16,845) |
| PURCHASING | | | | |
| 527 | Ford F-350 | - | 75,500 | 75,500 |
| | TOTAL PURCHASING | \$ - | \$ 75,500 | \$ 75,500 |
| FLEET/FACILITIES | | | | |
| 528 | Ford F-550 Fleet Service | - | 85,000 | 85,000 |
| 528 | Ford F-350 | - | 85,576 | 85,576 |
| 528 | Ford F-150 | 54,845 | 55,000 | 155 |
| 528 | Ford F-150 | 54,845 | 55,000 | 155 |
| 528 | Ford F-150 | 42,935 | 55,000 | 12,065 |
| 528 | Ford F-150 | - | 55,000 | 55,000 |
| 528 | Ford Escape | - | 30,000 | 30,000 |
| 528 | Lawn Mowing Equipment | - | 25,000 | 25,000 |
| 528 | Other | - | 25,000 | 25,000 |
| 528 | Pressure washing trailer | - | 16,000 | 16,000 |
| 528 | Janitorial Equipment | - | 15,000 | 15,000 |
| | TOTAL FLEET/FACILITIES | \$ 207,470 | \$ 656,576 | \$ 449,106 |
| CONSERVATION AND CUSTOMER SOLUTIONS | | | | |
| 529 | Ford Escape Plug-in Hybrid | 26,995 | 40,000 | 13,005 |
| 529 | Ford Escape Plug-in Hybrid | 26,995 | 40,000 | 13,005 |
| | TOTAL CONSERVATION AND CUSTOMER SOLUTIONS | \$ 53,990 | \$ 80,000 | \$ 26,010 |
| TECHNOLOGY | | | | |
| 531 | Server Replacements | 646,595 | 600,000 | (46,595) |
| 531 | PC Replacements | 312,500 | 400,000 | 87,410 |
| 531 | Dell Monitor | 400,000 | 400,000 | 400,000 |
| 531 | Network Equipment Replacements | 95,650 | 200,000 | 104,350 |
| 531 | IT to Purchase Unit | - | 50,000 | 50,000 |
| 531 | Copier and High-end Printer & Plotter Replacements | - | 37,500 | 37,500 |
| 531 | UPS Replacements | - | 10,000 | 10,000 |
| | TOTAL TECHNOLOGY | \$ 1,054,635 | \$ 1,697,500 | \$ 642,865 |
| SYSTEM CONTROL | | | | |
| 532 | Ford Escape | 26,995 | 30,000 | 3,005 |
| 532 | Ford Escape | 26,995 | 30,000 | 3,005 |
| 532 | Ford Escape | 26,995 | 30,000 | 3,005 |
| 532 | Ford Escape | 26,995 | 30,000 | 3,005 |
| 532 | Ford Escape | 27,995 | 30,000 | 2,005 |
| 532 | Ford Escape | 27,995 | 30,000 | 2,005 |
| | TOTAL SYSTEMS CONTROL | \$ 163,930 | \$ 180,000 | \$ 16,070 |
| | TOTAL CAPITAL EQUIPMENT | \$ 4,461,334 | \$ 8,626,543 | \$ 4,165,209 |
| BUDGETED PRIOR YEAR ITEMS | | | | |
| ELECTRIC | | | | |
| 117 | Magnum Pintle Trailer (FY23) | 50,813 | - | (50,813) |
| | TOTAL ELECTRIC | \$ 50,813 | \$ - | \$ (50,813) |
| WATER | | | | |
| 220 | 2023 Aluminum Dump Trailer (FY22) | 21,080 | - | (21,080) |
| 220 | 2023 Ford F150 4x4 Super crew (FY22) | 54,845 | - | (54,845) |
| 220 | 2023 Ford F150 4x4 Super crew (FY22) | 54,845 | - | (54,845) |
| 220 | 2023 Ford Explorer (FY23) | 38,994 | - | (38,994) |
| 220 | E.H. Wachs Large VE (FY22) | 83,732 | - | (83,732) |
| | TOTAL WATER | \$ 253,496 | \$ - | \$ (253,496) |
| SHARED WATER/WASTEWATER | | | | |
| 217/317 | 2022 CUES Sewer Truck CCTV (FY22) | 330,894 | - | (330,894) |
| 217/317 | 2023 Ford F150 4x4 Super crew (FY22) | 54,845 | - | (54,845) |
| 217/317 | 2024 Ford Explorer | 42,935 | - | (42,935) |
| 217/317 | 2024 Holt Caterpillar | 158,995 | - | (158,995) |
| | TOTAL SHARED WATER/WASTEWATER | \$ 587,669 | \$ - | \$ (587,669) |
| | TOTAL BUDGETED PRIOR YEAR CAPITAL EQUIPMENT | \$ 891,978 | \$ - | \$ (891,978) |
| UNBUDGETED ITEMS | | | | |
| FLEET/FACILITIES | | | | |
| 528 | 2023 Ford Explorer | 38,994 | - | (38,994) |
| 528 | 2023 Ford Explorer | 38,994 | - | (38,994) |
| | TOTAL FLEET/FACILITIES | \$ 77,988 | \$ - | \$ (77,988) |
| | TOTAL UNBUDGETED CAPITAL EQUIPMENT | \$ 77,988 | \$ - | \$ (77,988) |
| | TOTAL | \$ 5,431,300 | \$ 8,626,543 | \$ 3,278,975 |

FY 2024 Capital Expenditure Summary As of May 31, 2024

83% of Year
Completed

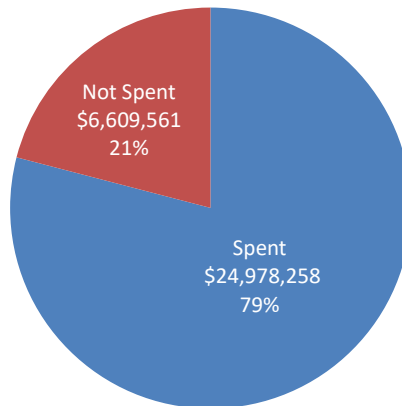
| | <u>Spent</u> | <u>Not Spent</u> | <u>Total Budget</u> | <u>% of Total Budget Spent</u> |
|------------------|-----------------------|----------------------|-----------------------|------------------------------------|
| Electric \$ | 24,978,258 | \$ 6,609,561 | \$ 31,587,819 | 79% |
| Water | 47,637,663 | 24,347,493 | 71,985,156 | 66% |
| Wastewater | 20,970,961 | 31,359,594 | 52,330,555 | 40% |
| Support Services | 19,799,825 | 27,255,828 | 47,055,653 | 42% |
| TOTAL | \$ 113,386,707 | \$ 89,572,476 | \$ 202,959,183 | |
| | <i>56%</i> | <i>44%</i> | <i>100%</i> | |



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

83% of Year Completed

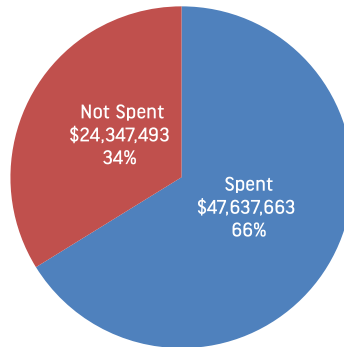
| Project | ¹ Total Spent YTD | ² FY24 Project Budget | FY24 Budget Remaining | Project Life Total Budget | ^{(1)/(2)} % Spent YTD | % Physical Completion |
|---|---------------------------------|-------------------------------------|-----------------------|---------------------------|-----------------------------------|-----------------------|
| Budgeted Projects: | | | | | | |
| System Extensions | \$ 7,328,552 | \$ 5,582,835 | \$ (1,745,717) | \$ 5,582,835 | 131% | 83% |
| Distribution Transformers | 8,540,834 | 5,642,698 | (2,898,136) | 5,642,698 | 151% | 83% |
| Electric Meters | 1,964,217 | 3,514,000 | 1,549,783 | 3,514,000 | 56% | 83% |
| Electric Aging Infrastructure | 1,391,952 | 2,967,536 | 1,575,584 | 2,967,536 | 47% | 83% |
| Electric Technology Upgrades | 13,331 | 149,106 | 135,775 | 149,106 | 9% | 80% |
| Three-Phase Extensions | 1,188,389 | 1,806,177 | 617,788 | 9,313,421 | 66% | 100% |
| Fiber Optic Extensions | 1,210 | 102,624 | 101,414 | 1,086,371 | 1% | 5% |
| Hueco Springs Substation | 1,414,238 | 7,301,106 | 5,886,868 | 9,939,535 | 19% | 44% |
| Electric Aging Infrastructure, Substation | 248,164 | 115,672 | (132,492) | 4,666,606 | 215% | 100% |
| Freiheit Breaker Additons & Control House | 144,015 | 2,371,748 | 2,227,733 | 2,445,650 | 6% | 15% |
| EC23 FM 482 Feeder | 58,434 | 712,665 | 654,231 | 812,622 | 8% | 50% |
| HE11 Conrads Rd Feeder | 266,056 | 114,026 | (152,030) | 1,966,183 | 233% | 15% |
| Transmission Access & Wildlife Protection | 247,677 | 175,117 | (72,560) | 953,166 | 141% | 100% |
| Comal T3 Replacement & Feeder C033 | 180,142 | 377,427 | 197,285 | 3,644,220 | 48% | 42% |
| Distribution Feeder Breaker Addition & Replacements | - | 159,067 | 159,067 | 3,113,453 | 0% | 10% |
| FR24 Kowald Ln. Feeder | 55,985 | 91,221 | 35,236 | 880,778 | 61% | 10% |
| Henne Substation Breaker & Half | 53,727 | 171,040 | 117,313 | 2,419,085 | 31% | 25% |
| CONB Road Widening Adjustments | 113,263 | 233,754 | 120,491 | 2,256,995 | 48% | 40% |
| Total Budgeted Projects | \$ 23,210,188 | \$ 31,587,819 | \$ 8,377,631 | \$ 61,354,259 | 73% | |
| Unbudgeted Projects: | | | | | | |
| Sheriff's Posse T3 Addition | \$ 20,904 | \$ - | \$ (20,904) | \$ 7,622,556 | 0% | 99% |
| E.C. Mornhinweg T2 & Feeders | 222,063 | - | (222,063) | 4,093,931 | 0% | 90% |
| Residential OH to UG Conversion | 459,019 | - | (459,019) | 3,776,463 | 0% | 97% |
| Weltner Rd Feeder 13, Clear Springs | 23,543 | - | (23,543) | 965,027 | 0% | 100% |
| L023 Loop 337 FM 1863 Extension Phase 2 | 15,396 | - | (15,396) | 1,224,681 | 0% | 100% |
| C014 Kentucky Rd Feeder | 101,118 | - | (101,118) | 601,370 | 0% | 67% |
| HE23 IH-35 Stolte Feeder | 777,041 | - | (777,041) | 1,564,074 | 0% | 45% |
| Freiheit Feeder 11, Alves Ln | 41,874 | - | (41,874) | 1,951,344 | 0% | 100% |
| Kohlenberg Rd Substation | 102,106 | - | (102,106) | 44,780 | 0% | 24% |
| Industrial Substation PWT Replacement (TXI T1) | 5,005 | - | (5,005) | 1,155,967 | 0% | 100% |
| Total Unbudgeted Projects | \$ 1,768,070 | \$ - | \$ (1,768,070) | \$ 23,000,192 | | |
| TOTAL | \$ 24,978,258 | \$ 31,587,819 | \$ 6,609,561 | \$ 84,354,451 | 79% | |



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

83% of Year Completed

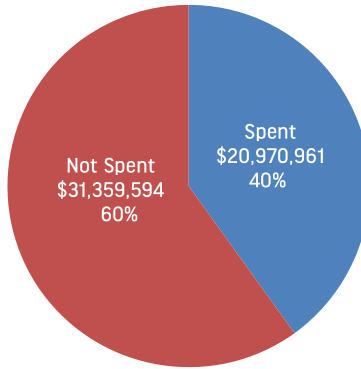
| Project | ¹ Total Spent YTD | ² FY24 Project Budget | FY24 Budget Remaining | Project Life Total Budget | ^{(1)/(2)} % Spent YTD | % Physical Completion |
|--|---------------------------------|-------------------------------------|-----------------------|---------------------------|-----------------------------------|-----------------------|
| Budgeted Projects: | | | | | | |
| System Extensions | \$ 1,222,092 | \$ 375,703 | \$ (846,389) | \$ 375,703 | 325% | 78% |
| Water Meters | 2,749,027 | 1,844,670 | (904,357) | 1,844,670 | 149% | 54% |
| Water Technology Upgrades | - | 140,116 | 140,116 | 140,116 | 0% | 100% |
| Aging System Replacements | 1,565,482 | 2,092,123 | 526,641 | 2,092,123 | 75% | 21% |
| ASR Feasibility Dev (IF) | 123,512 | 2,069,462 | 1,945,950 | 38,120,155 | 6% | 41% |
| Wood Meadows Water Line River Crossing | 476,190 | 216,373 | (259,817) | 3,052,319 | 220% | 28% |
| I-35 Water Line (Downtown) | 8,879,616 | 7,963,912 | (915,704) | 11,468,136 | 111% | 86% |
| 1.00MG Solms Ground Storage Tank and Flow Control Valve | 278 | 235,473 | 235,195 | 4,337,137 | 0% | 1% |
| Western Downtown to Morningside PZ Conversion | 106,595 | 308,393 | 201,798 | 8,525,525 | 35% | 21% |
| FM 306 Pump Station & Discharge Pipeline | 1,618,729 | 1,885,704 | 266,975 | 10,821,940 | 86% | 75% |
| Conrads EST | 3,241,118 | 5,488,218 | 2,247,100 | 6,852,776 | 59% | 42% |
| Goodwin Lane Water Main | 5,780,400 | 6,884,157 | 1,103,757 | 12,624,155 | 84% | 93% |
| Klein Rd Reconstruction Phase 2 | 464,663 | 1,126,496 | 661,833 | 1,404,382 | 41% | 92% |
| Landa Pump Station Phase 2/Well 5 | 4,317,584 | 6,242,981 | 1,925,397 | 15,931,146 | 69% | 93% |
| Trinity Expansion- Treatment Plant | 10,452,264 | 17,173,917 | 6,721,653 | 27,357,602 | 61% | 75% |
| Trinity Expansion- Well Field | 2,988,666 | 7,057,207 | 4,068,541 | 10,222,796 | 42% | 45% |
| FM 1044 EST | 225,445 | 1,373,451 | 1,148,006 | 13,187,743 | 16% | 4% |
| GBRA Interconnect Metering Station | 1,350,349 | 701,780 | (648,569) | 996,909 | 192% | 93% |
| Garden Street Bridge Water Line | 396,481 | 390,851 | (5,630) | 587,926 | 101% | 100% |
| Goodwin/Conrads Water Adjustments | 1,209 | 403,683 | 402,474 | 434,276 | 0% | 4% |
| Misison/Westpointe Connection Waterlines | 68,367 | 5,539,877 | 5,471,510 | 6,495,952 | 1% | 11% |
| Senate Bill 3 EPP Generators | 225,896 | 1,301,224 | 1,075,328 | 1,328,362 | 17% | 8% |
| Tank Decommission | 708,916 | 865,803 | 156,887 | 954,937 | 82% | 100% |
| Water Tank Rehabilitations | 231,228 | 303,582 | 72,354 | 303,582 | 76% | 10% |
| Total Budgeted Projects | \$ 47,194,108 | \$ 71,985,156 | \$ 24,791,048 | \$ 179,460,368 | 66% | |
| Unbudgeted Projects: | | | | | | |
| Infrastructure Replacement Package 1-W | \$ 234 | \$ - | \$ (234) | \$ 5,451 | | 100% |
| 30/24-inch SWTP Discharge Line (Downtown) | 17,449 | - | (17,449) | 21,587,112 | | 100% |
| Well 4 to Grandview Pump Station & Discharge Line Upgrades | 189,902 | - | (189,902) | 9,460,061 | | 100% |
| Weltner Rd Ground Strg Tank & Pump Station-Ph 1 | 160,313 | - | (160,313) | 24,173,897 | | 100% |
| 24-inch McQueeney Road Parallel Water Line (Downtown) | 75,657 | - | (75,657) | 9,659,699 | | |
| Total Unbudgeted Projects | \$ 443,555 | \$ - | \$ (443,555) | \$ 64,886,220 | | |
| TOTAL | \$ 47,637,663 | \$ 71,985,156 | \$ 24,347,493 | \$ 244,346,587 | 66% | |



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

83% of Year Completed

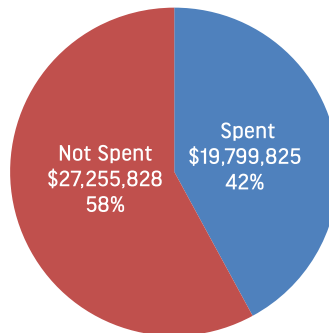
| Project | ¹ Total Spent YTD | ² FY24 Project Budget | FY24 Budget Remaining | Project Life Total Budget | ⁽¹⁾⁺⁽²⁾ % Spent YTD | % Physical Completion |
|--|---------------------------------|-------------------------------------|-----------------------|---------------------------|-----------------------------------|-----------------------|
| Budgeted Projects: | | | | | | |
| System Extensions | \$ 580,865 | \$ 249,038 | \$ (331,827) | \$ 249,038 | 233% | 70% |
| Aging System Replacements | 969,013 | 2,046,224 | 1,077,211 | 2,046,224 | 47% | 13% |
| Wastewater Technology Upgrades | - | 145,563 | 145,563 | 145,563 | 0% | 1% |
| Manhole Rehabilitation | 230,005 | 789,673 | 559,668 | 789,673 | 29% | 41% |
| South Kuehler Interceptor Phase 1 | 172,935 | 480,284 | 307,349 | 5,426,066 | 36% | 19% |
| Gruene Rd Sewer Main Rehabilitation/Relocation | 8,901 | 107,441 | 98,540 | 2,896,802 | 8% | 6% |
| McKenzie WRF Expansion | 16,326,269 | 20,026,694 | 3,700,425 | 72,312,120 | 82% | 29% |
| Solms Lift Station Expansion | 804,732 | 1,076,397 | 271,665 | 1,705,332 | 75% | 55% |
| I-35 Interceptor Upgrade | 312,249 | 4,090,487 | 3,778,238 | 14,155,678 | 8% | 8% |
| Kuehler WRF Access Road-Courtyard Dr | 106,812 | 3,265,043 | 3,158,231 | 3,739,824 | 3% | 17% |
| McKenzie Interceptor Upgrade | 798,957 | 2,291,295 | 1,492,338 | 50,706,156 | 35% | 4% |
| Kuehler WRF Rehabilitation | 44,217 | 12,890,556 | 12,846,339 | 44,788,333 | 0% | 3% |
| Sewer Infrastructure Replacement Package 2 | 310,294 | 739,180 | 428,886 | 4,957,511 | 42% | 13% |
| Saengerhalle North Interceptor | 54,227 | 215,817 | 161,590 | 5,888,532 | 25% | 14% |
| Goodwin/Conrads Adjustments (CNB)-WW | 27,600 | 406,908 | 379,308 | 1,114,676 | 7% | 6% |
| Gruene WRF Spoils & Materials Yard | 79,192 | 447,632 | 368,440 | 1,061,999 | 18% | 100% |
| North Kuehler Manhole Rehabilitation-Segment 3 | - | 494,109 | 494,109 | 1,016,271 | 0% | 100% |
| Kuehler WRF Rehabilitation-Clarifier Replacement | 227,778 | 2,568,214 | 2,340,436 | 2,758,806 | 9% | 10% |
| Total Budgeted Projects | \$ 21,054,046 | \$ 52,330,555 | \$ 31,276,509 | \$ 215,758,603 | 40% | |
| Unbudgeted Projects: | | | | | | |
| North Kuehler 42" Interceptor Upgrade | \$ 2,217 | \$ - | \$ (2,217) | \$ 15,524,017 | | 100% |
| North Kuehler 30 and 33-inch Interceptor Upgrade | 40 | - | (40) | 26,748,112 | | 100% |
| Gruene Rd Sewer Main Odor Control | 70,346 | - | (70,346) | 239,659 | | 18% |
| Infrastructure Replacement Package 1-WW | 9,617 | - | (9,617) | 123,819 | | 20% |
| Rio Lift Station Expansion | 55,136 | - | (55,136) | 3,576,417 | | 100% |
| Schmidt I-35 N Sewer Main Replacement | (236,923) | - | 236,923 | 376,069 | | 97% |
| Saengerhalle Lift Station Expansion & Force Main | 16,481 | - | (16,481) | 4,892,290 | | 100% |
| Total Unbudgeted Projects | \$ (83,085) | \$ - | \$ 83,085 | \$ 51,480,383 | | |
| TOTAL | \$ 20,970,961 | \$ 52,330,555 | \$ 31,359,594 | \$ 267,238,986 | 40% | |



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

83% of Year Completed

| Project | ¹ Total Spent YTD | ² FY24 Project Budget | FY24 Budget Remaining | Project Life Total Budget | ⁽¹⁾⁺⁽²⁾ % Spent YTD | % Physical Completion |
|---|------------------------------------|--|--------------------------|------------------------------|--------------------------------------|--------------------------|
| Budgeted Projects: | | | | | | |
| Headwaters at the Comal | \$ 4,186,688 | \$ 4,500,000 | \$ 313,312 | \$ 25,670,681 | 93% | 60% |
| Cyber Security System | 112,300 | 325,000 | 212,700 | 325,000 | 35% | 15% |
| Software Replacement and Enhancements | - | 130,000 | 130,000 | 130,000 | 0% | 10% |
| NBU Headquarters, Maint & Support Facility | 13,157,239 | 25,000,000 | 11,842,761 | 134,505,960 | 53% | 10% |
| Laserfiche Development | - | 300,000 | 300,000 | 570,867 | 0% | 20% |
| Backup Operations Center | 100,465 | 1,280,000 | 1,179,535 | 8,452,700 | 8% | 20% |
| Upgrade or Replace all NBU Radios | - | 200,000 | 200,000 | 200,000 | 0% | 10% |
| Kerlick Tower Modifications | - | 450,000 | 450,000 | 457,597 | 0% | 20% |
| Data Strategy Upgrades - BDAP | 757,850 | 1,185,653 | 427,803 | 1,185,653 | 64% | 33% |
| System Technology Upgrades - Monitoring | 91,083 | 400,000 | 308,917 | 400,000 | 23% | 0% |
| Fiber Network Distribution Expansion | - | 650,000 | 650,000 | 1,428,700 | 0% | 10% |
| Fleet AVL | - | 75,000 | 75,000 | 75,000 | 0% | 0% |
| Data Strategy Upgrades - GIS Upgrades | - | 200,000 | 200,000 | 1,900,000 | 0% | 15% |
| Pioneer Upgrade | - | 171,000 | 171,000 | 171,000 | 0% | 5% |
| Smartsheet Control Center | - | 73,000 | 73,000 | 73,000 | 0% | 0% |
| Tele-Communications Enhancements | - | 102,000 | 102,000 | 181,754 | 0% | 40% |
| Water/Wastewater SCADA Aging Infrastructure | - | 1,000,000 | 1,000,000 | 1,000,000 | 0% | 0% |
| Water SCADA Replacement & Integration | 346,008 | 2,000,000 | 1,653,992 | 3,413,098 | 17% | 50% |
| OT Security | - | 50,000 | 50,000 | 50,000 | 0% | 0% |
| Customer Bill Pay Portal | 40,542 | 160,000 | 119,458 | 230,044 | 25% | 0% |
| ARCGIS Indoors | - | 50,000 | 50,000 | 50,000 | 0% | 0% |
| Loop 337 Substation Control House | - | 42,000 | 42,000 | 42,000 | 0% | 0% |
| Replace Control Center Console | 196,525 | 100,000 | (96,525) | 100,000 | 197% | 0% |
| Future Facilities Rehab Projects | - | 150,000 | 150,000 | 1,229,990 | 0% | 0% |
| Firewall and VPN Replacement | - | 120,000 | 120,000 | 120,000 | 0% | 0% |
| Gruene Rd Fence | 21,250 | 32,000 | 10,750 | 32,000 | 66% | 100% |
| CIS Functionality Upgrade | - | 1,500,000 | 1,500,000 | 1,500,000 | 0% | 0% |
| Ipads for Cityworks Mobile & mcare | 6,500 | 125,000 | 118,500 | 125,000 | 5% | 30% |
| Customer Service Kiosk | - | 78,000 | 78,000 | 78,000 | 0% | 0% |
| Level 2 EV Chargers | - | 72,000 | 72,000 | 72,000 | 0% | 0% |
| Meraki Wifi Replacement | 77,304 | 125,000 | 47,696 | 125,000 | 62% | 60% |
| RTU replacement 4.6,7 Main office | 62,800 | 40,000 | (22,800) | 40,000 | 157% | 0% |
| New Braunfels Police Department | 507,862 | 3,585,000 | 3,077,138 | 3,645,000 | 14% | 0% |
| RuggedCom Switch Replacement | - | 200,000 | 200,000 | 600,000 | 0% | 10% |
| Sheriff's Posse Control House Recondition | - | 35,000 | 35,000 | 35,000 | 0% | 0% |
| Solar Array and Battery Storage | - | 50,000 | 50,000 | 50,000 | 0% | 0% |
| Mass Meter Change Out | - | 2,000,000 | 2,000,000 | 2,000,000 | 0% | 0% |
| Water Meter Study | - | 500,000 | 500,000 | 500,000 | 0% | 0% |
| Total Budgeted Projects | \$ 19,664,417 | \$ 47,055,653 | \$ 27,391,236 | \$ 190,765,042 | 42% | |
| Unbudgeted Projects: | | | | | | |
| Physical Security Systems | \$ 135,409 | \$ - | \$ (135,409) | \$ 135,409 | | 90% |
| Total | \$ 135,409 | \$ - | \$ (135,409) | \$ 135,409 | | |
| Total | \$ 19,799,825 | \$ 47,055,653 | \$ 27,255,828 | \$ 190,900,451 | 42% | |



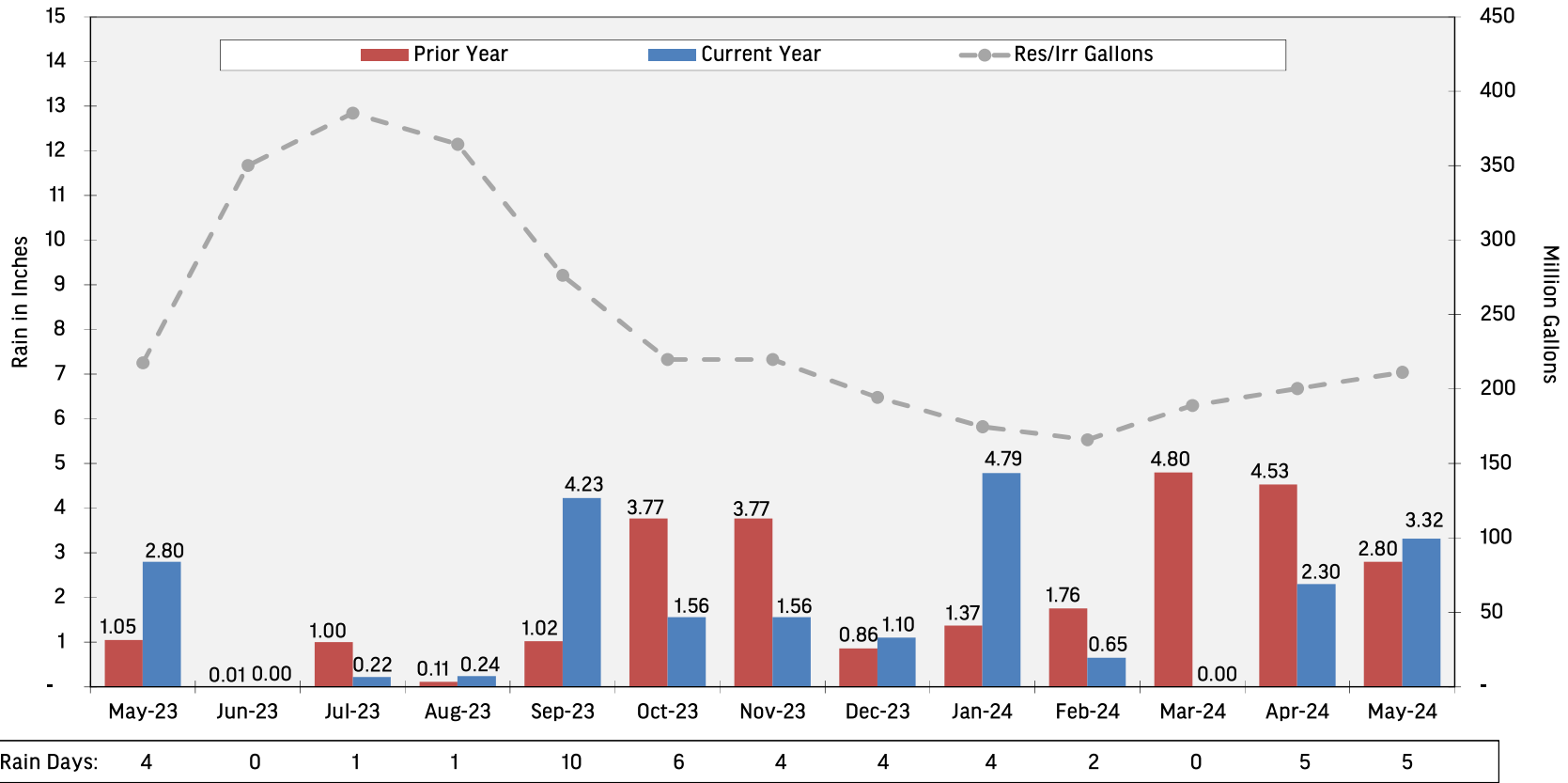
Electric Statistics are provided separately due to competitive matters.

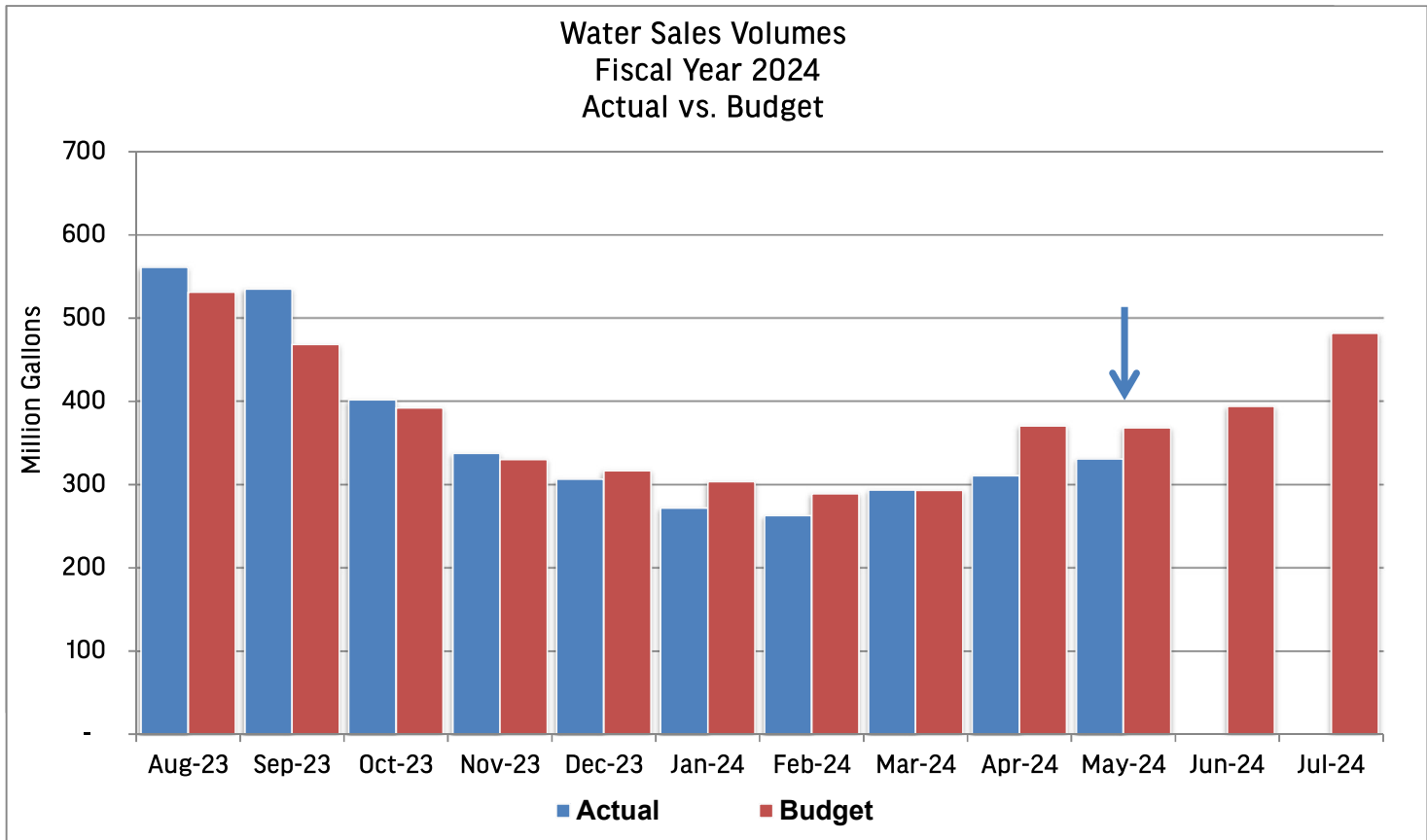
WATER STATISTICS

**NEW BRAUNFELS UTILITIES
WATER STATISTICS
HIGHLIGHTS OVERVIEW**

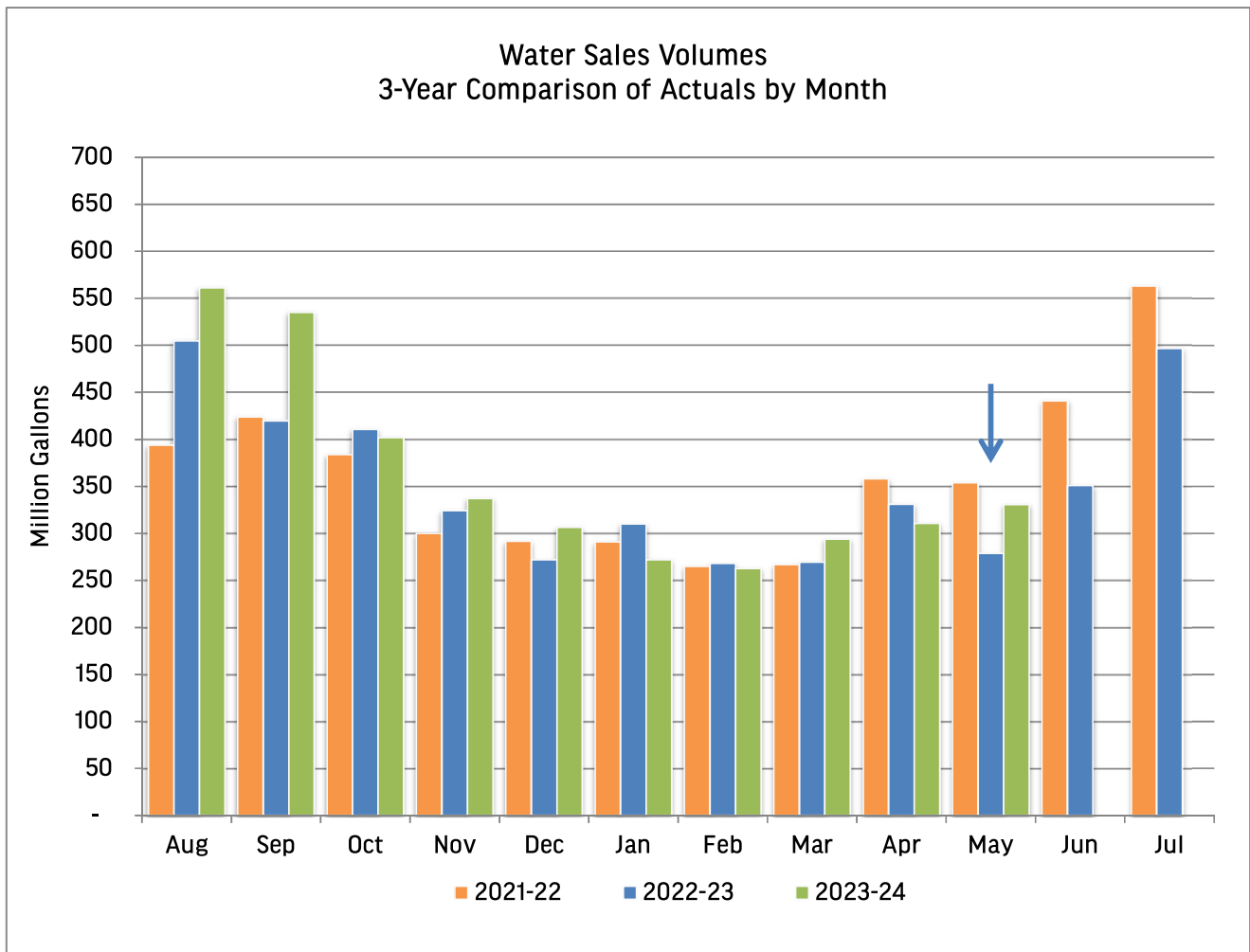
- May MTD rainfall was higher than the prior year rainfall, totaling 3.32 inches for the month. The May rainfall total of 3.32 inches was 0.78 inches lower than the historical average rainfall of 4.10 inches. For May 2024, there were five rain days during the month compared to four rain days in May 2023.
- May YTD rainfall totaled 19.75 inches compared to the prior year total of 24.79 inches, which is a decrease of 5.04 inches compared to prior year YTD. For YTD, there have been 41 rain days compared to 46 rain days for prior year YTD.
- Average MTD consumption by residential water customer in May 2024 was 4,583 gallons compared to 4,249 gallons in May 2023, reflecting a 7.9% increase.
- Actual YTD consumption by residential water customer through May 2024 was 52,170 gallons compared to 51,534 for YTD through May 2023, reflecting an increase of 1.2%.
- 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 223.1 million gallons, or 6.6% (3,612.1 million gallons for FY 2024 YTD vs. 3,389.0 million gallons for FY 2023 YTD).
- Actual total water sales volume for year-to-date FY 2024 is 3,612.1 million gallons, which is 51.3 million less than the budgeted amount of 3,663.4 million gallons for the same time period.
 - The following are major contributors, by rate classification, towards the 51.3 million gallons change from budget:
 - Residential – decrease of 68.1 million gallons (down 3.5% from budget)
 - Multi-Unit 5+ - increase of 21.8 million gallons (up 9.1% from budget)
 - Residential Irrigation – decrease of 67.0 million gallons (down 12.0% from budget)
 - Commercial Irrigation – increase of 15.5 million gallons (up 7.9% from budget)
 - Small General Services – increase of 74.2 million gallons (up 26.5% from budget)
 - Large General Services – decrease of 64.8 million gallons (down 17.1% from budget)
 - Other Sales – increase of 28.8 million gallons (up 91.2% from budget)
 - ReUse Water – increase of 8.1 million gallons (up 486.8% from budget)

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





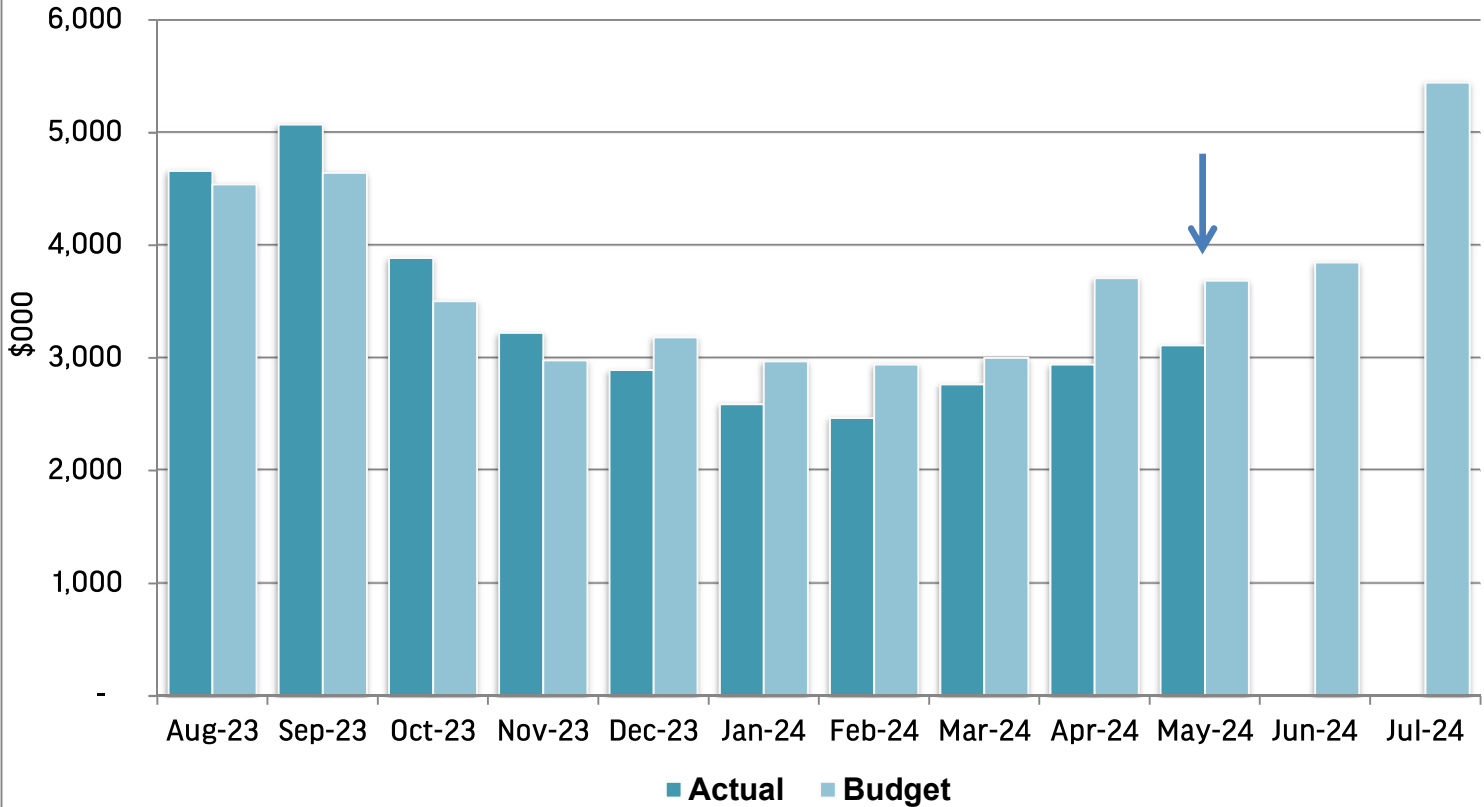
| Month | Actual | Budget |
|--------------|--------------|--------------|
| Aug-23 | 561 | 531 |
| Sep-23 | 535 | 468 |
| Oct-23 | 402 | 392 |
| Nov-23 | 337 | 330 |
| Dec-23 | 306 | 317 |
| Jan-24 | 272 | 304 |
| Feb-24 | 263 | 289 |
| Mar-24 | 294 | 293 |
| Apr-24 | 311 | 371 |
| May-24 | 331 | 368 |
| Jun-24 | - | 394 |
| Jul-24 | - | 482 |
| TOTAL | 3,612 | 4,539 |



| Water Sales Volumes (Million Gallons) | | | |
|---------------------------------------|--------------|--------------|--------------|
| Month | 2021-22 | 2022-23 | 2023-24 |
| Aug | 394 | 505 | 561 |
| Sep | 424 | 420 | 535 |
| Oct | 384 | 411 | 402 |
| Nov | 300 | 324 | 337 |
| Dec | 292 | 272 | 306 |
| Jan | 291 | 310 | 272 |
| Feb | 265 | 268 | 263 |
| Mar | 267 | 269 | 294 |
| Apr | 358 | 331 | 311 |
| May | 354 | 279 | 331 |
| Jun | 441 | 351 | - |
| Jul | 563 | 497 | - |
| TOTAL | 4,333 | 4,237 | 3,612 |

| Meter Count | FY 2022 | % Change 2022-2023 | FY 2023 | % Change 2023-2024 | FY 2024 |
|--------------|---------------|-----------------------|---------------|-----------------------|---------------|
| Residential | 34,427 | 2.20% | 35,186 | 5.02% | 36,952 |
| Irrigation | 13,055 | 5.75% | 13,806 | 10.44% | 15,247 |
| Other | 2,956 | 0.51% | 2,971 | 5.39% | 3,131 |
| TOTAL | 50,438 | 3.02% | 51,963 | 6.48% | 55,330 |

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



| Month | Total Water Sales (\$000) | |
|--------------|---------------------------|------------------|
| | Actual | Budget |
| Aug-23 | \$ 4,660 | \$ 4,539 |
| Sep-23 | \$ 5,070 | \$ 4,642 |
| Oct-23 | \$ 3,888 | \$ 3,503 |
| Nov-23 | \$ 3,224 | \$ 2,978 |
| Dec-23 | \$ 2,890 | \$ 3,184 |
| Jan-24 | \$ 2,587 | \$ 2,971 |
| Feb-24 | \$ 2,465 | \$ 2,943 |
| Mar-24 | \$ 2,767 | \$ 2,999 |
| Apr-24 | \$ 2,942 | \$ 3,708 |
| May-24 | \$ 3,112 | \$ 3,685 |
| Jun-24 | \$ - | \$ 3,847 |
| Jul-24 | \$ - | \$ 5,445 |
| TOTAL | \$ 33,608 | \$ 44,444 |

WATER SUPPLEMENTAL INFORMATION

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

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD | |
|-------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------|-------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | ACT | AVG |
| Residential | | | | | | | | | | | | |
| Actuals | 286,378,437 | 269,971,015 | 205,507,686 | 172,501,880 | 161,600,866 | 152,601,010 | 153,302,646 | 157,174,649 | 161,205,629 | 169,357,747 | 1,889,601,565 | 188,960,156 |
| Budget | 278,669,478 | 237,292,325 | 207,072,688 | 175,109,490 | 173,209,570 | 174,176,159 | 163,056,961 | 162,170,495 | 194,797,667 | 192,150,195 | 1,957,705,029 | 195,770,503 |
| Prior Year | 264,945,370 | 214,133,721 | 210,921,150 | 168,052,918 | 147,195,572 | 177,670,848 | 150,738,797 | 147,502,230 | 178,229,197 | 149,505,620 | 1,808,895,423 | 180,889,542 |
| Multi-Unit 2-4 | | | | | | | | | | | | |
| Actuals | 2,241,863 | 2,314,345 | 1,899,923 | 1,522,212 | 1,378,280 | 1,409,153 | 1,552,115 | 1,324,190 | 1,401,093 | 1,600,113 | 16,643,287 | 1,664,329 |
| Budget | 2,133,762 | 2,020,591 | 1,702,965 | 1,531,918 | 1,502,289 | 1,598,116 | 1,411,754 | 1,326,910 | 1,520,816 | 1,588,266 | 16,337,387 | 1,633,739 |
| Prior Year | 2,255,895 | 1,811,283 | 1,706,631 | 1,468,178 | 1,558,732 | 1,991,094 | 1,731,278 | 1,499,746 | 1,772,742 | 1,328,557 | 17,124,136 | 1,712,414 |
| Multi-Unit 5+ | | | | | | | | | | | | |
| Actuals | 27,135,318 | 27,407,982 | 22,473,477 | 24,538,890 | 28,093,615 | 25,622,619 | 27,819,886 | 26,634,330 | 24,746,326 | 26,419,852 | 260,892,295 | 26,089,230 |
| Budget | 25,326,666 | 25,620,852 | 24,285,693 | 22,896,149 | 23,054,060 | 23,641,597 | 23,603,566 | 22,619,338 | 23,808,093 | 24,208,591 | 239,064,605 | 23,906,461 |
| Prior Year | 25,435,941 | 26,247,479 | 23,126,169 | 22,573,660 | 22,243,553 | 27,640,694 | 24,981,709 | 20,919,119 | 23,207,100 | 20,994,653 | 237,370,077 | 23,737,008 |
| Residential Irrigation | | | | | | | | | | | | |
| Actuals | 99,066,089 | 94,465,846 | 70,964,442 | 47,428,899 | 32,889,344 | 22,127,445 | 12,702,243 | 31,763,383 | 39,166,067 | 41,938,674 | 492,512,432 | 49,251,243 |
| Budget | 101,916,516 | 89,848,970 | 67,370,554 | 47,455,669 | 40,755,051 | 29,226,787 | 25,896,276 | 31,239,450 | 62,350,426 | 63,491,605 | 559,551,304 | 55,955,130 |
| Prior Year | 75,502,265 | 57,908,800 | 60,546,492 | 42,139,788 | 25,242,936 | 22,372,220 | 18,434,179 | 28,352,401 | 37,104,469 | 30,094,914 | 397,698,464 | 39,769,846 |
| Commercial Irrigation | | | | | | | | | | | | |
| Actuals | 39,196,600 | 41,949,117 | 32,913,746 | 22,756,456 | 17,084,238 | 10,744,133 | 5,317,364 | 9,807,255 | 14,536,190 | 18,360,454 | 212,665,553 | 21,266,555 |
| Budget | 31,806,969 | 32,170,482 | 23,953,236 | 19,136,346 | 16,184,358 | 13,285,633 | 10,869,113 | 11,380,673 | 18,210,497 | 20,136,263 | 197,133,571 | 19,713,357 |
| Prior Year | 33,744,774 | 30,535,334 | 28,118,852 | 21,721,253 | 14,886,687 | 8,439,663 | 8,440,206 | 9,447,251 | 15,636,975 | 14,154,511 | 185,125,506 | 18,512,551 |
| SGS | | | | | | | | | | | | |
| Actuals | 88,144,880 | 36,085,131 | 31,847,997 | 31,141,415 | 29,299,975 | 26,281,878 | 27,100,968 | 27,988,408 | 28,101,017 | 28,286,413 | 354,278,081 | 35,427,808 |
| Budget | 31,764,131 | 29,773,888 | 26,212,617 | 27,978,022 | 28,661,024 | 23,437,606 | 27,384,033 | 28,582,232 | 24,726,924 | 31,605,916 | 280,126,392 | 28,012,639 |
| Prior Year | 78,178,199 | 78,468,416 | 69,448,844 | 58,815,374 | 57,772,260 | 67,638,990 | 59,416,751 | 55,376,946 | 68,417,902 | 58,582,716 | 652,116,399 | 65,211,640 |
| LGS | | | | | | | | | | | | |
| Actuals | - | 48,367,404 | 27,029,314 | 34,572,371 | 31,871,386 | 31,180,200 | 32,332,096 | 33,005,019 | 36,014,141 | 40,978,466 | 315,350,397 | 31,535,040 |
| Budget | 51,137,660 | 44,700,916 | 38,954,200 | 34,714,127 | 32,435,703 | 36,602,561 | 33,955,022 | 31,959,274 | 40,994,427 | 34,737,590 | 380,191,481 | 38,019,148 |
| Prior Year | - | - | - | - | - | - | - | - | - | - | - | - |
| Other Sales | | | | | | | | | | | | |
| Actuals | 14,773,264 | 12,569,962 | 7,367,839 | 2,816,330 | 4,160,045 | 2,123,877 | 2,696,819 | 5,633,216 | 4,339,353 | 3,893,510 | 60,374,215 | 6,037,422 |
| Budget | 7,964,649 | 7,211,502 | 2,237,575 | 1,361,680 | 320,031 | 1,497,983 | 2,870,647 | 3,420,026 | 4,305,181 | 389,289 | 31,578,561 | 3,157,856 |
| Prior Year | 19,291,639 | 10,429,974 | 11,829,866 | 6,504,861 | 2,722,722 | 4,009,008 | 2,940,187 | 5,494,272 | 5,654,538 | 3,998,169 | 72,875,236 | 7,287,524 |
| ReUse Water | | | | | | | | | | | | |
| Actuals | 4,312,900 | 1,955,900 | 1,821,400 | - | - | - | - | 466,049 | 1,232,407 | - | 9,788,656 | 978,866 |
| Budget | 613,050 | (292,400) | 117,738 | 177,998 | 442,163 | 235,575 | 84,025 | 219,800 | 70,149 | - | 1,668,097 | 166,810 |
| Prior Year | 5,486,000 | 267,200 | 5,113,000 | 2,946,800 | 285,200 | 470,300 | 1,369,400 | 762,700 | 1,138,300 | - | 17,838,900 | 1,783,890 |
| Total Sales | | | | | | | | | | | | |
| Actuals | 561,249,351 | 535,086,702 | 401,825,824 | 337,278,453 | 306,377,749 | 272,090,315 | 262,824,137 | 293,796,498 | 310,742,223 | 330,835,228 | 3,612,106,481 | 361,210,648 |
| Budget | 531,332,881 | 468,347,126 | 391,907,266 | 330,361,397 | 316,564,249 | 303,702,017 | 289,131,396 | 292,918,198 | 370,784,181 | 368,307,716 | 3,663,356,427 | 366,335,643 |
| Prior Year | 504,840,083 | 419,802,207 | 410,811,004 | 324,222,832 | 271,907,662 | 310,232,817 | 268,052,507 | 269,354,665 | 331,161,223 | 278,659,140 | 3,389,044,141 | 338,904,414 |

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

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD | |
|-------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|--------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | ACT | AVG |
| Residential | | | | | | | | | | | | |
| Actuals | 286,378,437 | 269,971,015 | 205,507,686 | 172,501,880 | 161,600,866 | 152,601,010 | 153,302,646 | 157,174,649 | 161,205,629 | 169,357,747 | 1,889,601,565 | 188,960,156 |
| Actual vs Budget | 7,708,959 | 32,678,690 | (1,565,002) | (2,607,610) | (11,608,704) | (21,575,149) | (9,754,315) | (4,995,846) | (33,592,038) | (22,792,448) | (68,103,464) | (6,810,346) |
| Actual vs Prior Year | 21,433,067 | 55,837,294 | (5,413,464) | 4,448,962 | 14,405,294 | (25,069,838) | 2,563,849 | 9,672,419 | (17,023,568) | 19,852,127 | 80,706,142 | 8,070,614 |
| Multi-Unit 2-4 | | | | | | | | | | | | |
| Actuals | 2,241,863 | 2,314,345 | 1,899,923 | 1,522,212 | 1,378,280 | 1,409,153 | 1,552,115 | 1,324,190 | 1,401,093 | 1,600,113 | 16,643,287 | 1,664,329 |
| Actual vs Budget | 108,101 | 293,754 | 196,958 | (9,706) | (124,009) | (188,963) | 140,361 | (2,720) | (119,723) | 11,847 | 305,900 | 30,590 |
| Actual vs Prior Year | (14,032) | 503,062 | 193,292 | 54,034 | (180,452) | (581,941) | (179,163) | (175,556) | (371,649) | 271,556 | (480,849) | (48,085) |
| Multi-Unit 5+ | | | | | | | | | | | | |
| Actuals | 27,135,318 | 27,407,982 | 22,473,477 | 24,538,890 | 28,093,615 | 25,622,619 | 27,819,886 | 26,634,330 | 24,746,326 | 26,419,852 | 260,892,295 | 26,089,230 |
| Actual vs Budget | 1,808,652 | 1,787,130 | (1,812,216) | 1,642,741 | 5,039,555 | 1,981,022 | 4,216,320 | 4,014,992 | 938,233 | 2,211,261 | 21,827,690 | 2,182,769 |
| Actual vs Prior Year | 1,699,377 | 1,160,503 | (652,692) | 1,965,230 | 5,850,062 | (2,018,075) | 2,838,177 | 5,715,211 | 1,539,226 | 5,425,199 | 23,522,218 | 2,352,222 |
| Residential Irrigation | | | | | | | | | | | | |
| Actuals | 99,066,089 | 94,465,846 | 70,964,442 | 47,428,899 | 32,889,344 | 22,127,445 | 12,702,243 | 31,763,383 | 39,166,067 | 41,938,674 | 492,512,432 | 49,251,243 |
| Actual vs Budget | (2,850,427) | 4,616,876 | 3,593,888 | (26,770) | (7,865,707) | (7,099,342) | (13,194,033) | 523,933 | (23,184,359) | (21,552,931) | (67,038,872) | (6,703,887) |
| Actual vs Prior Year | 23,563,824 | 36,557,046 | 10,417,950 | 5,289,111 | 7,646,408 | (244,775) | (5,731,936) | 3,410,982 | 2,061,598 | 11,843,760 | 94,813,968 | 9,481,397 |
| Commercial Irrigation | | | | | | | | | | | | |
| Actuals | 39,196,600 | 41,949,117 | 32,913,746 | 22,756,456 | 17,084,238 | 10,744,133 | 5,317,364 | 9,807,255 | 14,536,190 | 18,360,454 | 212,665,553 | 21,266,555 |
| Actual vs Budget | 7,389,631 | 9,778,635 | 8,960,510 | 3,620,110 | 899,880 | (2,541,500) | (5,551,749) | (1,573,418) | (3,674,307) | (1,775,809) | 15,531,982 | 1,553,198 |
| Actual vs Prior Year | 5,451,826 | 11,413,783 | 4,794,894 | 1,035,203 | 2,197,551 | 2,304,470 | (3,122,842) | 360,004 | (1,100,785) | 4,205,943 | 27,540,047 | 2,754,005 |
| SGS | | | | | | | | | | | | |
| Actuals | 88,144,880 | 36,085,131 | 31,847,997 | 31,141,415 | 29,299,975 | 26,281,878 | 27,100,968 | 27,988,408 | 28,101,017 | 28,286,413 | 354,278,081 | 35,427,808 |
| Actual vs Budget | 56,380,749 | 6,311,243 | 5,635,380 | 3,163,393 | 638,951 | 2,844,272 | (283,065) | (593,824) | 3,374,093 | (3,319,503) | 74,151,689 | 7,415,169 |
| Actual vs Prior Year | 9,966,681 | (42,383,285) | (37,600,847) | (27,673,959) | (28,472,285) | (41,357,112) | (32,315,783) | (27,388,539) | (40,316,885) | (30,296,304) | (297,838,318) | (29,783,832) |
| LGS | | | | | | | | | | | | |
| Actuals | - | 48,367,404 | 27,029,314 | 34,572,371 | 31,871,386 | 31,180,200 | 32,332,096 | 33,005,019 | 36,014,141 | 40,978,466 | 315,350,397 | 31,535,040 |
| Actual vs Budget | (51,137,660) | 3,666,488 | (11,924,886) | (141,756) | (564,317) | (5,422,361) | (1,622,926) | 1,045,745 | (4,980,286) | 6,240,876 | (64,841,084) | (6,484,108) |
| Actual vs Prior Year | - | 48,367,404 | 27,029,314 | 34,572,371 | 31,871,386 | 31,180,200 | 32,332,096 | 33,005,019 | 36,014,141 | 40,978,466 | 315,350,397 | 31,535,040 |
| Other Sales | | | | | | | | | | | | |
| Actuals | 14,773,264 | 12,569,962 | 7,367,839 | 2,816,330 | 4,160,045 | 2,123,877 | 2,696,819 | 5,633,216 | 4,339,353 | 3,893,510 | 60,374,215 | 6,037,422 |
| Actual vs Budget | 6,808,615 | 5,358,460 | 5,130,264 | 1,454,650 | 3,840,014 | 625,894 | (173,828) | 2,213,190 | 34,172 | 3,504,221 | 28,795,654 | 2,879,565 |
| Actual vs Prior Year | (4,518,375) | 2,139,988 | (4,462,027) | (3,688,531) | 1,437,323 | (1,885,131) | (243,368) | 138,944 | (1,315,185) | (104,659) | (12,501,021) | (1,250,102) |
| ReUse Water | | | | | | | | | | | | |
| Actuals | 4,312,900 | 1,955,900 | 1,821,400 | - | - | - | - | 466,049 | 1,232,407 | - | 9,788,656 | 978,866 |
| Actual vs Budget | 3,699,850 | 2,248,300 | 1,703,662 | (177,998) | (442,163) | (235,575) | (84,025) | 246,249 | 1,162,259 | - | 8,120,559 | 812,056 |
| Actual vs Prior Year | (1,173,100) | 1,688,700 | (3,291,600) | (2,946,800) | (285,200) | (470,300) | (1,369,400) | (296,651) | 94,107 | - | (8,050,244) | (805,024) |
| Total Sales | | | | | | | | | | | | |
| Actuals | 561,249,351 | 535,086,702 | 401,825,824 | 337,278,453 | 306,377,749 | 272,090,315 | 262,824,137 | 293,796,498 | 310,742,223 | 330,835,228 | 3,612,106,481 | 361,210,648 |
| Actual vs Budget | 29,916,470 | 66,739,576 | 9,918,558 | 6,917,056 | (10,186,500) | (31,611,702) | (26,307,259) | 878,301 | (60,041,958) | (37,472,487) | (51,249,946) | (5,124,995) |
| Actual vs Prior Year | 56,409,268 | 115,284,495 | (8,985,180) | 13,055,621 | 34,470,087 | (38,142,502) | (5,228,370) | 24,441,833 | (20,419,000) | 52,176,088 | 223,062,340 | 22,306,234 |

NEW BRAUNFELS UTILITIES
Water Revenue
For Month Ending May 31, 2024

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD | |
|-------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|--------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | ACT | AVG |
| Residential | | | | | | | | | | | | |
| Actuals | \$ 1,827,272 | \$ 2,392,640 | \$ 1,747,250 | \$ 1,412,358 | \$ 1,306,382 | \$ 1,224,701 | \$ 1,225,157 | \$ 1,264,360 | \$ 1,311,569 | \$ 1,380,713 | \$ 15,092,402 | \$ 1,509,240 |
| Budget | \$ 1,675,906 | \$ 1,751,798 | \$ 1,399,790 | \$ 1,266,297 | \$ 1,417,615 | \$ 1,371,746 | \$ 1,309,178 | \$ 1,327,852 | \$ 1,556,587 | \$ 1,555,006 | \$ 14,631,774 | \$ 1,463,177 |
| Prior Year | \$ 1,435,468 | \$ 1,424,172 | \$ 1,284,509 | \$ 1,094,836 | \$ 976,144 | \$ 1,109,772 | \$ 972,939 | \$ 975,688 | \$ 1,119,548 | \$ 994,105 | \$ 11,387,180 | \$ 1,138,718 |
| Multi-Unit 2-4 | | | | | | | | | | | | |
| Actuals | \$ 19,957 | \$ 20,786 | \$ 18,489 | \$ 16,371 | \$ 15,628 | \$ 15,725 | \$ 16,542 | \$ 15,215 | \$ 15,642 | \$ 16,683 | \$ 171,038 | \$ 17,104 |
| Budget | \$ 20,133 | \$ 22,197 | \$ 18,479 | \$ 17,431 | \$ 18,354 | \$ 19,284 | \$ 18,172 | \$ 17,245 | \$ 18,850 | \$ 18,850 | \$ 188,993 | \$ 18,899 |
| Prior Year | \$ 19,176 | \$ 17,926 | \$ 16,683 | \$ 15,050 | \$ 16,630 | \$ 17,942 | \$ 16,479 | \$ 15,143 | \$ 16,741 | \$ 14,251 | \$ 166,020 | \$ 16,602 |
| Multi-Unit 5+ | | | | | | | | | | | | |
| Actuals | \$ 260,228 | \$ 257,270 | \$ 230,761 | \$ 241,325 | \$ 263,312 | \$ 255,463 | \$ 270,981 | \$ 260,191 | \$ 253,681 | \$ 264,100 | \$ 2,557,312 | \$ 255,731 |
| Budget | \$ 266,804 | \$ 279,964 | \$ 279,474 | \$ 255,175 | \$ 286,678 | \$ 288,535 | \$ 286,395 | \$ 284,064 | \$ 303,441 | \$ 307,495 | \$ 2,838,024 | \$ 283,802 |
| Prior Year | \$ 241,401 | \$ 258,388 | \$ 239,757 | \$ 226,649 | \$ 220,174 | \$ 253,389 | \$ 237,675 | \$ 217,571 | \$ 228,301 | \$ 219,562 | \$ 2,342,868 | \$ 234,287 |
| Residential Irrigation | | | | | | | | | | | | |
| Actuals | \$ 1,117,789 | \$ 1,105,950 | \$ 869,979 | \$ 647,488 | \$ 517,007 | \$ 421,127 | \$ 336,040 | \$ 510,115 | \$ 579,763 | \$ 607,603 | \$ 6,712,861 | \$ 671,286 |
| Budget | \$ 1,313,660 | \$ 1,294,138 | \$ 883,179 | \$ 648,549 | \$ 645,400 | \$ 503,243 | \$ 523,810 | \$ 556,623 | \$ 880,800 | \$ 887,423 | \$ 8,136,825 | \$ 813,682 |
| Prior Year | \$ 876,750 | \$ 751,431 | \$ 715,064 | \$ 518,829 | \$ 371,346 | \$ 345,040 | \$ 310,796 | \$ 396,258 | \$ 477,192 | \$ 414,872 | \$ 5,177,578 | \$ 517,758 |
| Commercial Irrigation | | | | | | | | | | | | |
| Actuals | \$ 477,522 | \$ 504,909 | \$ 398,908 | \$ 276,791 | \$ 210,617 | \$ 136,872 | \$ 75,668 | \$ 126,890 | \$ 181,555 | \$ 227,164 | \$ 2,616,895 | \$ 261,690 |
| Budget | \$ 424,000 | \$ 469,064 | \$ 310,403 | \$ 234,897 | \$ 222,201 | \$ 184,303 | \$ 153,156 | \$ 159,906 | \$ 254,611 | \$ 278,386 | \$ 2,690,926 | \$ 269,093 |
| Prior Year | \$ 405,253 | \$ 401,101 | \$ 328,274 | \$ 240,204 | \$ 164,788 | \$ 94,550 | \$ 97,630 | \$ 109,278 | \$ 175,133 | \$ 159,224 | \$ 2,175,435 | \$ 217,544 |
| SGS | | | | | | | | | | | | |
| Actuals | \$ 765,231 | \$ 343,842 | \$ 309,028 | \$ 304,058 | \$ 291,599 | \$ 267,962 | \$ 267,142 | \$ 280,827 | \$ 278,162 | \$ 278,855 | \$ 3,386,705 | \$ 338,671 |
| Budget | \$ 434,693 | \$ 388,629 | \$ 291,965 | \$ 281,162 | \$ 354,123 | \$ 315,931 | \$ 346,915 | \$ 358,489 | \$ 321,559 | \$ 380,198 | \$ 3,473,666 | \$ 347,367 |
| Prior Year | \$ 616,047 | \$ 678,287 | \$ 558,030 | \$ 450,987 | \$ 450,757 | \$ 516,134 | \$ 461,766 | \$ 434,665 | \$ 524,879 | \$ 456,551 | \$ 5,148,105 | \$ 514,810 |
| LGS | | | | | | | | | | | | |
| Actuals | \$ - | \$ 288,946 | \$ 208,593 | \$ 235,009 | \$ 213,600 | \$ 214,437 | \$ 218,252 | \$ 222,743 | \$ 242,619 | \$ 269,394 | \$ 2,113,592 | \$ 211,359 |
| Budget | \$ 290,436 | \$ 325,951 | \$ 289,257 | \$ 252,430 | \$ 233,412 | \$ 259,549 | \$ 243,598 | \$ 229,544 | \$ 295,520 | \$ 250,856 | \$ 2,670,553 | \$ 267,055 |
| Prior Year | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Other Sales | | | | | | | | | | | | |
| Actuals | \$ 179,419 | \$ 155,792 | \$ 105,303 | \$ 58,471 | \$ 72,249 | \$ 50,717 | \$ 55,637 | \$ 84,058 | \$ 72,005 | \$ 67,633 | \$ 901,283 | \$ 90,128 |
| Budget | \$ 110,730 | \$ 111,853 | \$ 30,081 | \$ 20,845 | \$ 5,798 | \$ 28,566 | \$ 61,475 | \$ 65,352 | \$ 76,585 | \$ 6,437 | \$ 517,723 | \$ 51,772 |
| Prior Year | \$ 241,628 | \$ 145,742 | \$ 143,275 | \$ 89,711 | \$ 50,358 | \$ 62,775 | \$ 51,200 | \$ 76,503 | \$ 77,511 | \$ 61,662 | \$ 1,000,363 | \$ 100,036 |
| ReUse Water | | | | | | | | | | | | |
| Actuals | \$ 12,545 | \$ 173 | \$ 165 | \$ 32,382 | \$ 56 | \$ 56 | \$ 56 | \$ 2,732 | \$ 7,330 | \$ 56 | \$ 55,551 | \$ 5,555 |
| Budget | \$ 3,125 | \$ (1,309) | \$ 634 | \$ 952 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 3,402 | \$ 340 |
| Prior Year | \$ 25,191 | \$ 1,078 | \$ 24,810 | \$ 14,201 | \$ 1,166 | \$ 2,072 | \$ 6,476 | \$ 3,504 | \$ 5,344 | \$ 56 | \$ 83,897 | \$ 8,390 |
| Total Sales | | | | | | | | | | | | |
| Actuals | \$ 4,659,963 | \$ 5,070,307 | \$ 3,888,476 | \$ 3,224,252 | \$ 2,890,450 | \$ 2,587,060 | \$ 2,465,474 | \$ 2,767,131 | \$ 2,942,326 | \$ 3,112,201 | \$ 33,607,640 | \$ 3,360,764 |
| Budget | \$ 4,539,486 | \$ 4,642,285 | \$ 3,503,262 | \$ 2,977,737 | \$ 3,183,581 | \$ 2,971,156 | \$ 2,942,699 | \$ 2,999,075 | \$ 3,707,953 | \$ 3,684,651 | \$ 35,151,886 | \$ 3,515,189 |
| Prior Year | \$ 3,860,913 | \$ 3,678,125 | \$ 3,310,402 | \$ 2,650,466 | \$ 2,251,363 | \$ 2,401,673 | \$ 2,154,961 | \$ 2,228,611 | \$ 2,624,648 | \$ 2,320,282 | \$ 27,481,445 | \$ 2,748,145 |

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

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD | |
|-------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|--------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | ACT | AVG |
| Residential | | | | | | | | | | | | |
| Actuals | \$ 1,827,272 | \$ 2,392,640 | \$ 1,747,250 | \$ 1,412,358 | \$ 1,306,382 | \$ 1,224,701 | \$ 1,225,157 | \$ 1,264,360 | \$ 1,311,569 | \$ 1,380,713 | \$ 15,092,402 | \$ 1,509,240 |
| Actual vs Budget | \$ 151,366 | \$ 640,842 | \$ 347,460 | \$ 146,062 | \$ (111,232) | \$ (147,045) | \$ (84,021) | \$ (63,492) | \$ (245,018) | \$ (174,293) | \$ 460,628 | \$ 46,063 |
| Actual vs Prior Year | \$ 391,804 | \$ 968,468 | \$ 462,741 | \$ 317,523 | \$ 330,238 | \$ 114,929 | \$ 252,218 | \$ 288,671 | \$ 192,020 | \$ 386,609 | \$ 3,705,222 | \$ 370,522 |
| Multi-Unit 2-4 | | | | | | | | | | | | |
| Actuals | \$ 19,957 | \$ 20,786 | \$ 18,489 | \$ 16,371 | \$ 15,628 | \$ 15,725 | \$ 16,542 | \$ 15,215 | \$ 15,642 | \$ 16,683 | \$ 171,038 | \$ 17,104 |
| Actual vs Budget | \$ (176) | \$ (1,410) | \$ 10 | \$ (1,060) | \$ (2,726) | \$ (3,559) | \$ (1,630) | \$ (2,030) | \$ (3,208) | \$ (2,167) | \$ (17,955) | \$ (1,795) |
| Actual vs Prior Year | \$ 781 | \$ 2,861 | \$ 1,806 | \$ 1,321 | \$ (1,001) | \$ (2,216) | \$ 62 | \$ 73 | \$ (1,099) | \$ 2,432 | \$ 5,019 | \$ 502 |
| Multi-Unit 5+ | | | | | | | | | | | | |
| Actuals | \$ 260,228 | \$ 257,270 | \$ 230,761 | \$ 241,325 | \$ 263,312 | \$ 255,463 | \$ 270,981 | \$ 260,191 | \$ 253,681 | \$ 264,100 | \$ 2,557,312 | \$ 255,731 |
| Actual vs Budget | \$ (6,575) | \$ (22,694) | \$ (48,714) | \$ (13,849) | \$ (23,366) | \$ (33,072) | \$ (15,414) | \$ (23,873) | \$ (49,760) | \$ (43,395) | \$ (280,712) | \$ (28,071) |
| Actual vs Prior Year | \$ 18,828 | \$ (1,119) | \$ (8,997) | \$ 14,676 | \$ 43,138 | \$ 2,074 | \$ 33,305 | \$ 42,620 | \$ 25,380 | \$ 44,539 | \$ 214,444 | \$ 21,444 |
| Residential Irrigation | | | | | | | | | | | | |
| Actuals | \$ 1,117,789 | \$ 1,105,950 | \$ 869,979 | \$ 647,488 | \$ 517,007 | \$ 421,127 | \$ 336,040 | \$ 510,115 | \$ 579,763 | \$ 607,603 | \$ 6,712,861 | \$ 671,286 |
| Actual vs Budget | \$ (195,872) | \$ (188,188) | \$ (13,200) | \$ (1,062) | \$ (128,393) | \$ (82,116) | \$ (187,769) | \$ (46,507) | \$ (301,037) | \$ (279,820) | \$ (1,423,964) | \$ (142,396) |
| Actual vs Prior Year | \$ 241,039 | \$ 354,519 | \$ 154,916 | \$ 128,659 | \$ 145,660 | \$ 76,086 | \$ 25,245 | \$ 113,857 | \$ 102,571 | \$ 192,731 | \$ 1,535,283 | \$ 153,528 |
| Commercial Irrigation | | | | | | | | | | | | |
| Actuals | \$ 477,522 | \$ 504,909 | \$ 398,908 | \$ 276,791 | \$ 210,617 | \$ 136,872 | \$ 75,668 | \$ 126,890 | \$ 181,555 | \$ 227,164 | \$ 2,616,895 | \$ 261,690 |
| Actual vs Budget | \$ 53,522 | \$ 35,845 | \$ 88,505 | \$ 41,894 | \$ (11,584) | \$ (47,431) | \$ (77,488) | \$ (33,016) | \$ (73,056) | \$ (51,223) | \$ (74,031) | \$ (7,403) |
| Actual vs Prior Year | \$ 72,269 | \$ 103,808 | \$ 70,634 | \$ 36,587 | \$ 45,828 | \$ 42,322 | \$ (21,962) | \$ 17,612 | \$ 6,423 | \$ 67,940 | \$ 441,460 | \$ 44,146 |
| SGS | | | | | | | | | | | | |
| Actuals | \$ 765,231 | \$ 343,842 | \$ 309,028 | \$ 304,058 | \$ 291,599 | \$ 267,962 | \$ 267,142 | \$ 280,827 | \$ 278,162 | \$ 278,855 | \$ 3,386,705 | \$ 338,671 |
| Actual vs Budget | \$ 330,538 | \$ (44,787) | \$ 17,063 | \$ 22,896 | \$ (62,525) | \$ (47,969) | \$ (79,774) | \$ (77,663) | \$ (43,397) | \$ (101,343) | \$ (86,961) | \$ (8,696) |
| Actual vs Prior Year | \$ 149,184 | \$ (334,445) | \$ (249,002) | \$ (146,929) | \$ (159,159) | \$ (248,172) | \$ (194,625) | \$ (153,839) | \$ (246,717) | \$ (177,696) | \$ (1,761,399) | \$ (176,140) |
| LGS | | | | | | | | | | | | |
| Actuals | \$ - | \$ 288,946 | \$ 208,593 | \$ 235,009 | \$ 213,600 | \$ 214,437 | \$ 218,252 | \$ 222,743 | \$ 242,619 | \$ 269,394 | \$ 2,113,592 | \$ 211,359 |
| Actual vs Budget | \$ (290,436) | \$ (37,006) | \$ (80,664) | \$ (17,421) | \$ (19,812) | \$ (45,112) | \$ (25,346) | \$ (6,801) | \$ (52,900) | \$ 18,538 | \$ (556,961) | \$ (55,696) |
| Actual vs Prior Year | \$ - | \$ 288,946 | \$ 208,593 | \$ 235,009 | \$ 213,600 | \$ 214,437 | \$ 218,252 | \$ 222,743 | \$ 242,619 | \$ 269,394 | \$ 2,113,592 | \$ 211,359 |
| Other Sales | | | | | | | | | | | | |
| Actuals | \$ 179,419 | \$ 155,792 | \$ 105,303 | \$ 58,471 | \$ 72,249 | \$ 50,717 | \$ 55,637 | \$ 84,058 | \$ 72,005 | \$ 67,633 | \$ 901,283 | \$ 90,128 |
| Actual vs Budget | \$ 68,689 | \$ 43,939 | \$ 75,222 | \$ 37,625 | \$ 66,451 | \$ 22,151 | \$ (5,838) | \$ 18,706 | \$ (4,580) | \$ 61,196 | \$ 383,560 | \$ 38,356 |
| Actual vs Prior Year | \$ (62,209) | \$ 10,051 | \$ (37,972) | \$ (31,240) | \$ 21,891 | \$ (12,059) | \$ 4,437 | \$ 7,554 | \$ (5,505) | \$ 5,971 | \$ (99,080) | \$ (9,908) |
| ReUse Water | | | | | | | | | | | | |
| Actuals | \$ 12,545 | \$ 173 | \$ 165 | \$ 32,382 | \$ 56 | \$ 56 | \$ 56 | \$ 2,732 | \$ 7,330 | \$ 56 | \$ 55,551 | \$ 5,555 |
| Actual vs Budget | \$ 9,420 | \$ 1,482 | \$ (470) | \$ 31,430 | \$ 56 | \$ 56 | \$ 56 | \$ 2,732 | \$ 7,330 | \$ 56 | \$ 52,149 | \$ 5,215 |
| Actual vs Prior Year | \$ (12,646) | \$ (905) | \$ (24,645) | \$ 18,181 | \$ (1,109) | \$ (2,016) | \$ (6,419) | \$ (772) | \$ 1,986 | \$ - | \$ (28,346) | \$ (2,835) |
| Total Sales | | | | | | | | | | | | |
| Actuals | \$ 4,659,963 | \$ 5,070,307 | \$ 3,888,476 | \$ 3,224,252 | \$ 2,890,450 | \$ 2,587,060 | \$ 2,465,474 | \$ 2,767,131 | \$ 2,942,326 | \$ 3,112,201 | \$ 33,607,640 | \$ 3,360,764 |
| Actual vs Budget | \$ 120,477 | \$ 428,022 | \$ 385,214 | \$ 246,514 | \$ (293,131) | \$ (384,096) | \$ (477,225) | \$ (231,944) | \$ (765,628) | \$ (572,450) | \$ (1,544,246) | \$ (154,425) |
| Actual vs Prior Year | \$ 799,050 | \$ 1,392,183 | \$ 578,074 | \$ 573,785 | \$ 639,087 | \$ 185,387 | \$ 310,513 | \$ 538,520 | \$ 317,677 | \$ 791,919 | \$ 6,126,194 | \$ 612,619 |

NEW BRAUNFELS UTILITIES
Water Meters
For Month Ending May 31, 2024

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD AVG |
|-------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | |
| Residential | | | | | | | | | | | |
| Actuals | 35,651 | 35,942 | 36,027 | 36,016 | 36,162 | 36,355 | 36,419 | 36,593 | 36,820 | 36,952 | 36,294 |
| Budget | 35,570 | 35,716 | 35,862 | 36,008 | 36,154 | 36,301 | 36,447 | 36,593 | 36,739 | 36,885 | 36,227 |
| Prior Year | 34,863 | 35,017 | 35,058 | 35,080 | 35,155 | 35,219 | 35,235 | 35,253 | 35,155 | 35,186 | 35,122 |
| Multi-Unit 2-4 | | | | | | | | | | | |
| Actuals | 208 | 221 | 225 | 223 | 223 | 222 | 222 | 220 | 221 | 220 | 221 |
| Budget | 208 | 208 | 208 | 208 | 208 | 208 | 208 | 208 | 208 | 208 | 208 |
| Prior Year | 208 | 209 | 207 | 208 | 209 | 209 | 208 | 206 | 207 | 207 | 208 |
| Multi-Unit 5+ | | | | | | | | | | | |
| Actuals | 262 | 269 | 270 | 270 | 273 | 274 | 275 | 275 | 275 | 283 | 273 |
| Budget | 260 | 262 | 263 | 265 | 267 | 269 | 270 | 272 | 274 | 276 | 268 |
| Prior Year | 257 | 257 | 259 | 258 | 258 | 259 | 259 | 259 | 257 | 259 | 258 |
| Residential Irrigation | | | | | | | | | | | |
| Actuals | 13,351 | 13,533 | 13,592 | 13,610 | 13,749 | 13,895 | 13,938 | 14,102 | 14,262 | 14,391 | 13,842 |
| Budget | 13,187 | 13,347 | 13,507 | 13,668 | 13,828 | 13,989 | 14,149 | 14,310 | 14,470 | 14,630 | 13,909 |
| Prior Year | 12,525 | 12,620 | 12,669 | 12,722 | 12,769 | 12,831 | 12,901 | 12,915 | 12,893 | 12,940 | 12,779 |
| Commercial Irrigation | | | | | | | | | | | |
| Actuals | 884 | 830 | 831 | 832 | 839 | 841 | 845 | 847 | 852 | 856 | 846 |
| Budget | 860 | 862 | 865 | 868 | 870 | 873 | 876 | 878 | 881 | 884 | 872 |
| Prior Year | 845 | 835 | 849 | 849 | 850 | 851 | 855 | 858 | 859 | 866 | 852 |
| SGS | | | | | | | | | | | |
| Actuals | 2,412 | 2,282 | 2,276 | 2,270 | 2,290 | 2,293 | 2,290 | 2,293 | 2,297 | 2,297 | 2,300 |
| Budget | 2,268 | 2,271 | 2,275 | 2,277 | 2,280 | 2,284 | 2,288 | 2,292 | 2,296 | 2,300 | 2,284 |
| Prior Year | 2,380 | 2,383 | 2,383 | 2,386 | 2,389 | 2,384 | 2,383 | 2,382 | 2,381 | 2,389 | 2,384 |
| LGS | | | | | | | | | | | |
| Actuals | - | 198 | 213 | 214 | 219 | 218 | 219 | 221 | 225 | 228 | 196 |
| Budget | 133 | 134 | 134 | 136 | 137 | 137 | 137 | 137 | 137 | 137 | 136 |
| Prior Year | - | - | - | - | - | - | - | - | - | - | - |
| Other Sales | | | | | | | | | | | |
| Actuals | 109 | 111 | 116 | 108 | 107 | 102 | 101 | 100 | 104 | 102 | 106 |
| Budget | 151 | 153 | 154 | 156 | 158 | 160 | 161 | 163 | 165 | 166 | 159 |
| Prior Year | 124 | 124 | 130 | 132 | 124 | 120 | 115 | 118 | 114 | 115 | 122 |
| ReUse Water | | | | | | | | | | | |
| Actuals | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Budget | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Prior Year | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Total Meters | | | | | | | | | | | |
| Actuals | 52,878 | 53,387 | 53,551 | 53,544 | 53,863 | 54,201 | 54,310 | 54,652 | 55,057 | 55,330 | 54,077 |
| Budget | 52,638 | 52,954 | 53,271 | 53,588 | 53,904 | 54,221 | 54,537 | 54,854 | 55,171 | 55,487 | 54,062 |
| Prior Year | 51,203 | 51,446 | 51,556 | 51,636 | 51,755 | 51,874 | 51,957 | 51,992 | 51,867 | 51,963 | 51,725 |
| New Meters | 241 | 509 | 164 | (7) | 319 | 338 | 109 | 342 | 405 | 273 | 269 |
| New Meter Growth | 0.5% | 1.0% | 0.3% | 0.0% | 0.6% | 0.6% | 0.2% | 0.6% | 0.7% | 0.5% | 0.5% |

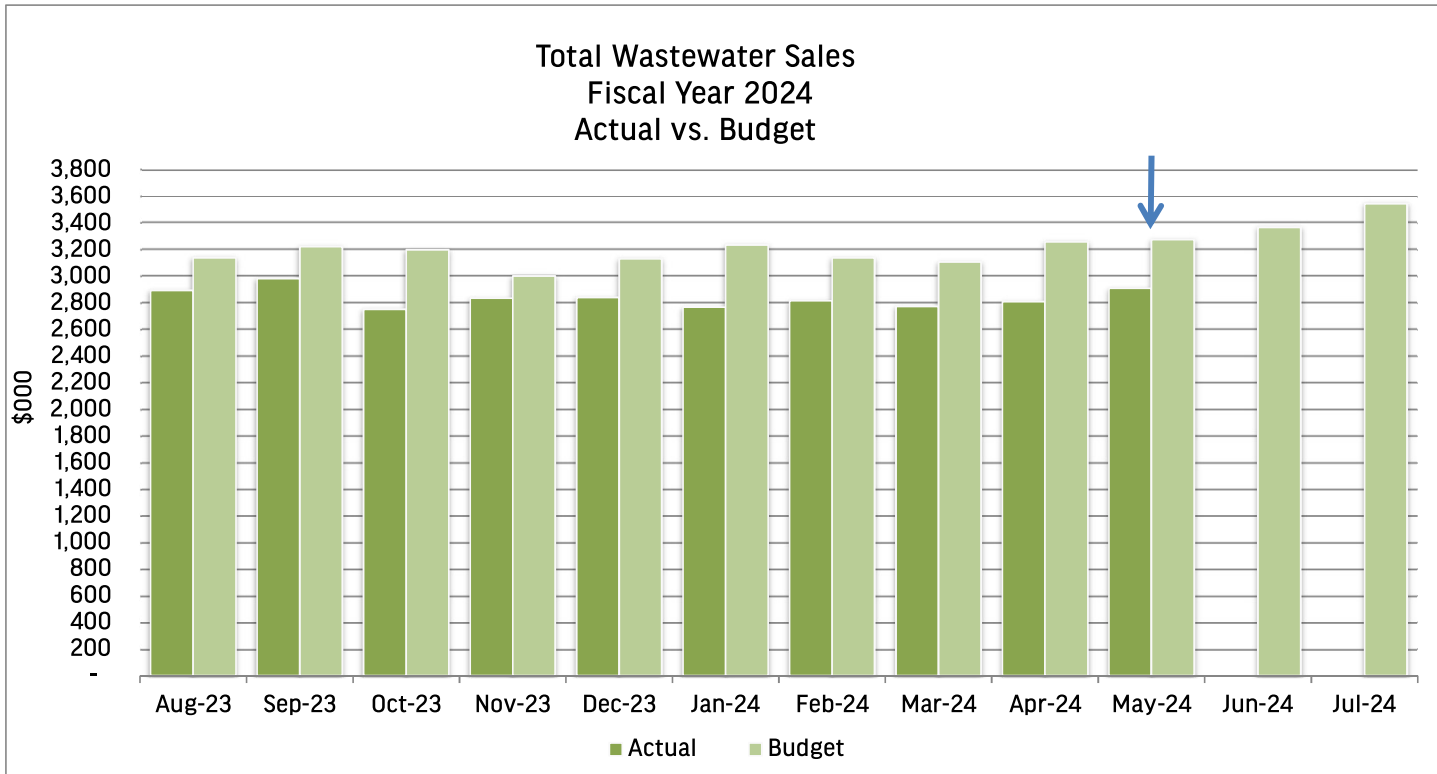
NEW BRAUNFELS UTILITIES
Water Volume per Meter (Gallons)
For Month Ending May 31, 2024

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD | |
|-------------------------------|-----------|-----------|-----------|-----------|---------|---------|-----------|---------|-----------|---------|-------------|-----------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | ACT | AVG |
| Residential | | | | | | | | | | | | |
| Actuals | 8,033 | 7,511 | 5,704 | 4,790 | 4,469 | 4,198 | 4,209 | 4,295 | 4,378 | 4,583 | 52,170 | 5,217 |
| Budget | 7,834 | 6,644 | 5,774 | 4,863 | 4,791 | 4,798 | 4,474 | 4,432 | 5,302 | 5,209 | 54,122 | 5,412 |
| Prior Year | 7,600 | 6,115 | 6,016 | 4,791 | 4,187 | 5,045 | 4,278 | 4,184 | 5,070 | 4,249 | 51,534 | 5,153 |
| Multi-Unit 2-4 | | | | | | | | | | | | |
| Actuals | 10,778 | 10,472 | 8,444 | 6,826 | 6,181 | 6,348 | 6,992 | 6,019 | 6,340 | 7,273 | 75,672 | 7,567 |
| Budget | 10,258 | 9,714 | 8,187 | 7,365 | 7,223 | 7,683 | 6,787 | 6,379 | 7,312 | 7,636 | 78,545 | 7,855 |
| Prior Year | 10,846 | 8,666 | 8,245 | 7,059 | 7,458 | 9,527 | 8,323 | 7,280 | 8,564 | 6,418 | 82,386 | 8,239 |
| Multi-Unit 5+ | | | | | | | | | | | | |
| Actuals | 103,570 | 101,888 | 83,235 | 90,885 | 102,907 | 93,513 | 101,163 | 96,852 | 89,987 | 93,356 | 957,357 | 95,736 |
| Budget | 97,504 | 97,976 | 92,253 | 86,400 | 86,426 | 88,050 | 87,340 | 83,159 | 86,970 | 87,871 | 893,950 | 89,395 |
| Prior Year | 98,973 | 102,130 | 89,290 | 87,495 | 86,215 | 106,721 | 96,454 | 80,769 | 90,300 | 81,060 | 919,408 | 91,941 |
| Residential Irrigation | | | | | | | | | | | | |
| Actuals | 7,420 | 6,980 | 5,221 | 3,485 | 2,392 | 1,592 | 911 | 2,252 | 2,746 | 2,914 | 35,915 | 3,592 |
| Budget | 7,729 | 6,732 | 4,988 | 3,472 | 2,947 | 2,089 | 1,830 | 2,183 | 4,309 | 4,340 | 40,619 | 4,062 |
| Prior Year | 6,028 | 4,589 | 4,779 | 3,312 | 1,977 | 1,744 | 1,429 | 2,195 | 2,878 | 2,326 | 31,257 | 3,126 |
| Commercial Irrigation | | | | | | | | | | | | |
| Actuals | 44,340 | 50,541 | 39,607 | 27,352 | 20,363 | 12,775 | 6,293 | 11,579 | 17,061 | 21,449 | 251,360 | 25,136 |
| Budget | 36,995 | 37,302 | 27,689 | 22,053 | 18,594 | 15,217 | 12,411 | 12,956 | 20,668 | 22,785 | 226,670 | 22,667 |
| Prior Year | 39,935 | 36,569 | 33,120 | 25,585 | 17,514 | 9,917 | 9,872 | 11,011 | 18,204 | 16,345 | 218,070 | 21,807 |
| SGS | | | | | | | | | | | | |
| Actuals | 36,544 | 15,813 | 13,993 | 13,719 | 12,795 | 11,462 | 11,834 | 12,206 | 12,234 | 12,315 | 152,914 | 15,291 |
| Budget | 14,002 | 13,108 | 11,520 | 12,285 | 12,568 | 10,260 | 11,966 | 12,468 | 10,767 | 13,739 | 122,682 | 12,268 |
| Prior Year | 32,848 | 32,928 | 29,143 | 24,650 | 24,183 | 28,372 | 24,934 | 23,248 | 28,735 | 24,522 | 273,563 | 27,356 |
| LGS | | | | | | | | | | | | |
| Actuals | - | 244,280 | 126,898 | 161,553 | 145,531 | 143,028 | 147,635 | 149,344 | 160,063 | 179,730 | 1,458,063 | 145,806 |
| Budget | 384,494 | 333,589 | 290,703 | 255,251 | 236,757 | 267,172 | 247,847 | 233,279 | 299,229 | 253,559 | 2,801,880 | 280,188 |
| Prior Year | - | - | - | - | - | - | - | - | - | - | - | - |
| Other Sales | | | | | | | | | | | | |
| Actuals | 135,535 | 113,243 | 63,516 | 26,077 | 38,879 | 20,822 | 26,701 | 56,332 | 41,725 | 38,172 | 561,001 | 56,100 |
| Budget | 52,714 | 47,203 | 14,487 | 8,721 | 2,028 | 9,391 | 17,809 | 20,998 | 26,162 | 2,342 | 201,853 | 20,185 |
| Prior Year | 155,578 | 84,113 | 90,999 | 49,279 | 21,957 | 33,408 | 25,567 | 46,562 | 49,601 | 34,767 | 591,831 | 59,183 |
| ReUse Water | | | | | | | | | | | | |
| Actuals | 4,312,900 | 1,955,900 | 1,821,400 | - | - | - | - | 466,049 | 1,232,407 | - | 9,788,656 | 978,866 |
| Budget | 613,050 | (292,400) | 117,738 | 177,998 | 442,163 | 235,575 | 84,025 | 219,800 | 70,149 | - | 1,668,097 | 166,810 |
| Prior Year | 5,486,000 | 267,200 | 5,113,000 | 2,946,800 | 285,200 | 470,300 | 1,369,400 | 762,700 | 1,138,300 | - | 17,838,900 | 1,783,890 |

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

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | AVG |
| Residential | | | | | | | | | | | |
| Actuals | \$ 0.0064 | \$ 0.0089 | \$ 0.0085 | \$ 0.0082 | \$ 0.0081 | \$ 0.0080 | \$ 0.0080 | \$ 0.0080 | \$ 0.0081 | \$ 0.0082 | \$ 0.0080 |
| Budget | \$ 0.0060 | \$ 0.0074 | \$ 0.0068 | \$ 0.0072 | \$ 0.0082 | \$ 0.0079 | \$ 0.0080 | \$ 0.0082 | \$ 0.0080 | \$ 0.0081 | \$ 0.0076 |
| Prior Year | \$ 0.0054 | \$ 0.0067 | \$ 0.0061 | \$ 0.0065 | \$ 0.0066 | \$ 0.0062 | \$ 0.0065 | \$ 0.0066 | \$ 0.0063 | \$ 0.0066 | \$ 0.0064 |
| Multi-Unit 2-4 | | | | | | | | | | | |
| Actuals | \$ 0.0089 | \$ 0.0090 | \$ 0.0097 | \$ 0.0108 | \$ 0.0113 | \$ 0.0112 | \$ 0.0107 | \$ 0.0115 | \$ 0.0112 | \$ 0.0104 | \$ 0.0105 |
| Budget | \$ 0.0094 | \$ 0.0110 | \$ 0.0109 | \$ 0.0114 | \$ 0.0122 | \$ 0.0121 | \$ 0.0129 | \$ 0.0130 | \$ 0.0124 | \$ 0.0119 | \$ 0.0117 |
| Prior Year | \$ 0.0085 | \$ 0.0099 | \$ 0.0098 | \$ 0.0103 | \$ 0.0107 | \$ 0.0090 | \$ 0.0095 | \$ 0.0101 | \$ 0.0094 | \$ 0.0107 | \$ 0.0098 |
| Multi-Unit 5+ | | | | | | | | | | | |
| Actuals | \$ 0.0096 | \$ 0.0094 | \$ 0.0103 | \$ 0.0098 | \$ 0.0094 | \$ 0.0100 | \$ 0.0097 | \$ 0.0098 | \$ 0.0103 | \$ 0.0100 | \$ 0.0098 |
| Budget | \$ 0.0105 | \$ 0.0109 | \$ 0.0115 | \$ 0.0111 | \$ 0.0124 | \$ 0.0122 | \$ 0.0121 | \$ 0.0126 | \$ 0.0127 | \$ 0.0127 | \$ 0.0119 |
| Prior Year | \$ 0.0095 | \$ 0.0098 | \$ 0.0104 | \$ 0.0100 | \$ 0.0099 | \$ 0.0092 | \$ 0.0095 | \$ 0.0104 | \$ 0.0098 | \$ 0.0105 | \$ 0.0099 |
| Residential Irrigation | | | | | | | | | | | |
| Actuals | \$ 0.0113 | \$ 0.0117 | \$ 0.0123 | \$ 0.0137 | \$ 0.0157 | \$ 0.0190 | \$ 0.0265 | \$ 0.0161 | \$ 0.0148 | \$ 0.0145 | \$ 0.0155 |
| Budget | \$ 0.0129 | \$ 0.0144 | \$ 0.0131 | \$ 0.0137 | \$ 0.0158 | \$ 0.0172 | \$ 0.0202 | \$ 0.0178 | \$ 0.0141 | \$ 0.0140 | \$ 0.0153 |
| Prior Year | \$ 0.0116 | \$ 0.0130 | \$ 0.0118 | \$ 0.0123 | \$ 0.0147 | \$ 0.0154 | \$ 0.0169 | \$ 0.0140 | \$ 0.0129 | \$ 0.0138 | \$ 0.0136 |
| Commercial Irrigation | | | | | | | | | | | |
| Actuals | \$ 0.0122 | \$ 0.0120 | \$ 0.0121 | \$ 0.0122 | \$ 0.0123 | \$ 0.0127 | \$ 0.0142 | \$ 0.0129 | \$ 0.0125 | \$ 0.0124 | \$ 0.0126 |
| Budget | \$ 0.0133 | \$ 0.0146 | \$ 0.0130 | \$ 0.0123 | \$ 0.0137 | \$ 0.0139 | \$ 0.0141 | \$ 0.0141 | \$ 0.0140 | \$ 0.0138 | \$ 0.0137 |
| Prior Year | \$ 0.0120 | \$ 0.0131 | \$ 0.0117 | \$ 0.0111 | \$ 0.0111 | \$ 0.0112 | \$ 0.0116 | \$ 0.0116 | \$ 0.0112 | \$ 0.0112 | \$ 0.0116 |
| SGS | | | | | | | | | | | |
| Actuals | \$ 0.0087 | \$ 0.0095 | \$ 0.0097 | \$ 0.0098 | \$ 0.0100 | \$ 0.0102 | \$ 0.0099 | \$ 0.0100 | \$ 0.0099 | \$ 0.0099 | \$ 0.0097 |
| Budget | \$ 0.0137 | \$ 0.0131 | \$ 0.0111 | \$ 0.0100 | \$ 0.0124 | \$ 0.0135 | \$ 0.0127 | \$ 0.0125 | \$ 0.0130 | \$ 0.0120 | \$ 0.0124 |
| Prior Year | \$ 0.0079 | \$ 0.0086 | \$ 0.0080 | \$ 0.0077 | \$ 0.0078 | \$ 0.0076 | \$ 0.0078 | \$ 0.0078 | \$ 0.0077 | \$ 0.0078 | \$ 0.0079 |
| LGS | | | | | | | | | | | |
| Actuals | \$ - | \$ 0.0060 | \$ 0.0077 | \$ 0.0068 | \$ 0.0067 | \$ 0.0069 | \$ 0.0068 | \$ 0.0067 | \$ 0.0067 | \$ 0.0066 | \$ 0.0061 |
| Budget | \$ 0.0057 | \$ 0.0073 | \$ 0.0074 | \$ 0.0073 | \$ 0.0072 | \$ 0.0071 | \$ 0.0072 | \$ 0.0072 | \$ 0.0072 | \$ 0.0072 | \$ 0.0071 |
| Prior Year | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Other Sales | | | | | | | | | | | |
| Actuals | \$ 0.0121 | \$ 0.0124 | \$ 0.0143 | \$ 0.0208 | \$ 0.0174 | \$ 0.0239 | \$ 0.0206 | \$ 0.0149 | \$ 0.0166 | \$ 0.0174 | \$ 0.0170 |
| Budget | \$ 0.0139 | \$ 0.0155 | \$ 0.0134 | \$ 0.0153 | \$ 0.0181 | \$ 0.0191 | \$ 0.0214 | \$ 0.0191 | \$ 0.0178 | \$ 0.0165 | \$ 0.0170 |
| Prior Year | \$ 0.0125 | \$ 0.0140 | \$ 0.0121 | \$ 0.0138 | \$ 0.0185 | \$ 0.0157 | \$ 0.0174 | \$ 0.0139 | \$ 0.0137 | \$ 0.0154 | \$ 0.0147 |
| ReUse Water | | | | | | | | | | | |
| Actuals | \$ 0.0029 | \$ 0.0001 | \$ 0.0001 | \$ - | \$ - | \$ - | \$ - | \$ 0.0059 | \$ 0.0059 | \$ - | \$ 0.0015 |
| Budget | \$ 0.0051 | \$ 0.0045 | \$ 0.0054 | \$ 0.0053 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 0.0020 |
| Prior Year | \$ 0.0046 | \$ 0.0040 | \$ 0.0049 | \$ 0.0048 | \$ 0.0041 | \$ 0.0044 | \$ 0.0047 | \$ 0.0046 | \$ 0.0047 | \$ - | \$ 0.0041 |

WASTEWATER STATISTICS



| Month | Total Wastewater Sales (\$000) | |
|--------------|--------------------------------|------------------|
| | Actual | Budget |
| Aug-23 | \$ 2,896 | \$ 3,143 |
| Sep-23 | \$ 2,985 | \$ 3,224 |
| Oct-23 | \$ 2,755 | \$ 3,201 |
| Nov-23 | \$ 2,838 | \$ 3,005 |
| Dec-23 | \$ 2,845 | \$ 3,134 |
| Jan-24 | \$ 2,770 | \$ 3,238 |
| Feb-24 | \$ 2,818 | \$ 3,140 |
| Mar-24 | \$ 2,775 | \$ 3,111 |
| Apr-24 | \$ 2,811 | \$ 3,260 |
| May-24 | \$ 2,911 | \$ 3,279 |
| Jun-24 | \$ - | \$ 3,370 |
| Jul-24 | \$ - | \$ 3,549 |
| TOTAL | \$ 28,406 | \$ 38,653 |

| Customer Count | FY 2022 | % Change 2022-2023 | FY 2023 | % Change 2023-2024 | FY 2024 |
|----------------|---------------|--------------------|---------------|--------------------|---------------|
| Residential | 30,998 | 2.37% | 31,733 | 5.47% | 33,469 |
| Other | 2,556 | 0.59% | 2,571 | 3.73% | 2,667 |
| TOTAL | 33,554 | 2.24% | 34,304 | 5.34% | 36,136 |

WASTEWATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Wastewater Revenue
For Month Ending May 31, 2024

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD | |
|-----------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|--------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | ACT | AVG |
| Residential | | | | | | | | | | | | |
| Actuals | \$ 1,620,385 | \$ 1,780,256 | \$ 1,690,795 | \$ 1,737,263 | \$ 1,758,843 | \$ 1,732,442 | \$ 1,739,432 | \$ 1,718,326 | \$ 1,726,642 | \$ 1,768,497 | \$ 17,272,880 | \$ 1,727,288 |
| Budget | \$ 1,877,005 | \$ 1,952,128 | \$ 1,949,215 | \$ 1,872,739 | \$ 1,976,311 | \$ 2,036,536 | \$ 1,986,258 | \$ 1,949,832 | \$ 2,012,386 | \$ 2,020,816 | \$ 19,633,225 | \$ 1,963,323 |
| Prior Year | \$ 1,431,988 | \$ 1,602,167 | \$ 1,517,326 | \$ 1,513,842 | \$ 1,516,902 | \$ 1,594,334 | \$ 1,541,595 | \$ 1,489,397 | \$ 1,595,886 | \$ 1,501,037 | \$ 15,304,473 | \$ 1,530,447 |
| Multi-Unit 2-4 | | | | | | | | | | | | |
| Actuals | \$ 14,354 | \$ 16,278 | \$ 15,918 | \$ 16,127 | \$ 16,106 | \$ 15,819 | \$ 15,767 | \$ 15,496 | \$ 15,387 | \$ 15,704 | \$ 156,956 | \$ 15,696 |
| Budget | \$ 15,982 | \$ 16,707 | \$ 16,656 | \$ 15,857 | \$ 16,392 | \$ 16,876 | \$ 16,643 | \$ 16,260 | \$ 17,527 | \$ 17,100 | \$ 166,000 | \$ 16,600 |
| Prior Year | \$ 12,873 | \$ 14,215 | \$ 13,595 | \$ 13,583 | \$ 13,704 | \$ 14,466 | \$ 13,990 | \$ 13,418 | \$ 14,418 | \$ 13,538 | \$ 137,799 | \$ 13,780 |
| Multi-Unit 5+ | | | | | | | | | | | | |
| Actuals | \$ 362,783 | \$ 369,364 | \$ 327,198 | \$ 343,852 | \$ 349,655 | \$ 349,101 | \$ 367,256 | \$ 344,244 | \$ 338,402 | \$ 352,669 | \$ 3,504,525 | \$ 350,453 |
| Budget | \$ 387,068 | \$ 401,507 | \$ 399,515 | \$ 372,282 | \$ 397,709 | \$ 411,152 | \$ 404,255 | \$ 389,172 | \$ 404,391 | \$ 411,324 | \$ 3,978,375 | \$ 397,837 |
| Prior Year | \$ 324,197 | \$ 352,643 | \$ 334,562 | \$ 322,131 | \$ 318,915 | \$ 360,340 | \$ 334,996 | \$ 310,016 | \$ 325,846 | \$ 312,742 | \$ 3,296,388 | \$ 329,639 |
| SGS | | | | | | | | | | | | |
| Actuals | \$ 897,364 | \$ 818,036 | \$ 720,079 | \$ 739,767 | \$ 718,962 | \$ 671,740 | \$ 694,327 | \$ 696,069 | \$ 729,560 | \$ 772,851 | \$ 7,458,755 | \$ 745,876 |
| Budget | \$ 861,177 | \$ 851,972 | \$ 833,952 | \$ 741,792 | \$ 741,660 | \$ 771,065 | \$ 730,594 | \$ 753,402 | \$ 823,837 | \$ 827,305 | \$ 7,936,755 | \$ 793,676 |
| Prior Year | \$ 720,511 | \$ 787,794 | \$ 743,962 | \$ 649,301 | \$ 662,503 | \$ 740,317 | \$ 672,769 | \$ 629,555 | \$ 741,030 | \$ 651,870 | \$ 6,999,611 | \$ 699,961 |
| Schertz Sewer | | | | | | | | | | | | |
| Actuals | \$ 1,307 | \$ 1,320 | \$ 1,296 | \$ 1,313 | \$ 1,213 | \$ 1,311 | \$ 1,407 | \$ 1,192 | \$ 1,449 | \$ 1,543 | \$ 13,351 | \$ 1,335 |
| Budget | \$ 1,902 | \$ 1,867 | \$ 1,902 | \$ 1,865 | \$ 1,853 | \$ 2,085 | \$ 2,178 | \$ 1,877 | \$ 2,082 | \$ 2,112 | \$ 19,722 | \$ 1,972 |
| Prior Year | \$ 1,476 | \$ 1,282 | \$ 1,310 | \$ 1,306 | \$ 1,194 | \$ 1,269 | \$ 1,425 | \$ 1,178 | \$ 1,251 | \$ 1,272 | \$ 12,963 | \$ 1,296 |
| Total Sales | | | | | | | | | | | | |
| Actuals | \$ 2,896,192 | \$ 2,985,254 | \$ 2,755,286 | \$ 2,838,322 | \$ 2,844,779 | \$ 2,770,413 | \$ 2,818,188 | \$ 2,775,328 | \$ 2,811,440 | \$ 2,911,265 | \$ 28,406,468 | \$ 2,840,647 |
| Budget | \$ 3,143,133 | \$ 3,224,180 | \$ 3,201,239 | \$ 3,004,535 | \$ 3,133,925 | \$ 3,237,713 | \$ 3,139,928 | \$ 3,110,543 | \$ 3,260,223 | \$ 3,278,657 | \$ 31,734,077 | \$ 3,173,408 |
| Prior Year | \$ 2,491,044 | \$ 2,758,100 | \$ 2,610,754 | \$ 2,500,162 | \$ 2,513,218 | \$ 2,710,727 | \$ 2,564,775 | \$ 2,443,564 | \$ 2,678,431 | \$ 2,480,459 | \$ 25,751,234 | \$ 2,575,123 |

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

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD | |
|-----------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|--------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | ACT | AVG |
| Residential | | | | | | | | | | | | |
| Actuals | \$ 1,620,385 | \$ 1,780,256 | \$ 1,690,795 | \$ 1,737,263 | \$ 1,758,843 | \$ 1,732,442 | \$ 1,739,432 | \$ 1,718,326 | \$ 1,726,642 | \$ 1,768,497 | \$ 17,272,880 | \$ 1,727,288 |
| Actual vs Budget | \$ (256,620) | \$ (171,872) | \$ (258,420) | \$ (135,477) | \$ (217,468) | \$ (304,094) | \$ (246,826) | \$ (231,506) | \$ (285,744) | \$ (252,318) | \$ (2,360,345) | \$ (236,035) |
| Actual vs Prior Year | \$ 188,397 | \$ 178,089 | \$ 173,470 | \$ 223,421 | \$ 241,941 | \$ 138,108 | \$ 197,837 | \$ 228,929 | \$ 130,756 | \$ 267,461 | \$ 1,968,408 | \$ 196,841 |
| Multi-Unit 2-4 | | | | | | | | | | | | |
| Actuals | \$ 14,354 | \$ 16,278 | \$ 15,918 | \$ 16,127 | \$ 16,106 | \$ 15,819 | \$ 15,767 | \$ 15,496 | \$ 15,387 | \$ 15,704 | \$ 156,956 | \$ 15,696 |
| Actual vs Budget | \$ (1,628) | \$ (430) | \$ (738) | \$ 270 | \$ (286) | \$ (1,056) | \$ (876) | \$ (764) | \$ (2,139) | \$ (1,396) | \$ (9,044) | \$ (904) |
| Actual vs Prior Year | \$ 1,481 | \$ 2,063 | \$ 2,323 | \$ 2,544 | \$ 2,402 | \$ 1,353 | \$ 1,776 | \$ 2,078 | \$ 969 | \$ 2,167 | \$ 19,157 | \$ 1,916 |
| Multi-Unit 5+ | | | | | | | | | | | | |
| Actuals | \$ 362,783 | \$ 369,364 | \$ 327,198 | \$ 343,852 | \$ 349,655 | \$ 349,101 | \$ 367,256 | \$ 344,244 | \$ 338,402 | \$ 352,669 | \$ 3,504,525 | \$ 350,453 |
| Actual vs Budget | \$ (24,285) | \$ (32,143) | \$ (72,316) | \$ (28,430) | \$ (48,054) | \$ (62,050) | \$ (37,000) | \$ (44,928) | \$ (65,989) | \$ (58,655) | \$ (473,849) | \$ (47,385) |
| Actual vs Prior Year | \$ 38,586 | \$ 16,721 | \$ (7,364) | \$ 21,721 | \$ 30,740 | \$ (11,239) | \$ 32,260 | \$ 34,228 | \$ 12,556 | \$ 39,927 | \$ 208,138 | \$ 20,814 |
| SGS | | | | | | | | | | | | |
| Actuals | \$ 897,364 | \$ 818,036 | \$ 720,079 | \$ 739,767 | \$ 718,962 | \$ 671,740 | \$ 694,327 | \$ 696,069 | \$ 729,560 | \$ 772,851 | \$ 7,458,755 | \$ 745,876 |
| Actual vs Budget | \$ 36,188 | \$ (33,935) | \$ (113,873) | \$ (2,025) | \$ (22,698) | \$ (99,326) | \$ (36,267) | \$ (57,332) | \$ (94,277) | \$ (54,454) | \$ (478,000) | \$ (47,800) |
| Actual vs Prior Year | \$ 176,854 | \$ 30,242 | \$ (23,883) | \$ 90,466 | \$ 56,459 | \$ (68,578) | \$ 21,558 | \$ 66,515 | \$ (11,470) | \$ 120,981 | \$ 459,144 | \$ 45,914 |
| Schertz Sewer | | | | | | | | | | | | |
| Actuals | \$ 1,307 | \$ 1,320 | \$ 1,296 | \$ 1,313 | \$ 1,213 | \$ 1,311 | \$ 1,407 | \$ 1,192 | \$ 1,449 | \$ 1,543 | \$ 13,351 | \$ 1,335 |
| Actual vs Budget | \$ (595) | \$ (547) | \$ (606) | \$ (552) | \$ (640) | \$ (774) | \$ (771) | \$ (685) | \$ (633) | \$ (569) | \$ (6,371) | \$ (637) |
| Actual vs Prior Year | \$ (169) | \$ 38 | \$ (14) | \$ 7 | \$ 19 | \$ 41 | \$ (18) | \$ 14 | \$ 198 | \$ 271 | \$ 388 | \$ 39 |
| Total Sales | | | | | | | | | | | | |
| Actuals | \$ 2,896,192 | \$ 2,985,254 | \$ 2,755,286 | \$ 2,838,322 | \$ 2,844,779 | \$ 2,770,413 | \$ 2,818,188 | \$ 2,775,328 | \$ 2,811,440 | \$ 2,911,265 | \$ 28,406,468 | \$ 2,840,647 |
| Actual vs Budget | \$ (246,941) | \$ (238,926) | \$ (445,953) | \$ (166,214) | \$ (289,145) | \$ (467,300) | \$ (321,740) | \$ (335,215) | \$ (448,783) | \$ (367,392) | \$ (3,327,609) | \$ (332,761) |
| Actual vs Prior Year | \$ 405,148 | \$ 227,154 | \$ 144,532 | \$ 338,159 | \$ 331,561 | \$ 59,686 | \$ 253,414 | \$ 331,764 | \$ 133,009 | \$ 430,806 | \$ 2,655,234 | \$ 265,523 |

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

| DESCRIPTION | 2023 AUG | 2023 SEP | 2023 OCT | 2023 NOV | 2023 DEC | 2024 JAN | 2024 FEB | 2024 MAR | 2024 APR | 2024 MAY | FY 2024 YTD | |
|-----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------|-------------|
| | | | | | | | | | | | ACT | AVG |
| Residential | | | | | | | | | | | | |
| Actuals | 104,591,818 | 110,400,361 | 98,017,580 | 104,695,640 | 106,901,538 | 102,505,493 | 103,123,767 | 100,389,112 | 99,651,088 | 105,063,485 | 1,035,339,885 | 103,533,989 |
| Prior Year | 105,945,683 | 113,046,276 | 100,144,142 | 99,574,341 | 99,394,434 | 165,422,006 | 103,083,536 | 95,079,883 | 112,004,672 | 96,091,872 | 1,089,786,845 | 108,978,685 |
| Multi-Unit 2-4 | | | | | | | | | | | | |
| Actuals | 835,859 | 859,259 | 803,385 | 849,140 | 838,636 | 814,487 | 800,547 | 771,054 | 756,820 | 807,749 | 8,136,936 | 813,694 |
| Prior Year | 834,405 | 876,991 | 783,357 | 774,377 | 790,783 | 904,980 | 832,938 | 758,277 | 902,042 | 776,317 | 8,234,467 | 823,447 |
| Multi-Unit 5+ | | | | | | | | | | | | |
| Actuals | 26,464,494 | 26,498,569 | 21,294,621 | 23,400,792 | 23,794,355 | 23,835,720 | 25,905,743 | 23,228,453 | 22,304,354 | 23,818,525 | 240,545,626 | 24,054,563 |
| Prior Year | 25,753,140 | 28,032,246 | 23,907,336 | 22,819,107 | 22,650,042 | 27,891,169 | 24,467,609 | 20,651,634 | 22,916,972 | 20,798,039 | 239,887,294 | 23,988,729 |
| SGS | | | | | | | | | | | | |
| Actuals | 147,287,980 | 131,416,134 | 111,637,606 | 114,268,301 | 111,907,830 | 102,975,607 | 107,558,109 | 108,463,284 | 115,704,856 | 125,955,294 | 1,177,175,005 | 117,717,500 |
| Prior Year | 130,005,417 | 129,722,018 | 125,164,836 | 97,417,889 | 104,504,690 | 119,839,409 | 108,336,432 | 99,625,140 | 121,947,383 | 104,364,672 | 1,140,927,889 | 114,092,789 |
| Schertz Sewer | | | | | | | | | | | | |
| Actuals | 433,200 | 437,700 | 429,500 | 435,300 | 402,200 | 434,500 | 466,400 | 395,200 | 429,100 | 422,500 | 4,285,600 | 428,560 |
| Prior Year | 145,500 | 141,667 | 144,733 | 144,333 | 131,933 | 140,267 | 157,433 | 130,133 | 138,233 | 140,600 | 1,414,833 | 141,483 |
| Total Sales | | | | | | | | | | | | |
| Actuals | 279,613,351 | 269,612,023 | 232,182,693 | 243,649,174 | 243,844,560 | 230,565,808 | 237,854,567 | 233,247,104 | 238,846,219 | 256,067,554 | 2,465,483,052 | 246,548,305 |
| Prior Year | 262,684,145 | 271,819,198 | 250,144,405 | 220,730,048 | 227,471,883 | 314,197,831 | 236,877,949 | 216,245,068 | 257,909,303 | 222,171,500 | 2,480,251,329 | 248,025,133 |

NEW BRAUNFELS UTILITIES
Wastewater Customers
For Month Ending May 31, 2024

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD |
|------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | AVG |
| Residential | | | | | | | | | | | |
| Actuals | 32,187 | 32,472 | 32,558 | 32,545 | 32,691 | 32,878 | 32,947 | 33,120 | 33,338 | 33,469 | 32,821 |
| Budget | 34,071 | 34,211 | 34,352 | 34,494 | 34,636 | 34,779 | 34,922 | 35,066 | 35,211 | 35,356 | 34,710 |
| Prior Year | 31,424 | 31,569 | 31,602 | 31,627 | 31,697 | 31,757 | 31,772 | 31,793 | 31,703 | 31,733 | 31,668 |
| Multi-Unit 2-4 | | | | | | | | | | | |
| Actuals | 173 | 186 | 189 | 188 | 188 | 187 | 187 | 186 | 187 | 186 | 186 |
| Budget | 182 | 182 | 182 | 182 | 182 | 182 | 182 | 182 | 182 | 182 | 182 |
| Prior Year | 174 | 174 | 173 | 174 | 175 | 175 | 174 | 172 | 173 | 172 | 174 |
| Multi-Unit 5+ | | | | | | | | | | | |
| Actuals | 261 | 268 | 269 | 269 | 270 | 270 | 270 | 270 | 270 | 278 | 270 |
| Budget | 260 | 261 | 263 | 265 | 267 | 268 | 270 | 272 | 274 | 275 | 268 |
| Prior Year | 256 | 257 | 259 | 258 | 258 | 258 | 258 | 258 | 256 | 258 | 258 |
| SGS | | | | | | | | | | | |
| Actuals | 2,158 | 2,167 | 2,168 | 2,167 | 2,185 | 2,191 | 2,190 | 2,192 | 2,202 | 2,202 | 2,182 |
| Budget | 2,135 | 2,139 | 2,142 | 2,146 | 2,150 | 2,154 | 2,158 | 2,162 | 2,166 | 2,169 | 2,152 |
| Prior Year | 2,125 | 2,127 | 2,131 | 2,131 | 2,134 | 2,127 | 2,130 | 2,133 | 2,132 | 2,140 | 2,131 |
| Schertz Sewer | | | | | | | | | | | |
| Actuals | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Budget | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Prior Year | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Total Accounts | | | | | | | | | | | |
| Actuals | 34,780 | 35,094 | 35,185 | 35,170 | 35,335 | 35,527 | 35,595 | 35,769 | 35,998 | 36,136 | 35,459 |
| Budget | 36,648 | 36,794 | 36,941 | 37,088 | 37,236 | 37,384 | 37,533 | 37,683 | 37,833 | 37,984 | 37,313 |
| Prior Year | 33,980 | 34,128 | 34,166 | 34,191 | 34,265 | 34,318 | 34,335 | 34,357 | 34,265 | 34,304 | 34,231 |
| New Customers | 85 | 314 | 91 | (15) | 165 | 192 | 68 | 174 | 229 | 138 | 144 |
| New Customer Growth % | 0.2% | 0.9% | 0.3% | 0.0% | 0.5% | 0.5% | 0.2% | 0.5% | 0.7% | 0.4% | 0.4% |

NEW BRAUNFELS UTILITIES
Wastewater Rates (per Customer)
For Month Ending May 31, 2024

| DESCRIPTION | 2023 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 | 2024 | 2024 | 2024 | FY 2024 YTD |
|-----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | AVG |
| Residential | | | | | | | | | | | |
| Actuals | \$ 50.34 | \$ 54.82 | \$ 51.93 | \$ 53.38 | \$ 53.80 | \$ 52.69 | \$ 52.79 | \$ 51.88 | \$ 51.79 | \$ 52.84 | \$ 52.63 |
| Budget | \$ 55.09 | \$ 57.06 | \$ 56.74 | \$ 54.29 | \$ 57.06 | \$ 58.56 | \$ 56.88 | \$ 55.60 | \$ 57.15 | \$ 57.16 | \$ 56.56 |
| Prior Year | \$ 45.57 | \$ 50.75 | \$ 48.01 | \$ 47.87 | \$ 47.86 | \$ 50.20 | \$ 48.52 | \$ 46.85 | \$ 50.34 | \$ 47.30 | \$ 48.33 |
| Multi-Unit 2-4 | | | | | | | | | | | |
| Actuals | \$ 82.97 | \$ 87.52 | \$ 84.22 | \$ 85.78 | \$ 85.67 | \$ 84.60 | \$ 84.31 | \$ 83.31 | \$ 82.29 | \$ 84.43 | \$ 84.51 |
| Budget | \$ 87.80 | \$ 91.78 | \$ 91.48 | \$ 87.08 | \$ 90.01 | \$ 92.65 | \$ 91.36 | \$ 89.25 | \$ 96.19 | \$ 93.84 | \$ 91.15 |
| Prior Year | \$ 73.98 | \$ 81.69 | \$ 78.58 | \$ 78.06 | \$ 78.31 | \$ 82.66 | \$ 80.40 | \$ 78.01 | \$ 83.34 | \$ 78.71 | \$ 79.38 |
| Multi-Unit 5+ | | | | | | | | | | | |
| Actuals | \$ 1,389.97 | \$ 1,378.22 | \$ 1,216.35 | \$ 1,278.26 | \$ 1,295.02 | \$ 1,292.97 | \$ 1,360.21 | \$ 1,274.98 | \$ 1,253.34 | \$ 1,268.59 | \$ 1,300.79 |
| Budget | \$ 1,490.48 | \$ 1,535.99 | \$ 1,518.40 | \$ 1,405.67 | \$ 1,491.88 | \$ 1,532.25 | \$ 1,496.72 | \$ 1,431.48 | \$ 1,477.75 | \$ 1,493.28 | \$ 1,487.39 |
| Prior Year | \$ 1,266.40 | \$ 1,372.15 | \$ 1,291.75 | \$ 1,248.57 | \$ 1,236.11 | \$ 1,396.67 | \$ 1,298.43 | \$ 1,201.61 | \$ 1,272.83 | \$ 1,212.18 | \$ 1,279.67 |
| SGS | | | | | | | | | | | |
| Actuals | \$ 415.83 | \$ 377.50 | \$ 332.14 | \$ 341.38 | \$ 329.04 | \$ 306.59 | \$ 317.04 | \$ 317.55 | \$ 331.32 | \$ 350.98 | \$ 341.94 |
| Budget | \$ 403.40 | \$ 398.37 | \$ 389.25 | \$ 345.61 | \$ 344.93 | \$ 357.97 | \$ 338.57 | \$ 348.52 | \$ 380.42 | \$ 381.34 | \$ 368.84 |
| Prior Year | \$ 339.06 | \$ 370.38 | \$ 349.11 | \$ 304.69 | \$ 310.45 | \$ 348.06 | \$ 315.85 | \$ 295.15 | \$ 347.57 | \$ 304.61 | \$ 328.49 |
| Schertz Sewer | | | | | | | | | | | |
| Actuals | \$ 1,306.75 | \$ 1,320.32 | \$ 1,295.59 | \$ 1,313.08 | \$ 1,213.24 | \$ 1,310.67 | \$ 1,406.90 | \$ 1,192.12 | \$ 1,449.00 | \$ 1,543.18 | \$ 1,335.09 |
| Budget | \$ 1,902.07 | \$ 1,866.97 | \$ 1,901.70 | \$ 1,864.68 | \$ 1,853.06 | \$ 2,084.54 | \$ 2,178.27 | \$ 1,877.19 | \$ 2,081.67 | \$ 2,111.82 | \$ 1,972.20 |
| Prior Year | \$ 1,476.00 | \$ 1,282.01 | \$ 1,309.76 | \$ 1,306.14 | \$ 1,193.93 | \$ 1,269.34 | \$ 1,424.69 | \$ 1,177.64 | \$ 1,250.94 | \$ 1,272.36 | \$ 1,296.28 |

Financial Update



- **May 2024 Financials**

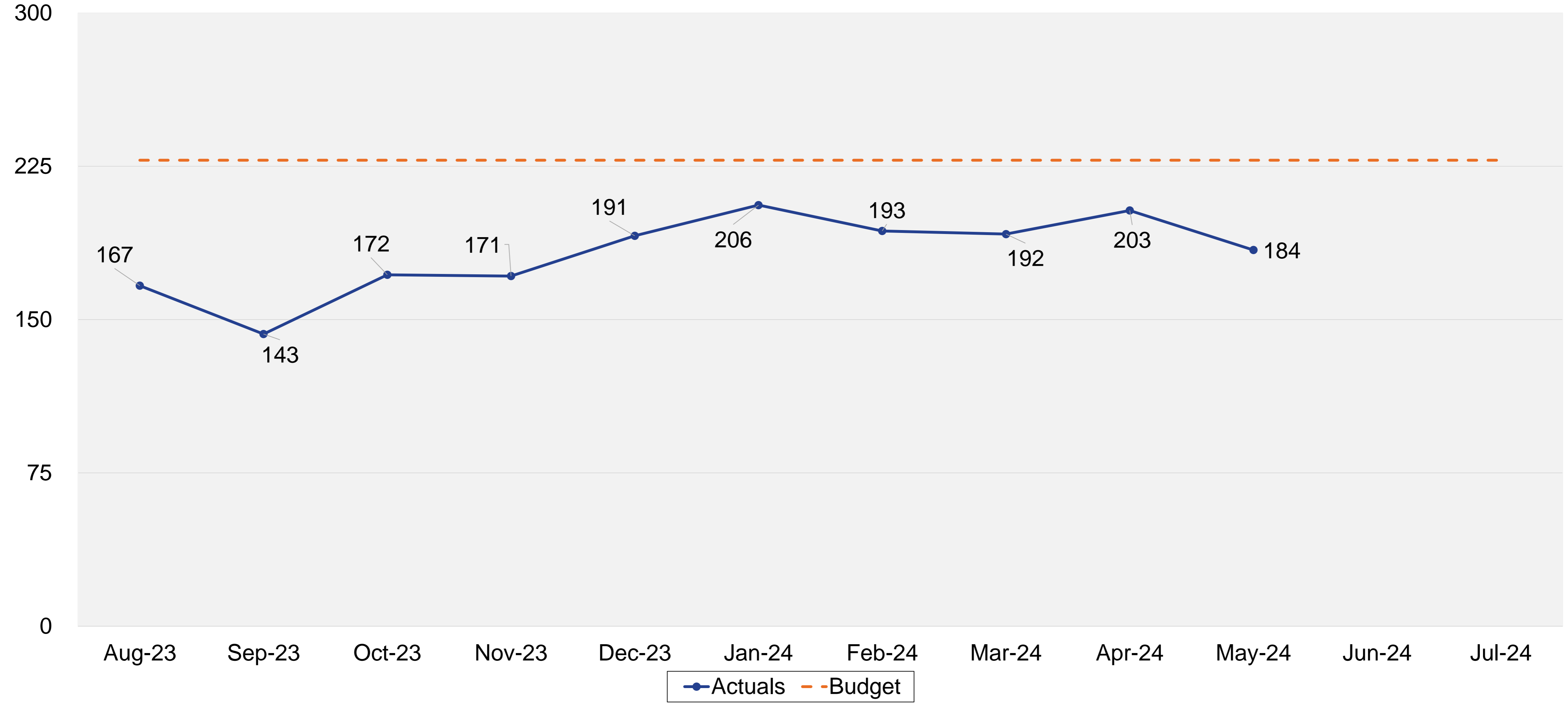
- Kimberly Huffman, Accounting Manager

Board Financial Policy Compliance - May 2024 YTD

| | FY 2023 Actual | FY 2024 Budget | Financial Policy | FY 2024 Actual* |
|--|----------------|----------------|------------------|-----------------|
| Debt to Capitalization (lower is better) | 39.1% | 47.4% | ≤55.0% | 42.2% |
| Debt Service Coverage (higher is better) | 5.05 | 4.28 | ≥2.40 | 4.87 |
| Days Cash on Hand (higher is better) | 214 | 228 | ≥140 | 184 |
| Days Liquidity on Hand (higher is better) | 442 | N/A | N/A | 503 |

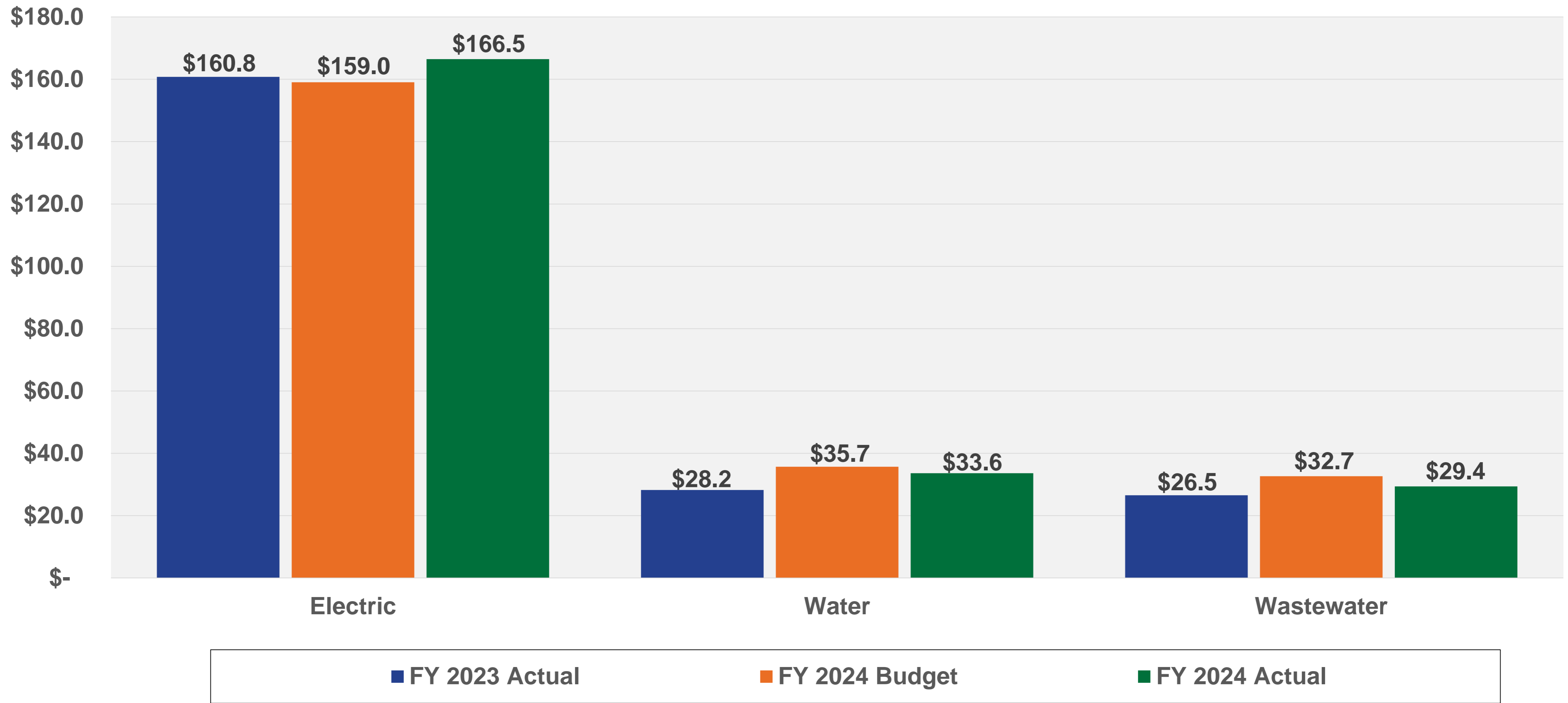
* Amounts are calculated by annualizing the YTD results

Days Cash on Hand - May 2024 YTD



Operating Revenue by LOB

May 2024 YTD – Amounts in Millions



Mission

Strengthening our community by providing resilient essential services



Vision

Be a trusted community partner dedicated to excellence in service



Core Values

Safety, Team, Integrity, Culture, and Stewardship

Operating Expenses – Variance to Budget

- Reviewed two largest variances in each LOB including Support
 - Timing or delay in services provided by outside consultants and impact to invoice payment processing.
 - How Departments cash flow out expenses over the 12-month budget giving their best estimates, assumptions and predictions on when expenses will hit. We are seeing a shift on when expenses will actually hit.
 - Items budgeted, but no longer needed.
 - Payroll related such as unfilled positions remaining open for a longer period of time (some being difficult to fill due to complexity and qualifications), turnover, or salary differences from budget.

Operating Expenses – Largest Variances

Electric- Operations and Power Supply - \$3.5M

- Payroll related due to turnover and time to fill positions, less need for contract tree trimming services (positive results), and Power Supply projects such as Resource Plan and Congestion Software pushed out.

Water – Operations and Treatment and Compliance - \$2.2M

- Payroll related due to turnover and time to fill positions.

Wastewater –Operations and Treatment and Compliance \$1.5M

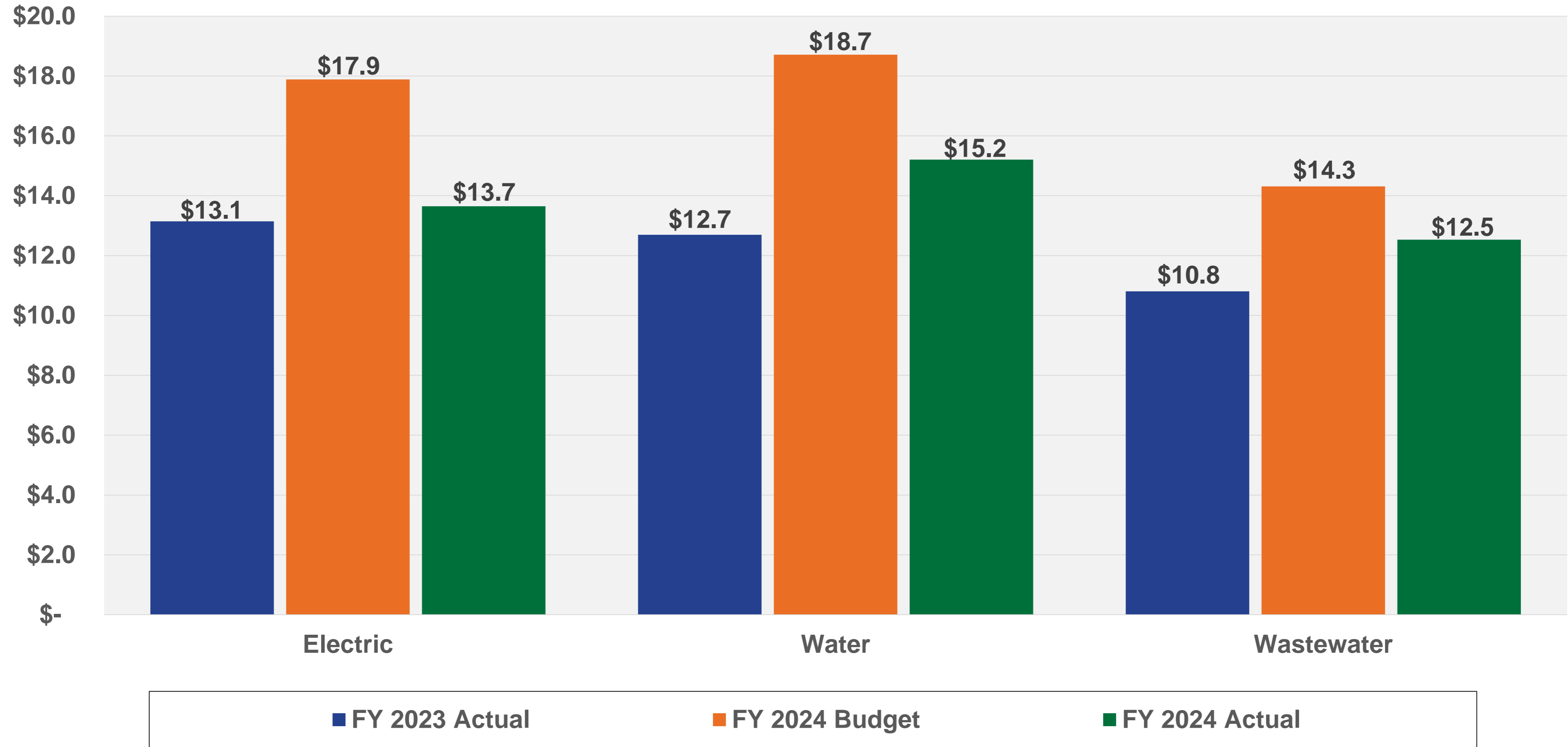
- Payroll related due to turnover and time to fill positions.

Support – Executive and IT - \$2.2M

- Payroll related for Executive services and other support department positions unfilled, and IT related from Microsoft Enterprise Agreement timeline delays and less staff augmentation used.

Operating Expenses* by LOB

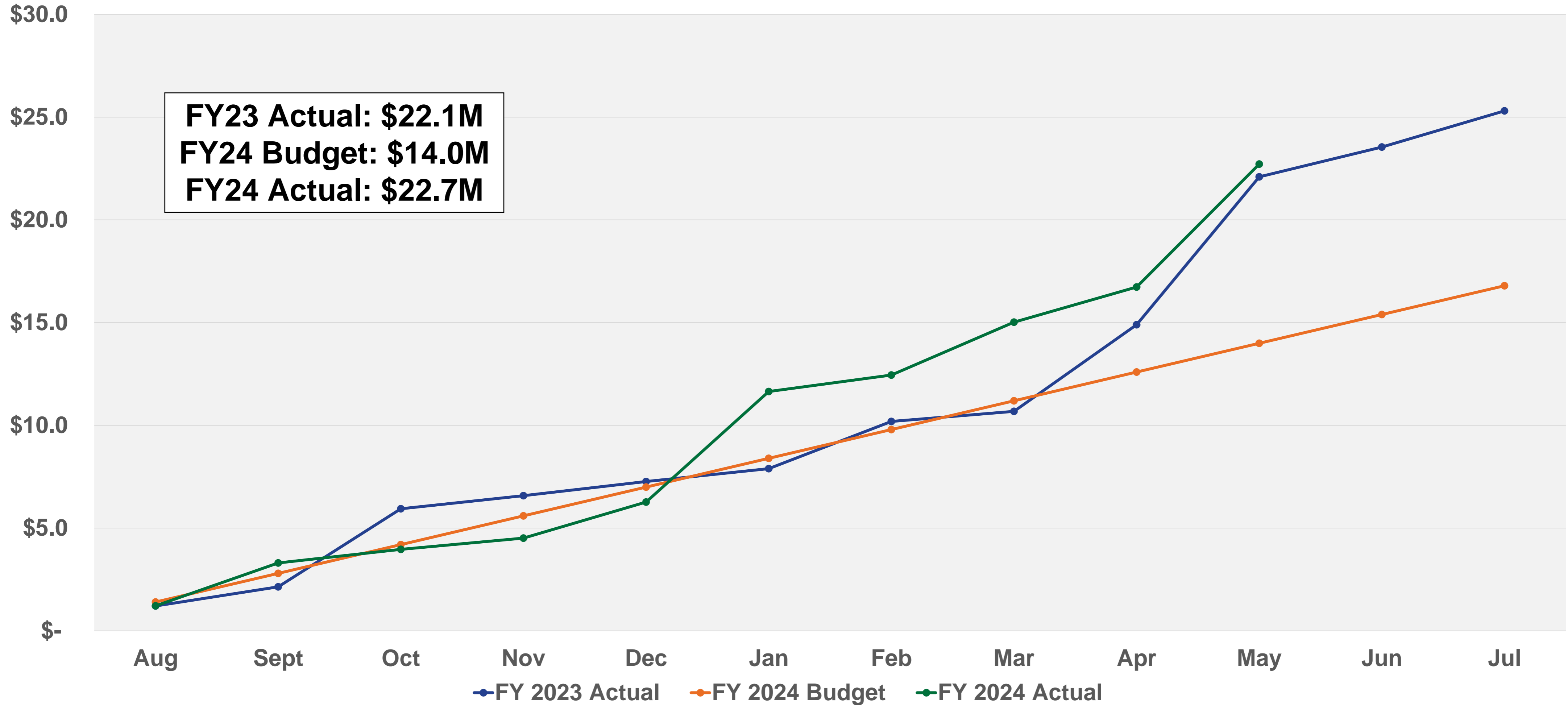
May 2024 YTD – Amounts in Millions



*Excludes purchased power, purchased water, and depreciation expense

Impact Fees

May 2024 YTD – Amounts in Millions*



* Amounts shown are YTD for each month

Mission

Strengthening our community by providing resilient essential services



Vision

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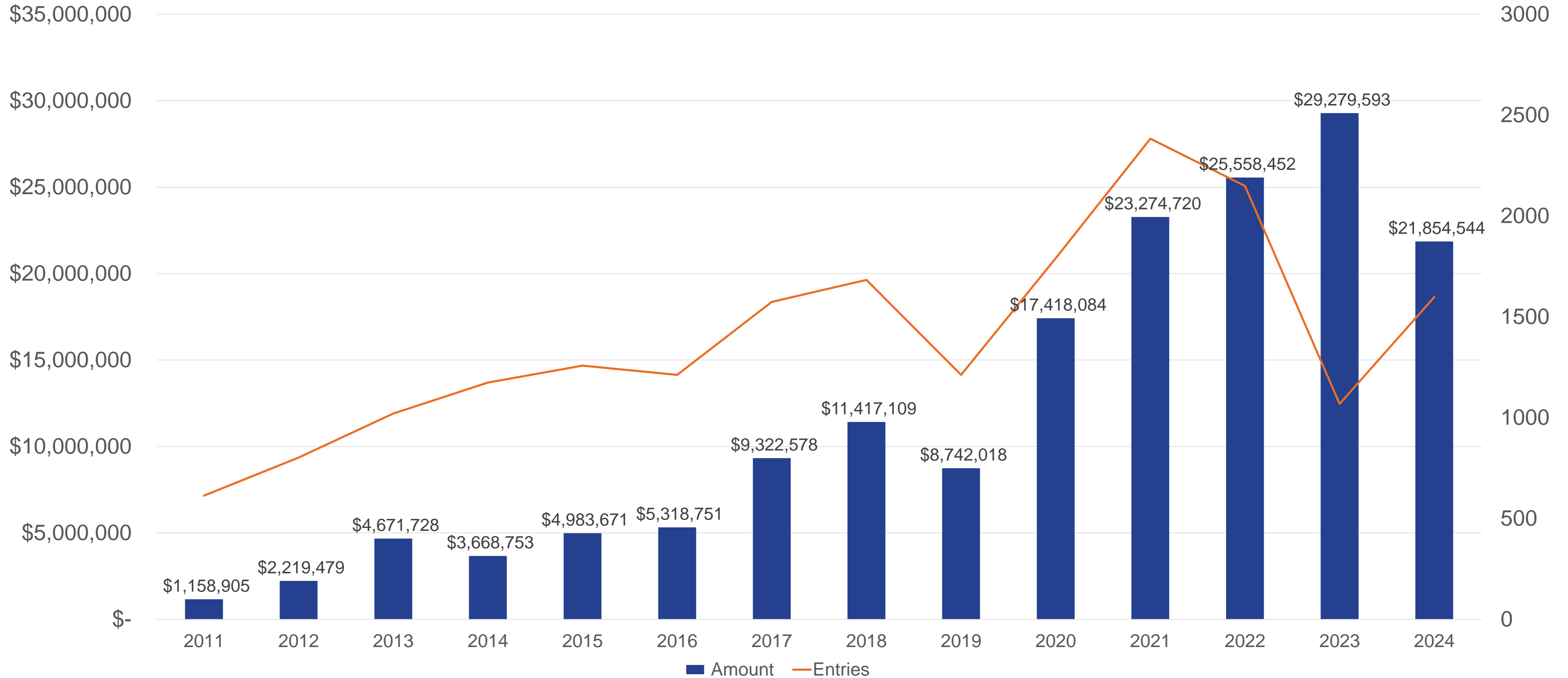


Core Values

Safety, Team, Integrity, Culture, and Stewardship

Impact Fee Collections – YTD May 2024

Impact Fee Totals and Entries Per Year



Mission

Strengthening our community by providing resilient essential services



Vision

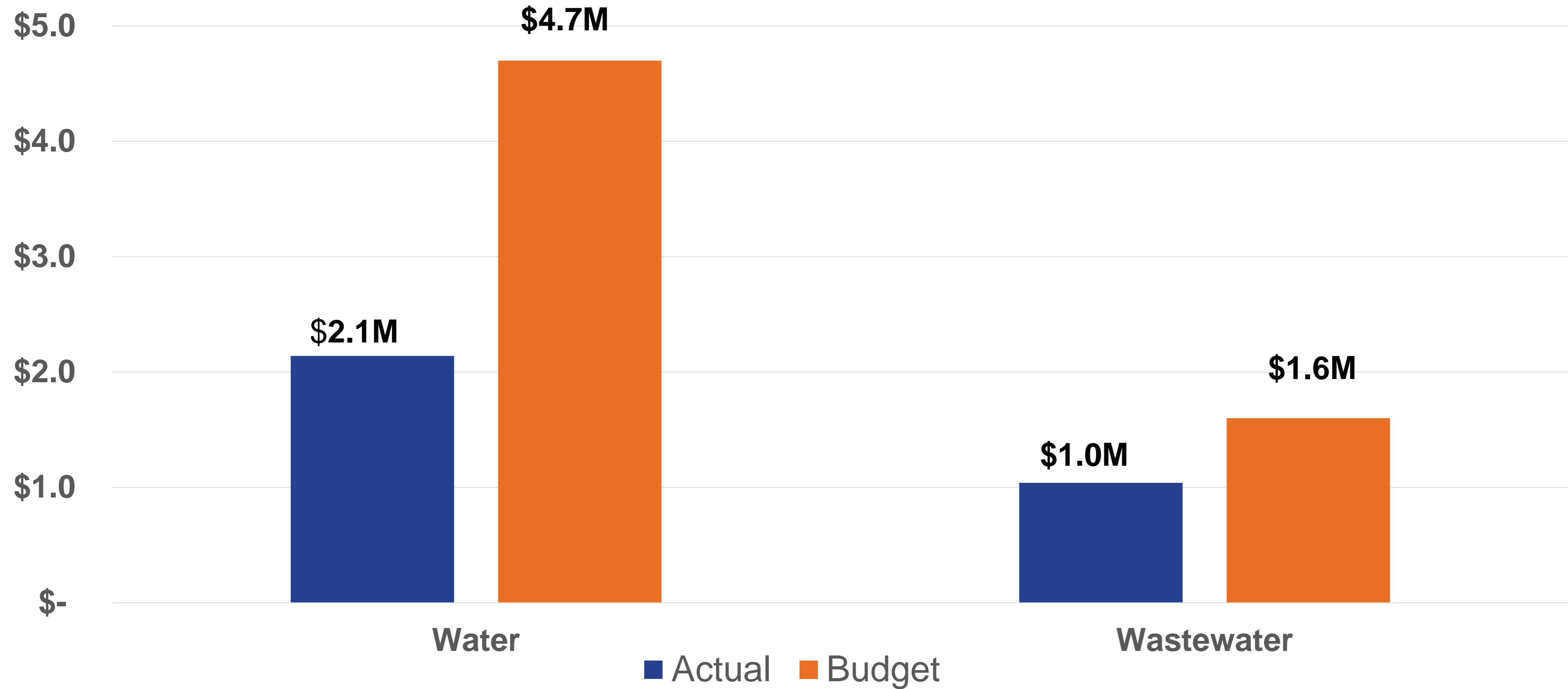
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Core Values

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Impact Fees-Program E Update May 2024 YTD – Amount in Millions



Mission

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Vision

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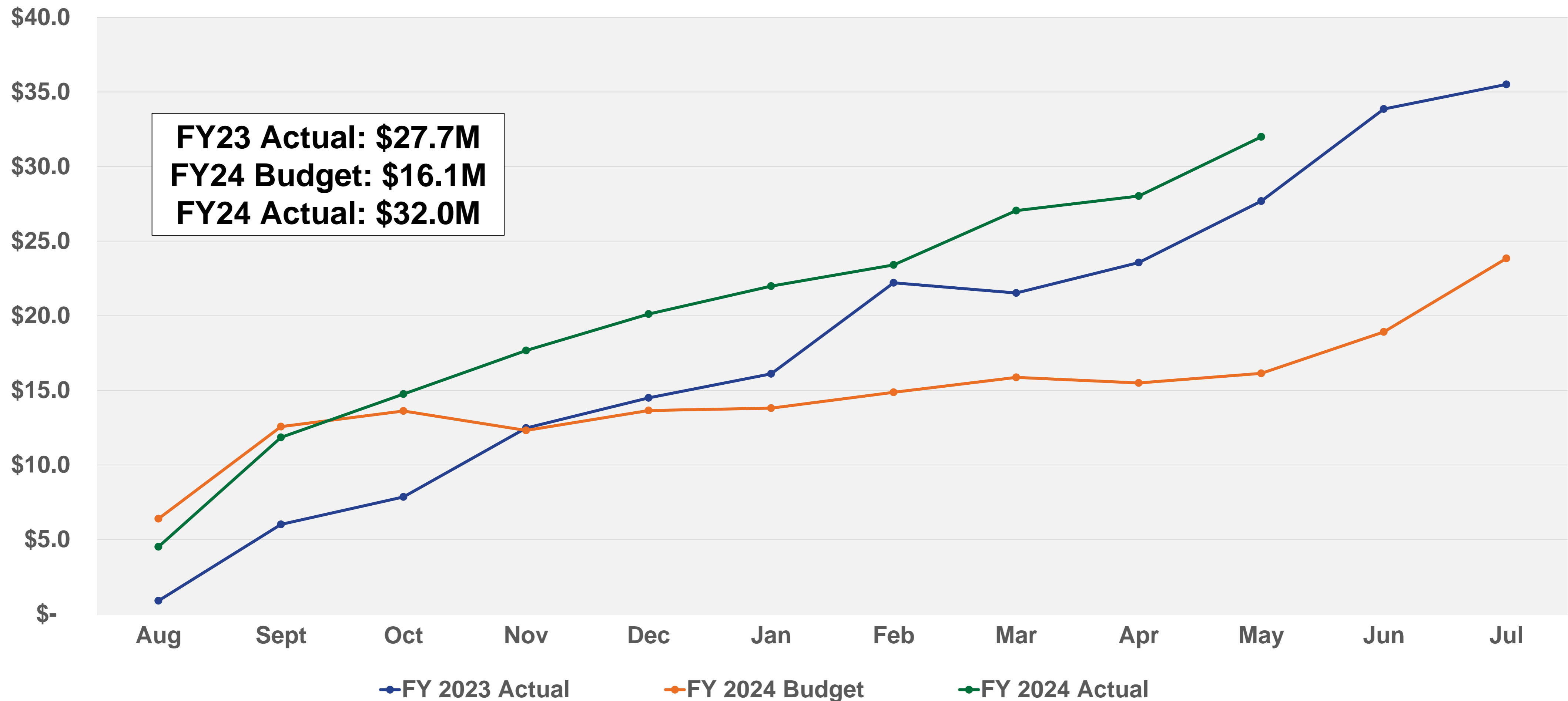


Core Values

Safety, Team, Integrity, Culture, and Stewardship

Net Operating Income

May 2024 – Amounts in Millions*



* Amounts shown are YTD for each month

Mission

Strengthening our community by providing resilient essential services



Vision

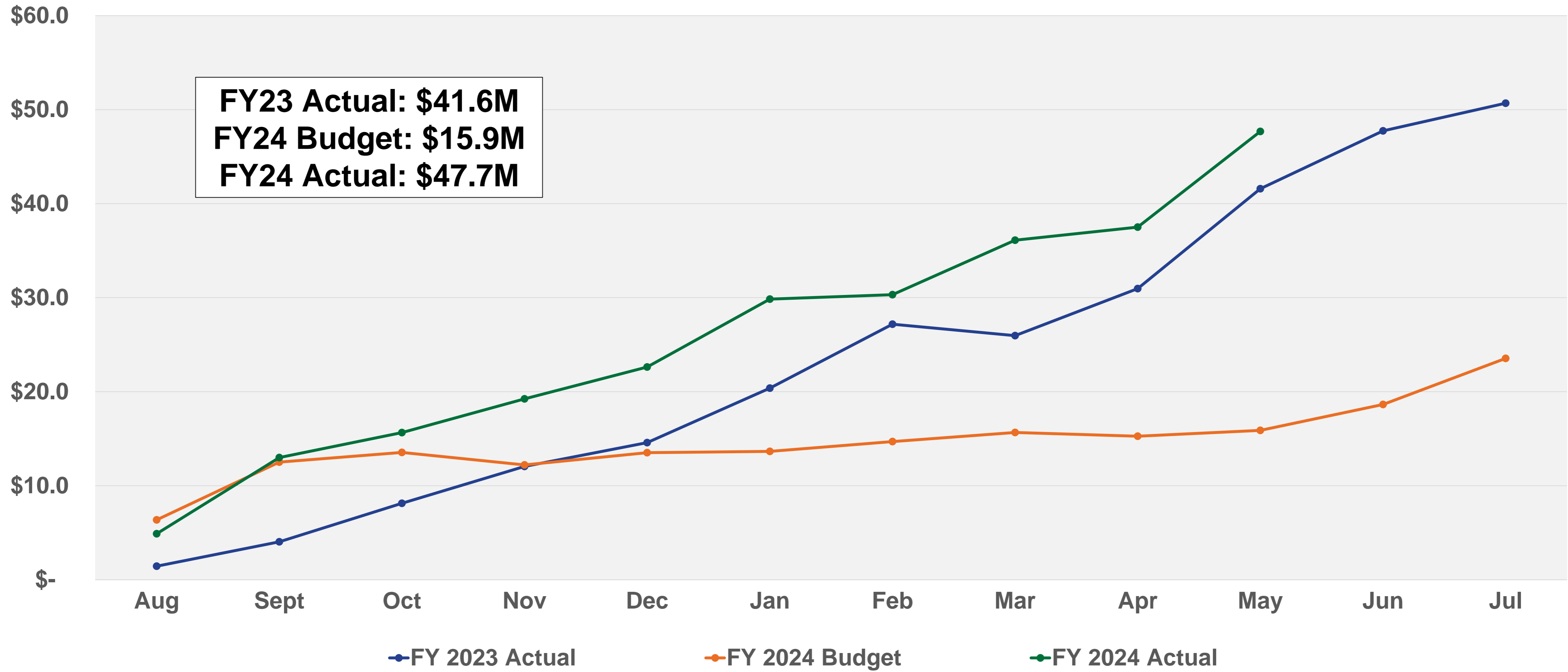
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Core Values

Safety, Team, Integrity, Culture, and Stewardship

Change in Net Position After Contributions May 2024– Amounts in Millions*



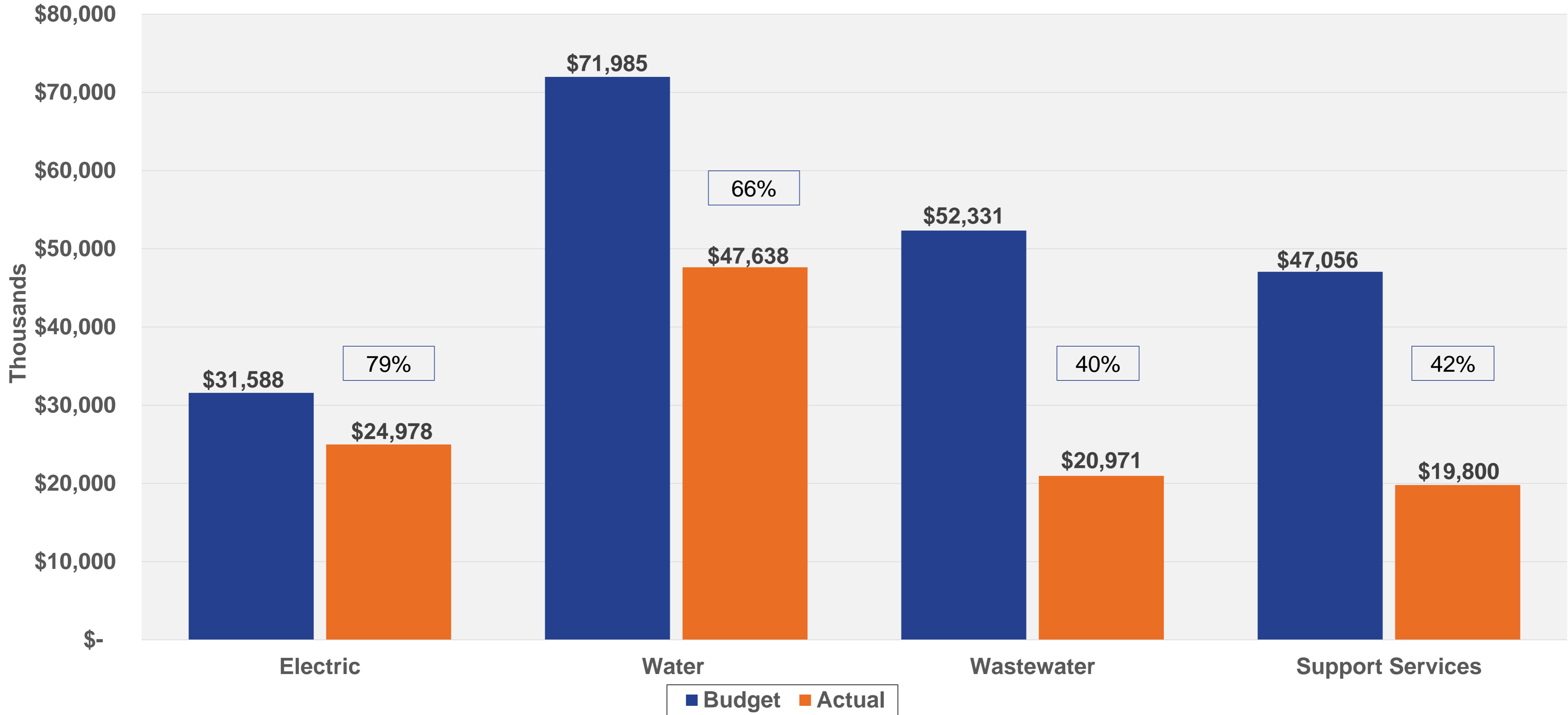
* Amounts shown are YTD for each month

Financial Highlights – YTD Compared to Budget

| | Favorable | Unfavorable |
|--|----------------|------------------|
| Overall System Operating Revenues | +1% \$2.1M | |
| • Electric Revenues | +5% \$7.5M | |
| • Water Revenues | | -6% (\$2.1M) |
| • Wastewater Revenues | | -10% (\$3.3M) |
| Operating Expenses (minus purchased power, purchased water and depreciation) | -19% \$9.5M | |
| Purchased Power Costs | 0% (\$365K) | |
| Interest Income | +89% \$3.8M | |
| Interest Expense | | +7% \$1.0M |

Capital Project Expenditures

May 2024 YTD – Amounts in Thousands



Questions?

Transmission Cost of Service Update

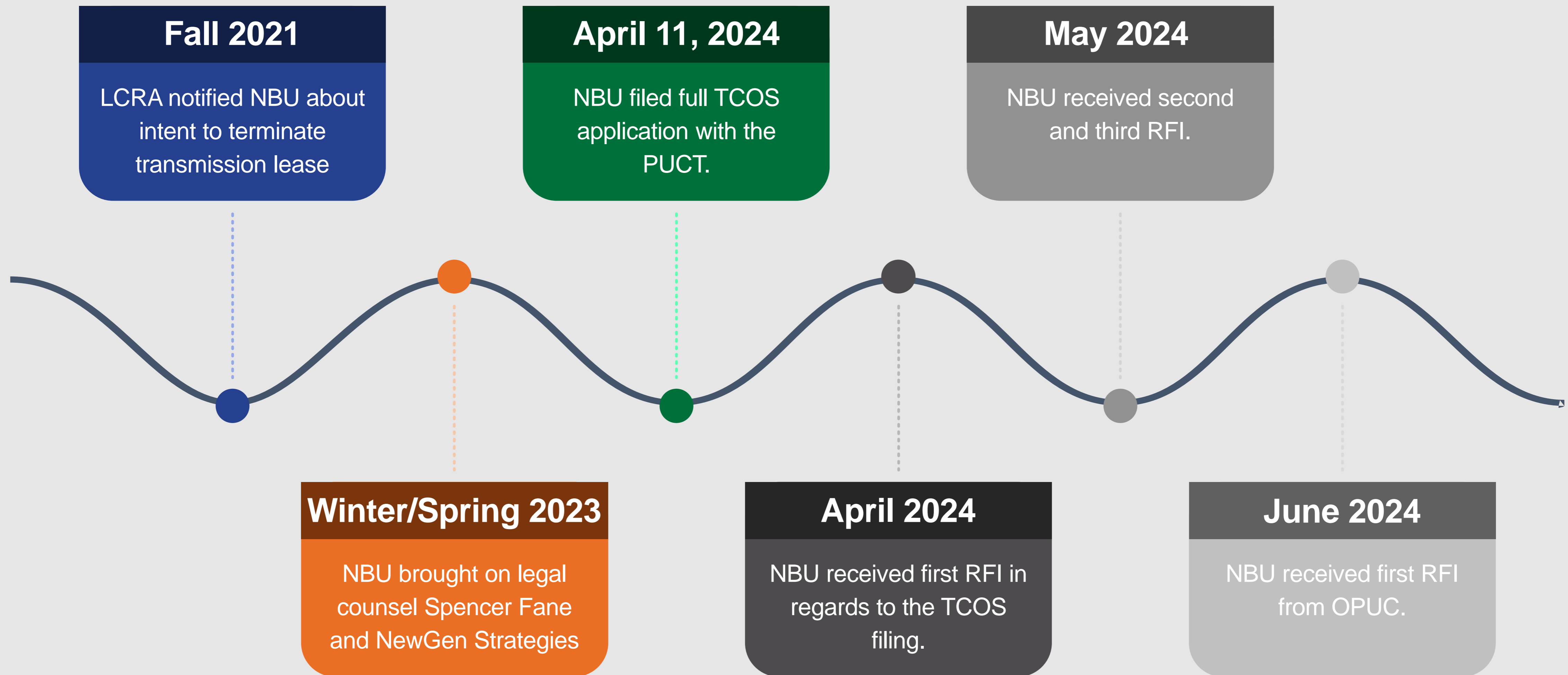


June 27, 2024

TCOS Update

- **RFI #1 – Submitted May 2024**
 - Questions in regards to depreciation analysis
- **RFI #2 – Submitted May 2024**
 - Questions in regards to TCOS Calculation
- **RFI #3 – Submitted June 2024**
 - Questions in regards to FERCs and transactions
- **RFI #1 – Received from Office of Public Utility Counsel (OPUC) June 2024**
 - Questions in regards the TCOS Direct Testimonies

TCOS Timeline



Questions?



Meeting Date: June 27, 2024 **Agenda Type:** Items from Staff

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

Submitted by: Dawn Schriever **Approved by:** Ryan Kelso
 Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Water Supply Fee Report

BACKGROUND

The Fiscal Year (“FY”) 2024 Budget and Five-Year Financial Operating Plan, presented to the Board of Trustees at the March 2023 Regular Board Meeting, identified revenue requirements in FY 2024 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 Two-Year Rate Plan for FY 2024 through FY 2025, which was approved by City Council on April 10, 2023, 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 and second usage blocks for residential customers, in order to protect the essential use-only water customer.

The FY 2024 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) Comal Trinity water.

During the reconciliation process, an over collection of \$3,592,419 was identified as a true-up amount to be included in the WSF for FY 2025. 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 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 2025 through the WSF is \$3,383,023. When dividing the total amount of estimated revenue for FY 2025 across the estimated

water volume, the WSF is calculated at \$1.17 per thousand gallons. The Two-Year Rate Plan included an estimated WSF of \$1.84 per thousand gallons for FY 2025, based on estimates made during the FY 2024 budget process.

NBU's twenty-year water infrastructure and water supply strategies are identified in NBU's Water 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 FY 2025 WSF is estimated to provide \$3,383,023 towards the total water revenue requirement of \$43,436,716.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. WSF Presentation

Water Supply Fee (WSF) Report

June 27, 2024



John Warren, Finance and Risk Manager

- 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.

Two-Year Rate Plan WSF

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

Mission

Strengthening our community by providing resilient essential services



Vision

Be a trusted community partner dedicated to excellence in service



Core Values

Safety, Team, Integrity, Culture, and Stewardship

FY 2024 WSF Estimate

Item 3.

WSF Estimate

| | |
|-----------------------------|-----------------------------|
| Seguin | \$ 2,730,219 |
| GBRA Canyon - Coletto Creek | \$ 952,875 |
| GBRA Canyon - Womack | \$ 493,763 |
| GBRA GCWSP | \$ 1,239,067 |
| Green Valley | \$ 1,013,348 |
| Comal Trinity | \$ 168,000 |
| Water Sales | \$ 0.00 |
| Cumulative WSF True-Up | \$ (3,064,176) |
| Water Volume | 2,788,483,153 gallons |
| Water Supply Fee | \$1.27 per thousand gallons |

Mission

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Be a trusted community partner dedicated to excellence in service



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Safety, Team, Integrity, Culture, and Stewardship

| WSF Forecast | |
|-------------------------------------|----------------------------|
| WSF Revenue Collected | \$ 5,363,707 |
| WSF Revenue Required | \$ 4,835,463 |
| Fiscal Year Over/(Under) Collection | \$ 528,244 |
| Cumulative Over/(Under) Collection | \$ 3,592,419 = WSF True-up |

FY 2025 WSF Estimate

Item 3.

| WSF Estimate | |
|----------------------------|-----------------------------|
| Seguin | \$ 2,598,662 |
| GBRA Canyon - Coleta Creek | \$ 962,500 |
| GBRA Canyon - Womack | \$ 498,750 |
| GBRA GCWSP | \$ 2,110,013 |
| Green Valley | \$ 988,632 |
| Comal Trinity | \$ 168,000 |
| Water Sales | \$ (351,115) |
| Cumulative WSF True-Up | \$ (3,592,419) |
| Water Volume | 2,879,504,010 gallons |
| Water Supply Fee | \$1.17 per thousand gallons |

Mission

Strengthening our community by providing resilient essential services

+ Vision

Be a trusted community partner dedicated to excellence in service

+ Core Values

Safety, Team, Integrity, Culture, and Stewardship



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve Minutes of the NBU Board Budget Workshop of May 30, 2024

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

- 1. May 30, 2024 Board Budget Workshop Minutes

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

**10:30 A.M.
THURSDAY, MAY 30, 2024
NBU BOARD ROOM
263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130**

Board President Wayne Peters opened the meeting at 10:33 am. A quorum of the NBU Board was present.

PRESENT

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

ABSENT

None

NBU PERSONNEL

Ryan Kelso, Dawn Schriewer, Connie Lock, David Hubbard, and Laura Rivers

NBU CONSULTANTS

None

PLEDGE AND INVOCATION

Board Vice President Judith Dykes-Hoffmann led the pledge of allegiance and offered the invocation.

PUBLIC COMMENT

None

ITEMS FROM THE CHAIR

1. Report from the Budget Committee Meeting

Board Vice President Judith Dykes-Hoffmann provided an update on the Budget Committee meetings that took place on May 28, 2024.

PRESENTATION ITEMS

1. Presentation and Discussion of Draft Fiscal Year 2025 Budget and Five-Year Plan

Chief Executive Officer Ryan Kelso and Chief Financial Officer Dawn Schriewer provided an overview of the FY 2025 Budget, Capital Projects, and Five-Year plan.

ADJOURN

Board President Wayne Peters adjourned the Board Meeting at 11:46 am.

*Wayne Peters, President
Approved*

Attest:

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

Date Approved: June 27, 2024



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve Minutes of the NBU Regular Board Meeting of May 30, 2024

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

- 1. May 30, 2024 Regular Board Meeting Minutes

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

**1:00 P.M.
Thursday, May 30, 2024
NBU Board Room
263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130**

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

PRESENT

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

ABSENT

None

NBU PERSONNEL

Ryan Kelso, Dawn Schriewer, Connie Lock, David Hubbard, and Laura Rivers

NBU CONSULTANTS

None

PLEDGE AND INVOCATION

Board Vice President Judith Dykes-Hoffmann led the pledge of allegiance and offered the invocation.

NBU MISSION, VISION, CORE VALUES

Chief of Staff Laura Rivers shared examples of NBU staff exemplifying the NBU Mission, Vision, and Core Values. The NBU Operations team had dedicated crews working around the clock to restore power to customers affected by widespread power outages after storms on May 9th. Additionally, NBU extended support to our neighboring city of San Marcos to assist with restoring their power after a storm went through their city, causing heavy damage.

PUBLIC COMMENT

There were no public comment requests.

NBU EMPLOYEE RECOGNITIONS

1. Presentation of Service Pins

- a. Recognizing Gus Lara and Michael (Mike) Vineyard with 25 Years of Service

CEO Ryan Kelso recognized Gus Lara and Michael (Mike) Vineyard with 25 years of dedicated service to New Braunfels Utilities.

2. Retirement Recognition of Jimmy Quiroz

CEO Ryan Kelso recognized Jimmy Quiroz, who retired with 34 years of dedicated service to NBU.

ITEMS FROM THE CHAIR

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

None

ITEMS FROM STAFF

1. CEO Update

CEO Ryan Kelso presented updates on the following events that NBU staff participated in:

a. Safety Update: 365 Days of Work Performed with No Lost Time Incidents

As of March 31, 2024, NBU had performed 365 days of work with no lost time incidents. Not a single NBU employee experienced a work-related injury that prevented them from coming to work the next day for an entire year.

b. NBU Conservation Team's Participation in the City of New Braunfels' "Thru the Chute" Competition

On April 27, NBU's Conservation and Customer Solutions department participated in the City of New Braunfels' 11th Annual Thru the Chute Boat Race and River Expo. This year, the boat theme parodied the most recent Superbowl under the banner of "In Our Conservation Era" to tie in NBU's water conservation efforts.

c. Community Outreach: Career Day Visits at Local Elementary Schools

Since March, our Community Outreach team has had the fantastic opportunity to participate in Career Days at nine local elementary schools. We've shared insights about our professions through interactive presentations, hoping to inspire the next generation of leaders and thinkers.

d. CEO Roadshow: Participating in the New Braunfels Economic Development Foundation's All-Board Members Luncheon Water Panel Discussion on the Future of Water in New Braunfels

On April 30, NBU led an informative panel discussion at the well-attended quarterly New Braunfels EDF All-Member Luncheon. Titled "Flowing Forward: Planning for the Future of Water in New Braunfels," the panel discussion was moderated by Sarah Richards and featured leaders from three water agencies– NBU CEO Ryan Kelso, GRBA CEO and General Manager Darrell Nichols, and EAA General Manager Roland Ruiz. The discussion explored water supply planning efforts, highlighting how they ensure the resilience of regional water supplies. Leaders also emphasized the importance of water conservation and a One Water approach for the long-term sustainability of our local water supplies.

e. Texas Public Power Corridor Academy Graduation

The TxPPC Leadership Training Academy celebrated its graduation on May 2, 2024, marking the end of an extensive, multi-month program that connected leaders from CPS Energy, LCRA, and NBU. Congratulations to NBU's own Adam Willard, Kenneth Allen, Kristen Garza, Peter Vanderstoep, and Robert Aleman, who now emerge as stronger leaders equipped with advanced communication, decision-making, and team leadership skills.

f. Public Service Recognition Week

New Braunfels Utilities celebrated Public Service Week 2024, May 6 through May 10, honoring our employees' tireless dedication and invaluable contributions. We hold dear the importance of honoring the commitment of those who work tirelessly to serve their communities, often behind the scenes, in roles ranging from frontline workers to policymakers. Public Service Week is our opportunity to express gratitude and appreciation for their unwavering service and commitment to the greater good.

g. Tour of Interim Waste Water Treatment Plant at Mayfair

NBU employees Ryan Kelso, Mike Short, Dawn Schriever and Brent Lundmark joined Southstar's Mayfair team of Chip Mills, Jim Vater, James Tipton and Mike Meek, Pape Dawson's Todd Blackmon, Cloacina's Chris Nalley, and JA Wastewater Engineer Jaime Miller from JA Wastewater toured the Interim Wastewater Facility at Mayfair on April 18. The onsite sewer system, which was built by Cloacina, will provide sewer treatment for a total of 1500 homesites at Mayfair. This gives Southstar and NBU time to get the infrastructure in place for the ultimate sewer treatment at NBU's McKenzie Plant. The final buildout for Mayfair will include approximately 5,800 homes.

h. NBU University Graduation

NBU University is a comprehensive program crafted to enhance our knowledge of the inner workings of our municipally owned utility. The graduation ceremony, which took place on May 7, 2024, marked the end of this engaging initiative. The NBU University graduating class of 2024 included: Neil Rose, Mark Reber, Crissy Harris, Taylor Cano, Stacy Garrett, Delene Cornel, Rachel Behnke, Dr. Larry Johnson, Phillip Nickel, Larry Wicker, Katherine Crowe, Stacy Thigpen, Allyson Janzen, John Moss, William Joe Turner, Serena Morris, and Laura Ayala.

i. NBU Employees Graduate from Leadership New Braunfels

Leadership New Braunfels (LNB) offers unique opportunities for business leaders to connect, develop leadership skills, and engage deeply with the community. This year's graduating class, which included NBU employees Greg Brown and Ashley Van Booven, was celebrated on May 14, 2024.

j. Leadership Announcements: New Hire Joe Vargas, Security Manager

Joe Vargas was introduced as the new Physical Security Manager. He comes to NBU after serving 34 years with the New Braunfels Police Department.

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

2. **Financial Update and Report, Including an Update on the Filing of the NBU Transmission Cost of Service Application with the Public Utility Commission of Texas**
Accounting Manager Kimberly Huffman provided an update on the financial status of NBU. Energy Risk Manager Missy Quent provided an update on the Transmission Cost of Service application with the Public Utility Commission of Texas that was filed in April 2024.
3. **Quarterly Power Supply Report to Include a Power Stabilization Fund Update**
Energy Risk Manager Missy Quent provided the quarterly power supply update.
4. **Quarterly Investment Report**
Finance Manager John Warren provided an update on the quarterly Investment Report.
5. **Quarterly NBU Headquarters and Annex Progress Update**
Program Portfolio Manager Jacob Tschoepe provided an update on the progress of the NBU Headquarters and Annex building.
6. **Quarterly Update on the Headwaters of the Comal**
Headwaters at the Comal Managing Director Nancy Pappas provided an update on the Headwaters at the Comal.
7. **Fiscal Year 2024 Strategic Plan Update**
Director of Business Planning Shawn Schorn provided

CONSENT ITEMS FOR ACTION

Board Trustee Yvette Villanueva Barrera made a motion, and Mayor Neal Linnartz seconded the motion to approve the Consent Items for Action as follows: #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, and #11. The vote was unanimous.

1. Approve Minutes of the NBU Regular Board Meeting of April 25, 2024
2. Approve the Change Order Log from March 15, 2024, through April 15, 2024
3. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through April 15, 2024
4. Approve the Electric Line of Business Alternative Procurements from March 15, 2024, through April 15, 2024
5. Approve 2023 Fourth Quarter Charge-Off Accounts
6. Approve the Appointment of Gretchen Reuwer as an NBU Member of the Headwaters at the Comal Board of Directors
7. Authorize CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Merrick & Company for the Development Plan Review Project for Water and Wastewater Construction

8. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Pawelek & Moy, Inc. for the Design of the North Kuehler Interceptor Segment 3 Project
9. Authorize CEO or His Designee to Negotiate and Execute a Fourth Amendment to the Professional Services Agreement with Arcadis U.S., Inc. for the Design of Phase 4 of the Aquifer Storage and Recovery Project
10. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for Environmental Services for the Water and Wastewater Capital Improvements Program
11. Authorize CEO or His Designee to Negotiate and Execute an Interlocal Agreement with the Edwards Aquifer Authority for Operation of a Water Level Observation Well at Comal Plant No. 3 Adjacent to Comal Springs, New Braunfels, Texas

PRESENTATION ITEMS

1. Presentation on the New Braunfels Utilities (NBU) Customer Satisfaction Survey Results for Fiscal Year 2024 from Great Blue Research

Catherine Veschi with Great Blue Research presented the results from this year's Customer Satisfaction Survey, including commercial and residential surveys. Customer Service Manager Vania Fuentes-Caballero presented next-step options for addressing the survey results.

EXECUTIVE SESSION

Board President Wayne Peters recessed the Open Session at 2:44 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included Power Supply Resources – Competitive Matters: a. Power Supply Update including Changes to the Power Stabilization Fund and b. Discuss Generation Capacity Opportunities; Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege: Discuss the Effects of the San Antonio Water System's Application for Water Use Permit No. 13098 on NBU's Water Rights in the Guadalupe River Basin; and Personnel Matters: Deliberate the Employment, Evaluation, and Duties of the Chief Executive Officer.

The Executive Session was opened at 2:51 pm and closed at 4:18 pm.

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

The Regular Session resumed at 4:19 pm. Mayor Neal Linnartz made a motion and Board Trustee John Harrell seconded the motion to authorize the CEO of NBU or his designee to file a judicial appeal of the Texas Commission on Environmental Quality's decision and order issuing water use permit No. 13098 to the San Antonio Water System and TCEQ's decision to deny NBU's request to participate in the contested case hearing relating to the same permit. The vote was unanimous.

ADJOURN

There was no further business, and Board President Wayne Peters adjourned the meeting at 4:20 p.m.

Attest:

*Wayne Peters, President
Approved*

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

Date Approved: June 27, 2024



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve the Change Order Log from April 15, 2024, through May 15, 2024

BACKGROUND

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

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

FINANCIAL IMPACT

Change orders less than \$50,000:

- Trinity Expansion Well Field, Owners contingency (\$100,000) + \$8,435.68 Board approved contingency used: Additional barrels of acid - hauling - \$50/barrel, and breather vents., Kutscher Drilling, LTD, Change order No. 1, Cost increase of \$8,453.68.

Change orders more than \$50,000:

- Trinity Expansion Treatment Plant, Well Tie-In pipe supports, well field contamination PLW support, lightning protection on the new GST, 8" raw water feed line leak, lift station elevation conflict, PLW Waterworks, LLC., Change order No. 7, Cost increase of \$57,614.75.
- NBU Annex Design Build, design changes including additional demolition, drywall, and electrical work, Spaw Glass, Change order No. 1, Cost increase of \$223,072.00.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through May 15, 2024

BACKGROUND

The Board of Trustees approved the NBU Purchasing Policy on October 31, 2019. The Purchasing Policy defines the process for obtaining approval of Professional Engineering Contracts. In addition to the individual approval by the Board of Trustees for Professional Engineering Contracts greater than \$500,000, the policy further states, “The limit for expenditures to be paid to a licensed professional engineer or a firm of licensed professional engineers as defined in Chapter 2254 of the Texas Government Code, as amended, performing engineering services without the prior approval of the Board of Trustees shall be \$500,000 per vendor per contract. Each department manager, who hires a licensed professional engineer or firm of licensed professional engineers, shall prepare a report specifying the following:

1. name of licensed professional engineer or firm of licensed professional engineers engaged to complete a project;
2. project name;
3. contract amount and amendments to original contract amount;
4. total cumulative number of contracts and contract amounts approved in a fiscal year to that licensed professional engineer/firm of licensed engineers; and
5. date presented to the Board of Trustees.

This report shall be prepared on a monthly basis and be delivered to the Purchasing Manager before each Board of Trustees’ meeting. The Purchasing Manager will prepare a consent agenda item to request approval of the report at the next Board of Trustees meeting.”

Exhibits attached to this agenda item are the Professional Engineering report(s) submitted to the Purchasing Manager for the period of August 1, 2023, through May 15, 2024.

FINANCIAL IMPACT

The total value of new contracts added from April 15th to May 15th is \$2,126,910.00.

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

Water Engineering PSAs Presented to the Board FY 2024

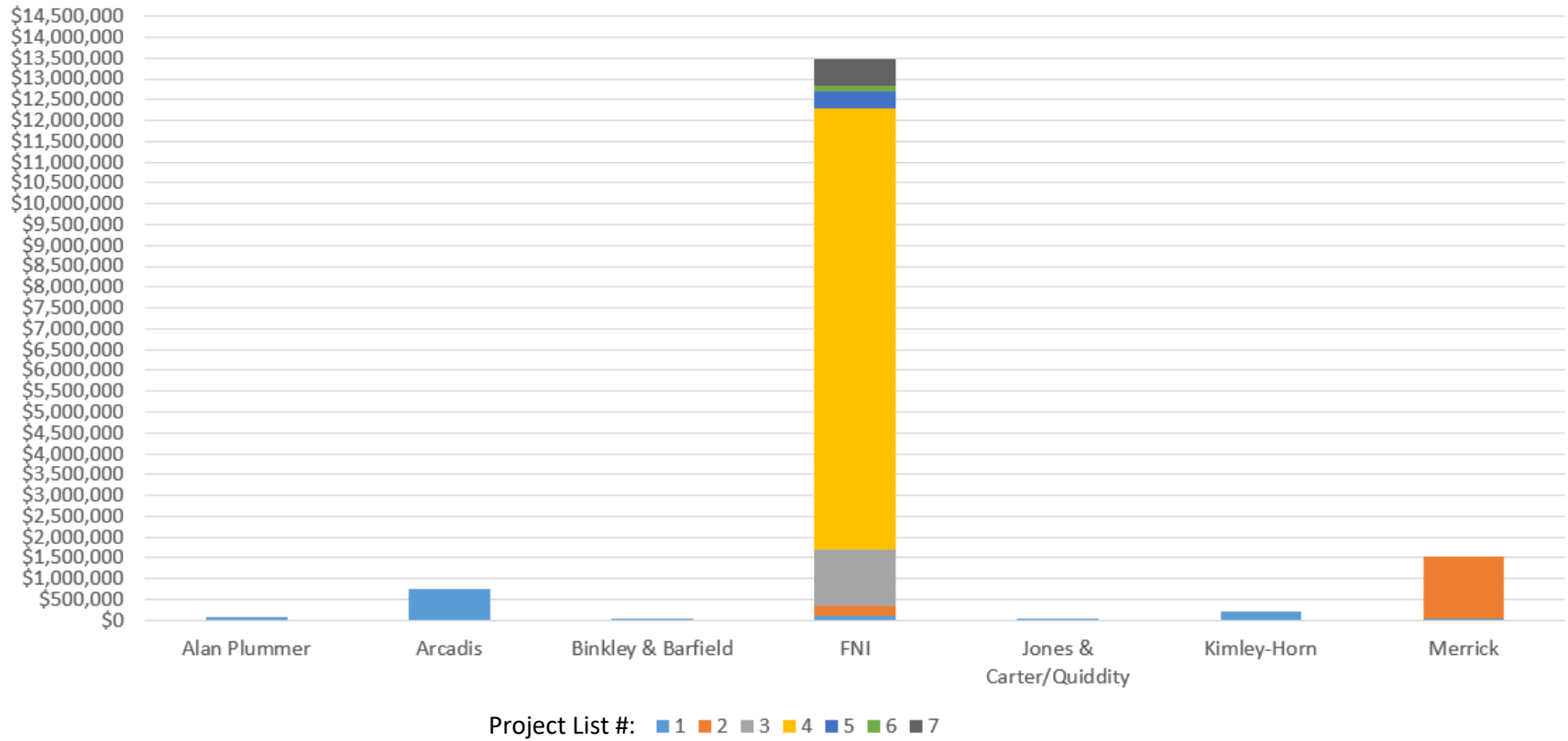
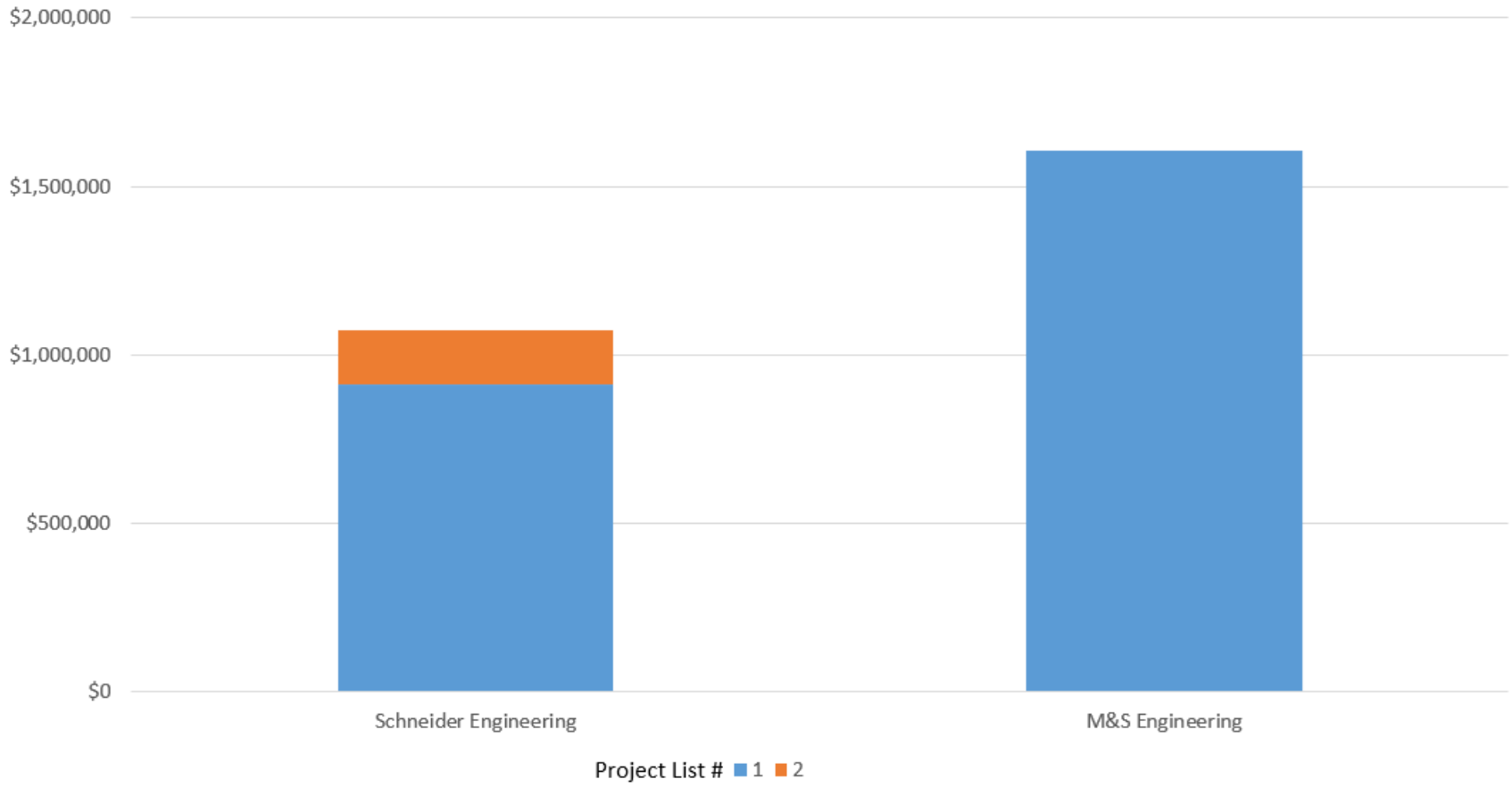


Exhibit A – Report for Water Engineering Contracts May 2024

| Project List # | Project | Vendor | Contract Amount | Board Date | Type of contract | Comment | Executed Date |
|----------------|---|----------------------------------|------------------|------------|------------------|--------------------------------|---------------|
| 1 | Castell Ave Rehabilitation (CNB) | Binkley and Barfield Inc. | \$ 50,892.00 | 8/31/2023 | Engineering | Amendment | 9/1/2023 |
| 1 | Solms Lift Station Expansion | Merrick & Company | \$ 30,988.00 | 8/31/2023 | Engineering | Amendment | 9/1/2023 |
| 1 | Well 4 to Grandview Pump Station and Discharge Line Upg | Freese and Nichols, Inc. | \$ 108,850.00 | 8/31/2023 | Engineering | Amendment | 9/7/2023 |
| 1 | Kuehler WRF Access Road - Courtyard Drive | Quiddity Engineering, LLC | \$ 66,410.00 | | Engineering | Amendment | 10/3/2023 |
| 2 | South Kuehler Interceptor Phase 1 | Quiddity Engineering, LLC | \$ 52,780.00 | 9/28/2023 | Engineering | Amendment | 10/3/2023 |
| 1 | 24-Inch McQueeney Road Parallel Water Line (Downtown) | Alan Plummer and Associates, Inc | \$ 70,000.00 | 9/28/2023 | Engineering | Amendment | 10/3/2023 |
| 2 | FM 306 Pump Station & Discharge Line | Freese and Nichols, Inc. | \$ 228,917.00 | 9/28/2023 | Engineering | Amendment | 10/3/2023 |
| 3 | San Antonio St Rehabilitation Phase 3 (CNB) | Quiddity Engineering, LLC | \$ 341,540.00 | | Engineering | PSA | 11/3/2023 |
| 3 | Water Tank Rehabilitations | Freese and Nichols, Inc. | \$ 1,380,592.00 | 10/26/2023 | Engineering | PSA | 11/13/2023 |
| 2 | Water Resource Plan | Arcadis, US, Inc. | \$ - | 12/14/2023 | Engineering | Amendment | 12/22/2023 |
| 1 | Aquifer Strg & Recovery Project | Arcadis, US, Inc. | \$ 744,898.00 | 12/14/2023 | Engineering | Amendment | 12/22/2023 |
| 4 | Staff Augmentation | Freese and Nichols, Inc. | \$ 10,578,296.00 | 12/14/2023 | Engineering | PSA | 12/22/2023 |
| 5 | Trinity Expansion Treatment Plant | Freese and Nichols, Inc. | \$ 394,525.00 | 1/25/2024 | Engineering | Amendment | 2/21/2024 |
| 1 | I-35 Interceptor Upgrade | Kimley-Horn and Associates, Inc. | \$ 199,000.00 | 1/25/2024 | Engineering | Amendment | 2/21/2024 |
| 6 | Construction Management & Inspection Services | Freese and Nichols, Inc. | \$ 138,570.00 | 3/28/2024 | Engineering | Amendment | 4/12/2024 |
| 7 | Gruene Rd Sewer Main Rehabilitation/Relocation (Inverte | Freese and Nichols, Inc. | \$ 634,844.00 | 3/28/2024 | Engineering | Amendment | 4/19/2024 |
| 2 | Solms Pump Station and GST | Merrick & Company | \$ 1,492,066.00 | 4/25/2024 | Engineering | Professional Service Agreement | 5/3/2024 |

Electric Engineering PSAs Presented to the Board FY 2024



| Project List # | Project | Vendor | Contract Amount | Board Date | Type of contract | Comment | Executed Date |
|----------------|--|-----------------------|-----------------|------------|------------------|---------|---------------|
| 1 | Substation and transmission Design FY 2024 | Schneider Engineering | \$ 912,000.00 | 8/31/2023 | Engineering | | 9/1/2023 |
| 1 | Electric Distribution Projects | M&S Engineering | \$ 1,607,590.00 | 8/31/2023 | Engineering | | 9/1/2023 |
| 2 | Electric Regulatory Compliance Consulting Services | Schneider Engineering | \$ 162,000.00 | | Engineering | | 3/25/2024 |



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve the Electric Line of Business Alternative Procurements from April 15, 2024, through May 15, 2024

BACKGROUND

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

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

FINANCIAL IMPACT

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

- Inventory Materials, Texas Electric Cooperatives, KBS Electrical Distributor, Sun Enterprises, Cost of \$675,940.00, See Exhibit A, Quote E1762, for reference

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

1. Exhibit A – Quote E1762

Item 5.

| Item | class no. | Description | Qty | UOM | SUN ENT. | TEC | KBS |
|------|---------------|---|-------|----------|-------------|--------------|-------------|
| | | | | | 101608 | 097207 | 036825 |
| 1 | 285-076-00003 | STAND. ST. LIGHT ALUM. 28' W/ARM | 50 | EA | \$1,049.00 | | |
| | | <u>MUST INCLUDE 1"X4"X36" ANCHOR BOLT, WITH 2 HEX NUTS, 2 WASHERS AND 1 LOCK WASHER</u> | | TOTAL | \$52,450.00 | | |
| | | | | DELIVERY | 12-14 WKS | | |
| 2 | 280-080-00013 | 4/0 PRIMARY UD ALUM. WIRE 220 MIL. 1/3 NEUTRAL | 25000 | FT | | \$3.79 | |
| | | <u>(2500 FT. PER WOOD REEL - PER NBU SPECS)</u> | | TOTAL | | \$94,750.00 | |
| | | | | DELIVERY | | 30-34 WKS | |
| 3 | 285-108-0015 | PADMOUNT SWITCHGEAR 3PHASE DEADFRONT SS ENCLOSURE 25KV -MD211 | 2 | EA | | | \$42,694.00 |
| | | <u>(FEDERAL PACIFIC # PSE-11-54312-AS2-CC-E6-F4-HR)</u> | | TOTAL | | | \$85,388.00 |
| | | | | DELIVERY | | | 32-34 WKS |
| 4 | 285-108-00017 | PADMOUNT SWITCHGEAR DEADFRONT SS ENCLOSURE 25KV -MD209 | 2 | EA | | | \$39,116.00 |
| | | <u>(FEDERAL PACIFIC # PSE-9-54222-AS2-CC-E3-F4-HR)</u> | | TOTAL | | | \$78,232.00 |
| | | | | DELIVERY | | | 32-34 WKS |
| 5 | 280-080-00019 | 1000MCM PRIMARY UD WIRE 260MIL. 1/6 NEUTRAL | 28000 | FT | | \$13.04 | |
| | | <u>(2000 FT. PER WOOD REEL PER NBU SPECS.)</u> | | TOTAL | | \$365,120.00 | |
| | | | | DELIVERY | | 30-34 WKS | |



Meeting Date: June 27, 2024 **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:** Ryan Kelso
 Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Raftelis Financial Consultants, Inc. DBA Raftelis for a Water, Wastewater, and Electric Rate Design Review

BACKGROUND

New Braunfels Utilities (“NBU”) reviews the sufficiency of its rates through the development of the annual financial operating plan. NBU most recently analyzed rates as part of a Two-Year Rate Plan for Fiscal Years 2024 through 2025, which was approved by City Council on April 10, 2023.

On a periodic basis, NBU may request an outside consultant to complete a water, wastewater, and electric rate design review. In order to engage a consultant, NBU issued a request for proposals (“RFP”) on January 29, 2024, from qualified consultants to perform a water, wastewater, and electric rate design review and to provide related community education. The purpose of the rate design is to review NBU’s revenue requirements, analyze NBU’s current rate structure and provide recommendations, if needed, to NBU about modifying the rate structure for water, wastewater, and electric utilities.

NBU received three (3) proposals in response to the RFP. NBU staff evaluated the proposals and selected Raftelis Financial Consultants, Inc. (“Raftelis”) as the responsible offeror whose proposal was the most advantageous to NBU, considering the relative importance of price and the other evaluation factors included in the RFP. The scoring matrix is included as an exhibit attached herein. Raftelis will complete the services by July 31, 2025.

NBU staff recommends that the NBU Board approve a Professional Services Agreement with Raftelis. This agreement is being presented to the Board because the total amount of the agreement exceeds \$250,000.

FINANCIAL IMPACT

The total financial impact of the Professional Services Agreement with Raftelis is \$290,309.00. The services are budgeted within the NBU Fiscal Year 2025 Budget.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. Professional Services Agreement with Raftelis Financial Consultants, Inc.
2. NBU Scoring Matrix RFP 24-0046

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 **RAFTELIS FINANCIAL CONSULTANTS, INC. D/B/A RAFTELIS**, a North Carolina corporation authorized to transact business in the State of Texas (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Term of Agreement. This Agreement shall become effective the date on which the last party to this Agreement executes this Agreement and this Agreement shall not be binding until executed by all parties (the “Effective Date”). Once this Agreement is executed by both parties, this Agreement shall remain in effect until the completion date specified in Exhibit A, unless terminated as provided for in this Agreement. 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 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 at the time and place the Services are rendered.

(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 as a deliverable pursuant to Exhibit A 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, non-assignable, non-sublicensable, 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. Nothing in this Agreement shall be deemed or construed as a waiver, release, transfer, assignment or divestiture by the Professional of any of its intellectual property, know-how or trade secrets.

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

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

Section 8. Performance Warranty. The Professional warrants that the Services provided under this Agreement shall conform to the professional standards performed by professionals regularly rendering this type of service.

Section 9. Indemnification. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, AND EMPLOYEE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN “INDEMNIFIED PARTY”), FOR, FROM AND AGAINST 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 BECOMES SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER (“CLAIMS”), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) ARE CAUSED BY THE NEGLIGENCE OF THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH BELOW SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU’s option.

- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance

of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers’ Compensation and Employer’s Liability Insurance. The Professional shall maintain Workers’ Compensation insurance to cover the Professional’s employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

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

Section 11. Termination.

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

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

(C) Non-Collusion. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

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

Section 12. Miscellaneous.

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

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

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

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

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

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

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

(H) No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.

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

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

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

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

(M) Offset.

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

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

If to NBU:

New Braunfels Utilities
 Attn: Chief Financial Officer
 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:

Raftelis Financial Consultants, Inc. d/b/a Raftelis
 3755 S. Capital of Texas Highway, Suite 290
 Austin, TX 78704

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 or as compelled by legal process. 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 or as compelled by legal process.

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **THE PROFESSIONAL SHALL INDEMNIFY, DEFEND, AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM THE PROFESSIONAL'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.**

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

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

Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

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

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

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

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

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

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

assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

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

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

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

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

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

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

The Professional must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement

that is in the custody or possession of the Professional on request of NBU; and (3) on completion of the Agreement, either:

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 2024.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

PROFESSIONAL:
RAFTELIS FINANCIAL CONSULTANTS, INC. d/b/a RAFTELIS,
a North Carolina corporation
authorized to transact business in the State of Texas

By: _____
Name: _____
Title: _____

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to conduct a rate design review and provide related community education. The Professional shall review NBU's revenue requirements, analyze NBU's current rate structure, and provide recommendations, if needed, to NBU about modifying the rate structure for water, wastewater, and electric utilities (the "Project"). The Professional's recommendations shall consider the feedback made by the New Braunfels City Council (the "City Council"), the NBU Board of Trustees (the "Board"), and the Community Advisory Panel (the "CAP").

I. SERVICES

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

Task 1. Project Approach, Project Management, and Quality Assurance/Quality Control ("QA/QC")

The Professional shall utilize the Project approach described herein and provide the Project management and QA/QC Services described herein.

- a. The Professional shall develop a baseline schedule for the Project that shall be provided in writing to NBU within thirty (30) days of notice to proceed ("NTP") and prepare updated schedules for the Project on a monthly basis on or before the 1st business day of each month for NBU to monitor progress and identify submittal dates. The Professional shall provide the schedules to the NBU Project Manager via email.
- b. The Professional shall develop a QA/QC program for the Project, which shall be explained in detail via a written document provided to the NBU Project Manager via email within thirty (30) days of NTP.
- c. The Professional shall provide NBU with electronic monthly Project progress reports and submit written invoices on or before the 25th day of each month for the previous month's effort. Progress reports shall be provided by the Professional to the NBU Project Manager via email on or before the 25th day of each month.
- d. With respect to the meetings described in Task 3 herein, the Professional shall provide meeting agendas and materials at least three (3) business days prior to every meeting and provide a copy of the documented meeting minutes and action item logs to the NBU Project Manager within three (3) business days after every meeting.
- e. The Professional shall manage Project integration, scope, schedule, cost, QA/QC, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs.

- f. If requested by NBU, the Professional shall provide a formalized communication plan for the Project that shall be provided in writing to NBU within the period of time specified by NBU when requesting the formalized communication plan. The Professional shall provide the communication plan to the NBU Project Manager via email.
- g. The Professional shall provide a dedicated Project management team to centralize communications and streamline processes, in addition to the technical analysis team. These two teams will include the team members described herein.
 - i. The Project director shall provide overall Project accountability and shall provide QA/QC, industry perspective, and insights into the Project.
 - ii. The Professional's Project manager shall serve as NBU's main point of contact for the Project. The Professional's Project Manager shall ensure the Project is within budget, on schedule, and effectively meets NBU's objectives. The Professional's Project manager shall lead the consulting staff in conducting analyses and preparing deliverables for the Project.
 - iii. The technical lead and QA/QC shall provide oversight for the Project, ensuring it meets industry standards, and shall also provide QA/QC for the Project.
 - iv. The electric subject matter expert shall provide input and guidance for the electric components of this Project.
 - v. The communication lead shall provide strategic communication and stakeholder engagement for the Project.
 - vi. The staff consultant shall conduct analyses and prepare deliverables for the Project.

Task 2. Rate Design Review and Possible Rate Modification

Upon NBU providing NTP to the Professional, the Professional shall perform the rate review and rate modification Services described herein.

- a. Rate Review
 - i. The Professional shall analyze recent historical financial results as well as NBU revenue and cost projections and review the underlying assumptions that serve as the basis for the rate requirements.
 - ii. The Professional shall review NBU's five-year financial operating plan, which has forecasted revenue requirements for fiscal years 2026 – 2030. The Professional shall coordinate with NBU staff to understand and consider incorporating these requirements into the analysis.

- iii. The Professional shall evaluate current NBU rates and rate structures in terms of the ability of these rates to generate adequate revenue to meet requirements from the proper source. The Professional shall review and recommend alternatives, if needed.
- b. Rate Modification, If Applicable
- i. The Professional shall review the rate plan, using a clear and distinct understanding of NBU’s overall goals and objectives as the foundation for rates to enable NBU to meet its service pricing objectives. Pricing objectives will include, as applicable:
 - A. cost of service (“COS”) recovery;
 - B. revenue stability;
 - C. affordability;
 - D. equity;
 - E. ease of administration;
 - F. regional competitive position;
 - G. conservation; and
 - H. economic development.
 - ii. If requested by NBU, the Professional shall discuss with NBU staff any potential rate design alternatives that meet NBU’s pricing goals and objectives. From these discussions, the Professional shall develop defensible rate structures that are reflective of industry-accepted practices and procedures and rate regulations within the State of Texas, equitably balancing the recovery of revenue between fixed and variable rates.

Task 3. Education, Presentations, and Meetings

The Professional shall perform the education, presentation, and meeting Services described herein.

- a. The Professional will educate NBU staff, the CAP, and any other parties specified by NBU about the process of rate development, including traditional rate setting issues, methodologies, and ideas being used throughout the utility industry. The educational component will include methodology, computer models, and the capability to modify or update the models or computations, if necessary.
- b. The Professional will brief various stakeholders from time to time. These may include City of New Braunfels staff and committees, City Council, NBU staff, the NBU Board, the CAP, and community groups, as reasonably specified by NBU. The Professional shall assist NBU staff in organizing and developing presentation materials for these meetings, in addition to participation in and presentation at these meetings. This may involve answering questions from community members regarding the subject matter or materials presented. The number of meetings and corresponding presentations is anticipated to be as follows: ten (10) internal NBU staff meetings, four (4) CAP meetings, one (1) NBU Board meeting, and one (1) City Council meeting.

- c. Additional ad hoc meetings and presentations may be requested by NBU staff, the CAP and/or its members, City Council or the Board, at any time – the quantity of which cannot be projected. These meetings will be requested as needed, when needed, with no minimums or maximums. Requests for meetings and/or presentations will be submitted by the NBU Project Manager.

II. DELIVERABLES

- a. Models: If water, wastewater, and electric rate models need to be developed during the process, those models shall become the property of NBU, and the appropriate NBU personnel shall be trained on the operation of said models.
- b. Reports: A written report shall be delivered to NBU, including an executive summary highlighting any major decisions (if applicable), a comprehensive rate review section that details all methodologies, assumptions, public input, and calculations used, and a background section that includes all data used in the development of recommendations. Unless otherwise specified by NBU in writing and accepted by the Professional, the written report will be due on or before March 31, 2025. The written report shall include the following components, as applicable:
 - i. Executive Summary
 - A. Scope
 - B. Purpose of Study
 - C. Revenue Requirements
 - D. Forecasted Deficits Under Existing Rates
 - E. Rate Design
 - ii. Community Advisory Panel
 - A. Purpose, Basis, and Role
 - iii. Electric Utility
 - A. Revenue Requirements
 - B. Proposed Electric Rate Design
 - iv. Water Utility
 - A. Revenue Requirements
 - B. Proposed Water Rate Design
 - v. Wastewater Utility
 - A. Revenue Requirements
 - B. Proposed Wastewater Rate Design

vi. Summary and Recommendations

- A. Summary
 - B. Recommendations
- c. Presentations: NBU shall be provided with copies of all presentations given at least one week prior to each presentation date.
- d. Dashboards: Dashboards or other data visualization tools may need to be developed for the Project. Any dashboards developed will be provided to NBU at Project closing.

The Services shall be completed by July 31, 2025.

Exhibit B
Compensation

NBU agrees to pay the Professional for the Services rendered under this Agreement in an amount not to exceed \$290,309 in accordance with the table below and made part of this Agreement.

| Services | Price |
|---|------------------|
| Project Management | \$27,438 |
| Water Rate Design | \$28,945 |
| Wastewater Rate Design | \$16,540 |
| Electric Rate Design | \$37,215 |
| Education, Presentations, and Meetings | |
| Communication Plan, if requested by NBU | \$18,760 |
| Customer and Stakeholder Communications | \$39,953 |
| Rate Calculator | \$13,340 |
| Community Open Houses | \$29,000 |
| Board and Council Communication | \$32,476 |
| Internal Meetings | \$46,642 |
| Total | \$290,309 |

EVALUATION FORM
24-0046 Water, Wastewater, and Electric Rate Design

| CRITERIA | POINTS AVAIL | Baker Tilley Virchow Krause, LLC. | NewGen Strategies & Solutions, LLC. | Raftelis Financial Consultants, Inc. |
|--|---------------------|--|--|---|
| Project Approach, Project Management and Quality Assurance/Quality Control | 30 | 15 | 12 | 27 |
| Demonstrated Applicable Experience of Company | 25 | 10 | 22 | 15 |
| Personnel Qualifications and Experience | 20 | 10 | 12 | 16 |
| Cost Proposal | 25 | 22 | 12 | 12 |
| Total | 100 | 57 | 58 | 70 |



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Pawelek and Moy, Inc. for the Design of the Sewer Infrastructure Replacement Package Two Project for Four Construction Locations, Including Landa Street, Fredericksburg Road, Sundance Parkway, and Elizabeth Avenue, New Braunfels, Texas

BACKGROUND

On June 30, 2022, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Services Agreement (the “Agreement”) with Pawelek and Moy, Inc. (“P&M”) for professional engineering services for the Sewer Infrastructure Replacement Package Two (the “Project”).

During design, NBU and P&M identified a need to remove Site 1 from the Project, and divide the Project into two phases. As a result, NBU staff requests that the Board approve the First Amendment to the Agreement (the “First Amendment”), which adds additional design services to include (i) new project management services to accomplish additional archeological coordination with the Texas Historical Commission (“THC”) and City of New Braunfels (“CoNB”), (ii) new environmental and cultural investigation services, (iii) additional final design phase services, (iv) new field services for subsurface utility engineering, (v) additional permitting and stakeholder services for the new design, (vi) new bid phase services, and (vii) additional construction phase services for the new design, all of which are more specifically described in Exhibit A to this First Amendment (the “New Services” and, together with the Original Services, the “Services”) that were not contemplated in the Agreement.

This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved.

Upon completion of the final design, NBU staff will solicit a construction contract and bring the construction contract to the Board for approval in December, 2024. NBU staff plans to begin construction in January, 2025 and complete construction by May, 2026.

FINANCIAL IMPACT

The total financial impact for the First Amendment is \$277,498.00. The total contract amount for the Agreement and the First Amendment with P&M for the Project is \$1,066,118.00. The Project is budgeted within the Fiscal Year 2024 through Fiscal Year 2026 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Customers and Community

Stewardship

EXHIBITS

1. First Amendment to Professional Services Agreement with P&M

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(SEWER INFRASTRUCTURE REPLACEMENT PACKAGE TWO)**

This **FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “First Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **PAWELEK & MOY, INC.**, a Texas corporation (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated July 5, 2022 (the “Agreement”), for project management, preliminary engineering, final design, permitting and coordination with stakeholders, bid, and construction phase services (the “Original Services”) for the Sewer Infrastructure Replacement Package 2 Project (the “Project”) to be completed by December 15, 2025;

WHEREAS, in the course of the design, NBU and the Professional identified a need to remove the site referenced in the Agreement as “MH 2665 to MH 2663 Landa St and Mission Dr,” and depicted as Figure 1, #1 of the Agreement (hereinafter referenced as “Site 1”) from the Project, and divide the Project into two phases;

WHEREAS, the removal of Site 1 accounts for the deletion of approximately 500 linear feet of 8-inch wastewater line, a manhole, and associated hardware from the design;

WHEREAS, NBU and the Professional determined it was necessary to divide the Project into two phases to limit the scope of digging and traffic control in the newly paved area of Elizabeth Avenue;

WHEREAS, NBU and the Professional also identified a need to add additional design services to include (i) new project management services to accomplish additional archeological coordination with the Texas Historical Commission (“THC”) and City of New Braunfels (“CoNB”), (ii) new environmental and cultural investigation services, (iii) additional final design phase services, (iv) new field services for subsurface utility engineering, (v) additional permitting and stakeholder services for the new design, (vi) new bid phase services, and (vii) additional construction phase services for the new design, all of which are more specifically described in Exhibit A to this First Amendment (the “New Services” and, together with the Original Services, the “Services”) that were not contemplated in the Agreement;

WHEREAS, the New Services require an increase in the compensation to the Professional and an extension of the completion date;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to amend or modify the Agreement; and

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) remove Site 1 and Services relating to Site 1 from the Agreement, (ii) divide the Project into two phases, (iii)

add the New Services, (iv) include additional compensation for the New Services, and (iv) extend the completion time for the Services.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this First Amendment as of the effective date of this First Amendment.

Section 2. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted in its entirety and replaced by Exhibit B to this First Amendment as of the effective date of this First Amendment.

Section 3. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 4. Entire Agreement. This First Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 5. Binding Effect. This First Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 6. Severability. If any term or provision of this First Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this First Amendment shall not be affected thereby, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this First Amendment on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

THE PROFESSIONAL:

PAWELEK & MOY, INC.,
a Texas corporation

By: John J. Moy Jr.
Name: John J. Moy Jr.
Title: Vice President

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide project management, preliminary engineering, final design, permitting and coordination with stakeholders, bid phase services, and construction phase services (collectively the “Services”) for the New Braunfels Utilities Sewer Infrastructure Package 2 Project, which will include three segments of sewer main improvements for a combined approximate total of 5,500 linear feet of 8-inch to 18-inch diameter (see Figure 1) (the “Project”). Site 1 is deleted from the Project and the Agreement. The site referenced and depicted in Figure 1 as #2 MH 3111 to MH 3120 Landa Street to Fredericksburg Rd is referenced herein as “Site 2.” The site referenced and depicted in Figure 1 as #3 MH2605 to MH 2604 Sundance Pkwy Old FM 306 is referenced herein as “Site 3.” The site referenced and depicted in Figure 1 as #4 MH 2145 to 2151 Landa Park Dr. is referenced herein as “Site 4.”

SERVICES

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

Task 1. Project Management

The Professional shall provide the 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 schedules to the NBU Project Manager via email.

The Professional shall adjust/extend the Project schedule in the manner set forth in the Table 1 due to archaeological coordination/input with the THC, alignment/route adjustments regarding Site 4 (Landa Park Aquatic Center/Golf Course/Wurstfest area), continued coordination with the CoNB regarding construction timelines/traffic phasing regarding Sites 2 and 4, and separating final design phase, bid phase, and construction phases into different bid/construction packages for Site 2 as Phase I and Sites 3 and 4 as Phase II.

1.2. NO CHANGE

1.3. NO CHANGE

1.4. NO CHANGE

1.5. NO CHANGE

Task 2. Preliminary Engineering Phase

Upon NBU providing notice to proceed (“NTP”), the Professional shall perform the preliminary engineering phase services described herein.

2.1. MEETINGS. NO CHANGE

2.2. ENVIRONMENTAL AND CULTURAL INVESTIGATION. The Professional shall provide the environmental and cultural services described herein.

2.2.1. NO CHANGE

2.2.2. NO CHANGE

2.2.3. NO CHANGE

2.2.4. The Professional shall conduct archaeological investigations in compliance with the Antiquities Code of Texas (ACT) for Site 4. The proposed investigations will be conducted in two phases (PHASE I and PHASE II). PHASE I will occur prior to construction and will consist of the monitoring of up to six (6) hydrovac potholes to find existing utility lines, and backhoe trenching three of the four proposed bore boxes. PHASE II will be conducted during construction and involve the backhoe trenching of the remaining bore box located in the Elizabeth Street Parking Lot, and construction monitoring of the open cut trenching for the installation of the new sewer lines. The purpose of these investigations is to identify any buried cultural resources within the limits of the Project area, and, if possible, assess their significance for inclusion in the National Register of Historic Places (NRHP) and for formal designation as State Antiquities Landmarks (SALs). All work will be conducted in accordance with the Archeological Survey Standards for Texas as set forth by the Council of Texas Archeologists (CTA) and adopted by the THC. Costs for any additional work required by the THC resulting from the findings of the investigations must be authorized by NBU in writing in advance and are not included in this Agreement.

2.2.5. The Professional shall (i) prepare draft and final environmental documents to include the results of the analysis described in Section 2.2.5, and (ii) produce the technical reports for review by the THC in accordance with its Rules of Practice and Procedure,

Chapter 26, Section 27, and the CTA Guidelines for Cultural Resources Management Reports. The report will provide a discussion of the field methods and results of the field investigation. It will also include a list of sites identified, recommendations of each site's eligibility for the NRHP or for formal designation as SALs, and the appropriate criteria under which the sites were evaluated. Site forms will be submitted to the Texas Archaeological Research Laboratory and the trinomials will be obtained by the Professional. The report will also include recommendations for further work or no further work with appropriate justifications based on the requirements of 13 TAC 26.5(35), 13 TAC 26.20(1), and 13 TAC 26.20(2) and CTA Guidelines.

- 2.2.6. A draft of the technical report will be submitted to NBU and the CoNB for review and comments. Subsequently, the report will be revised to address NBU and the CoNB comments and submitted to the THC for their review and approval. Once the report has been reviewed, the Professional will make revisions and submit a digital copy of the final report electronically to NBU, the CoNB and THC for their records. Non-restricted copies of the final report, as well as an abstract form, and Project area shapefile will also be submitted to the THC mandated by the Texas Antiquities Committee (TAC).

2.3. DESIGN DOCUMENTS.

NO CHANGE

2.4. PRELIMINARY ENGINEERING REPORT.

NO CHANGE

- 2.5. DELIVERABLES. The Professional shall provide the following engineering phase deliverables to NBU's Project Manager:

2.5.1. NO CHANGE

2.5.2. NO CHANGE

2.5.3. NO CHANGE

Task 3. Final Design Phase

Upon approval of the PER, the Professional shall perform the final design phase services described herein.

3.1.MEETINGS. The Professional shall provide a meeting agenda one (1) day prior to the meeting and meeting minutes no later than one (1) week after the meeting to NBU's Project Manager for the following meetings:

3.1.1. NO CHANGE

3.1.2. NO CHANGE

3.1.3. NO CHANGE

3.1.4. monthly design meetings (nine (9) meetings);

3.1.5. permitting meetings with the CoNB (five (5) meetings); and

3.1.6. meetings with additional stakeholders (five (5) meetings).

3.2. 30% DESIGN DOCUMENTS.

NO CHANGE

3.3. 90% DESIGN DOCUMENTS. Upon approval by NBU of the 30% design documents, the Professional shall prepare Phase I (Site 2) and Phase II (Sites 3 and 4) 90% plans, specifications, and an opinion of probable construction cost ("OPCC"), with Site 1 being removed from the Project. 90% design documents shall include:

3.3.1. REMOVED

3.3.2. NO CHANGE

3.3.3. NO CHANGE

3.3.4. NO CHANGE

3.3.5. NO CHANGE

3.3.6. NO CHANGE

3.3.7. NO CHANGE

3.3.8. NO CHANGE

3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon approval by NBU of the 90% design documents, the Professional shall prepare Phase I (Site 2) and Phase II (Sites 3 and 4) 100% plans, specifications, and an OPCC, with Site 1 being removed from the Project. 100% design documents shall include:

3.4.1. NO CHANGE

3.4.2. NO CHANGE

3.4.3. NO CHANGE

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

3.5.1. NO CHANGE

3.5.2. 90% design – the Professional shall provide for Phase I (Site 2) and Phase II (Sites 3 and 4) one (1) electronic copy and three (3) hard copies of 22” x 34” size plans, specifications, a bid form, and a Class 2 OPCC; and

3.5.3. 100% design – the Professional shall provide for Phase I (Site 2) and Phase II (Sites 3 and 4) one (1) electronic copy and three (3) hard copies of 22” x 34” size plans, specifications, a bid form, and a Class 1 OPCC.

3.5.4. The Professional shall provide all design deliverables to NBU within one week of completion.

Task 4. Field Services

The Professional shall perform the field services described herein.

4.1. TOPOGRAPHIC SURVEY. The Professional shall obtain a topographic, utility, and boundary control survey as described herein.

4.1.1. NO CHANGE

4.1.2. The Professional shall tie in the additional locations of the existing subsurface utilities on the survey.

4.1.3. NO CHANGE

4.1.4. NO CHANGE

4.1.5. NO CHANGE

4.1.6. NO CHANGE

4.2. SUBSURFACE UTILITY ENGINEERING (“SUE”). The Professional shall perform SUE as described herein.

4.2.1. The Professional shall provide additional SUE “Quality Level B” utility locates near and within the Landa Park Aquatic Center and along Golf Course Road. Quality Level B includes two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods providing horizontal positioning of subsurface utilities to within approximately one (1) foot.

4.2.2. The Professional shall perform SUE “Quality Level A” for up to six (6) additional pothole locations. Quality Level A includes physically locating the actual utility – often by ‘potholing.’ Once the utility is potholed it is located horizontally and vertically by survey measurements. This location is typically to the top of the pipe and shall be noted on the design plans.

4.2.3. NO CHANGE

4.2.4. NO CHANGE

4.3. GEOTECHNICAL DATA REPORT (“GDR”).

NO CHANGE

4.4. EASEMENT DOCUMENTS.

NO CHANGE

Task 5. Permitting & Stakeholders

The Professional shall coordinate with the following stakeholders/agencies as described herein.

5.1. NO CHANGE

5.2. The CoNB. The Professional shall prepare and submit separate permit applications for Phase I (Site 2) and Phase II (Sites 3 and 4) to the CoNB through the CoNB permitting portal to obtain permits for:

5.2.1. public infrastructure;

5.2.2. floodplain (Phase I only); and

5.2.3. traffic control.

5.3 Section 5.3 was inadvertently omitted in the Original Agreement and both Section 5.3 and subsection 5.3.4 have been intentionally omitted in this First Amendment.

5.4 REMOVED

5.5 NO CHANGE

5.6 DELIVERABLES. The Professional shall produce the following:

5.6.1 a US Army Corps of Engineers (“USACE”) Section 404 permit application, if needed – one (1) electronic copy;

5.6.2 For Phase I (Site 2) and Phase II (Sites 3 and 4) – a CoNB Public Infrastructure, floodplain, and a traffic control permit application - one (1) electronic copy

5.6.3 REMOVED (previously numbered as subsection 5.4.3)

5.6.4 a TxDOT Utility Installation Request (“UIR”) application – one (1) copy; and

5.6.5 The Professional shall provide all deliverables to NBU within one week of completion.

Task 6. Bid Phase Services

Upon completion of the final design, the Professional shall perform separate bid phase services for Phase I (Site 2) (Items 6.1 through 6.5) and Phase II (Sites 3 and 4) (Items 6.6 through 6.10) described herein.

Phase I (Site 2)

6.1. NO CHANGE

6.2. NO CHANGE

6.3. NO CHANGE

6.4. NO CHANGE

6.5. NO CHANGE

Phase II (Sites 3 and 4)

6.6. PREBID CONFERENCE. The Professional shall attend one (1) pre-bid conference to be administered by the NBU Purchasing Department. The Professional shall assist NBU with preparation of the agenda one (1) day prior to the conference, provide NBU with meeting notes within one (1) week after the conference, 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.

6.7. INTERPRET BID DOCUMENTS. The Professional shall assist NBU’s Project Manager with responding to questions and interpreting bid documents. NBU Purchasing Department shall prepare any addenda resulting from such questions.

6.8. BID EVALUATION. The Professional shall attend one (1) bid-opening conference to be administered by NBU’s Purchasing Department. The Professional shall assist NBU in analyzing the bids received for the Project, which includes researching contractor qualifications and references. The Professional shall recommend award of contract or other actions as appropriate to be taken by NBU in the form of a letter of recommendation.

6.9. CONFORMED CONSTRUCTION DOCUMENTS. The Professional shall conform the

construction documents by incorporating all addenda items into the plans and specifications.

6.10. DELIVERABLES. The Professional shall provide the following:

- 6.10.1 addenda - one (1) PDF electronic copy of each;
- 6.10.2 letter of recommendation - one (1) electronic copy; and
- 6.10.3 conformed construction documents - one (1) PDF electronic copy and 3 hard copies will be submitted at a 22" x 34" size.

Task 7. Construction Phase Services

Upon completion of the bid phase services, the Professional shall perform the construction phase administration services for Phase I (Site 2) (Items 7.1 through 7.7) and Phase II (Sites 3 and 4) (Items 7.8 through 7.14) described herein.

Phase I (Site 2)

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

- 7.1.1. NO CHANGE
- 7.1.2. NO CHANGE
- 7.1.3. attend up to a total of 20 bi-weekly construction progress meetings. The Professional shall prepare agenda via email one (1) day prior to meeting, record and distribute meeting minutes via email within one (1) week of meeting to the NBU Project Manager and the contractor via email;
- 7.1.4. attend up to a total of ten (10) monthly site visits during construction of the Project to observe the progress of the work and to determine if the work is proceeding in general accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports via email for each site visit and notify NBU of any non-conforming work performed by the contractor observed on the site visits;
- 7.1.5. NO CHANGE
- 7.1.6. NO CHANGE

7.2. SUBMITTAL MANAGEMENT. NO CHANGE

- 7.2.1. SUBMITTAL REVIEW.
NO CHANGE

7.3. CHANGE ORDERS. NO CHANGE

7.4. INTERPRET DRAWINGS AND SPECIFICATIONS. NO CHANGE

7.5. PAY ESTIMATES. NO CHANGE

7.6. CLOSE-OUT DOCUMENTS. NO CHANGE

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

7.7.1. NO CHANGE

7.7.2. NO CHANGE

7.7.3. NO CHANGE

7.7.4. The Professional shall provide all deliverables to NBU within one week of completion.

Phase II (Sites 3 and 4)

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

7.8.1. assist NBU in conducting one (1) pre-construction conference with the construction contractor and prepare and provide agenda via email one (1) day prior to the conference, record and distribute to NBU meeting minutes via email within one (1) week after the conference, and coordinate conference responses with NBU;

7.8.2. conduct one (1) construction document control workshop for the contractor;

7.8.3. attend up to a total of 24 bi-weekly construction progress meetings. The Professional shall prepare agenda via email one (1) day prior to meeting, record and distribute meeting minutes via email within one (1) week of meeting to the NBU Project Manager and the contractor via email;

7.8.4. attend up to a total of 11 monthly site visits during construction of the Project to observe the progress of the work and to determine if the work is proceeding in general accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports via email for each site visit and notify NBU of any non-conforming work performed by the contractor observed on the site visits;

7.8.5. conduct with NBU's representatives one (1) substantial completion observation and punch list reviews of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare a list of deficiencies to be corrected by the contractors before recommendation of final payment;

7.8.6. conduct one (1) final completion observation of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make recommendation of final payment.

7.9. SUBMITTAL MANAGEMENT. The Professional shall use FNiManager, a document management system for construction documents. The Professional shall monitor the processing of contractor's submittals, 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 a pdf version to the NBU Project Manager via email indicating the status of all submittals in the review process.

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

- 7.9.1.1 shop drawings (up to 10);
- 7.9.1.2 record data (up to 1);
- 7.9.1.3 requests for information (up to 5);
- 7.9.1.4 schedules (up to 5);
- 7.9.1.5 certified test reports (up to 5); and
- 7.9.1.6 miscellaneous submittals (up to 5).

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

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

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

7.10.3. The Professional shall prepare field/change order documentation for up to ten (10) field orders for minor alterations and up to five (5) change orders.

7.10.4. 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.

7.11. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for NBU and the contractor during the course of construction per the schedule assumed herein.

7.12. PAY ESTIMATES. The Professional and NBU's Project Manager 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.

7.13. CLOSE-OUT DOCUMENTS

7.13.1. 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 the NBU Project Manager as a PDF via email within 60 days of final completion.

7.13.2. ASSET INFORMATION. The Professional shall prepare a memorandum that provides the asset information for all new and abandoned pipelines and above grade appurtenances for insurance purposes within 30 days after substantial completion.

7.13.3. ADDITION/RETIREMENT FORMS. The Professional shall prepare addition and retirement forms for all new and abandoned pipelines and above grade appurtenances within 30 days after substantial completion.

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

7.14.1. project site visit memos and construction progress meeting minutes;

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

7.14.3. one (1) PDF electronic copy of Asset Information memorandum.

7.14.4. The Professional shall provide all deliverables to NBU within one (1) week of completion.

SUPPLEMENTAL SERVICES

NO CHANGE

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.

Table 1

| Project Milestones | Start Date | End Date |
|--|-------------------|------------------|
| Notice to Proceed | No Change | No Change |
| Task 1 – Project Management | No Change | August 30, 2024 |
| Task 2 – Preliminary Engineering Phase | No Change | April 30, 2024 |
| Task 3 – Final Design Phase | No Change | June 30, 2024 |
| Task 4 – Field Services | No Change | March 31, 2024 |
| Task 5 – Permitting and Stakeholders | July 1, 2024 | August 30, 2024 |
| Task 6 – Bid Phase Services | September 1, 2024 | October 31, 2024 |
| Task 7 – Construction Phase Services | January 1, 2025 | May 30, 2026 |

FIGURE 1

Sewer Infrastructure Replacement Package 2

Items 2,3,and 4 are one job location

- ~~#1~~ 1. Replace 15" sewer main from MH 2605 at the intersection of Landa St and Mission Dr to MH 2608.
 - #2 2. Replace 12" sewer main from MH 3111 at the KOC Hall on Landa to MH 3120 at the intersection of Landa St. and Fredericksburg Rd.
 - #2 3. Replace 8" sewer main from MH 3119 on Landa St. to MH 3136 on Fredericksburg Rd.
 - #2 4. Replace 10" sewer main from MH 3120 at the intersection of Landa St. and Fredericksburg Rd. to MH 3151 on Fredericksburg Rd.
 - #3 5. Replace 12" sewer main from MH 2605 at the intersection of Old FM 306 and Sundance Pkwy. To MH 2604.
 - #4 6. Replace 6" sewer main from MH 2153 at Landa Park Dr. and Elizabeth Ave. to MH 2145 on Elizabeth Ave. Also Rehab 6" main from 5152 through 2151 at Landa Pool.
- ↑
2152

Figure 1
Site 1 Removed

Figure 1

Site 2

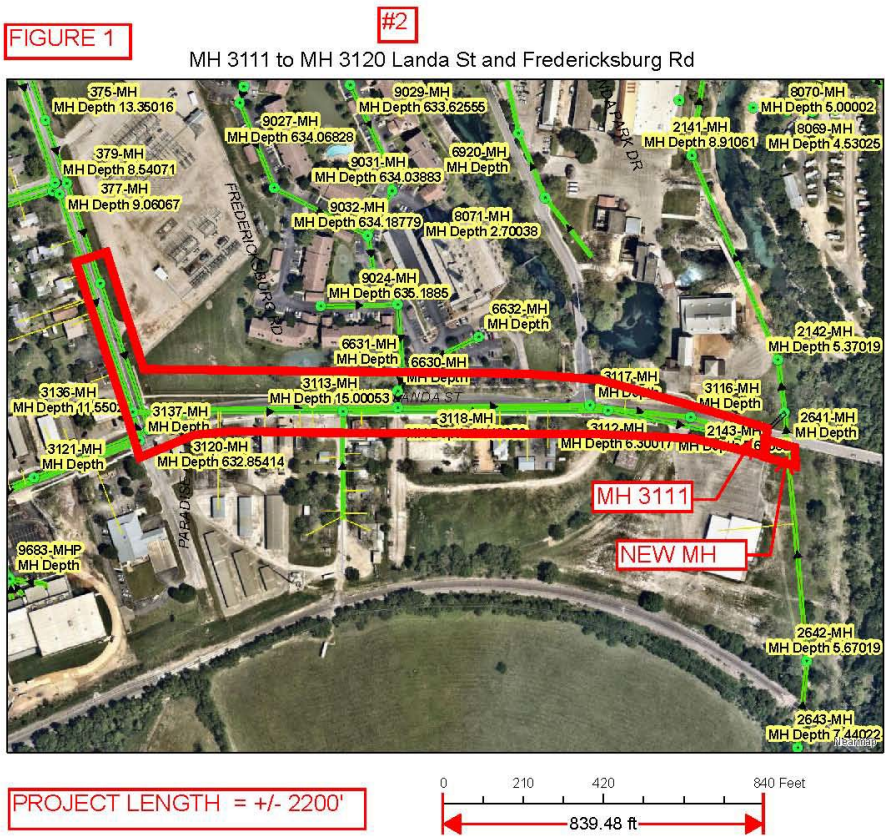


Figure 1

Site 3

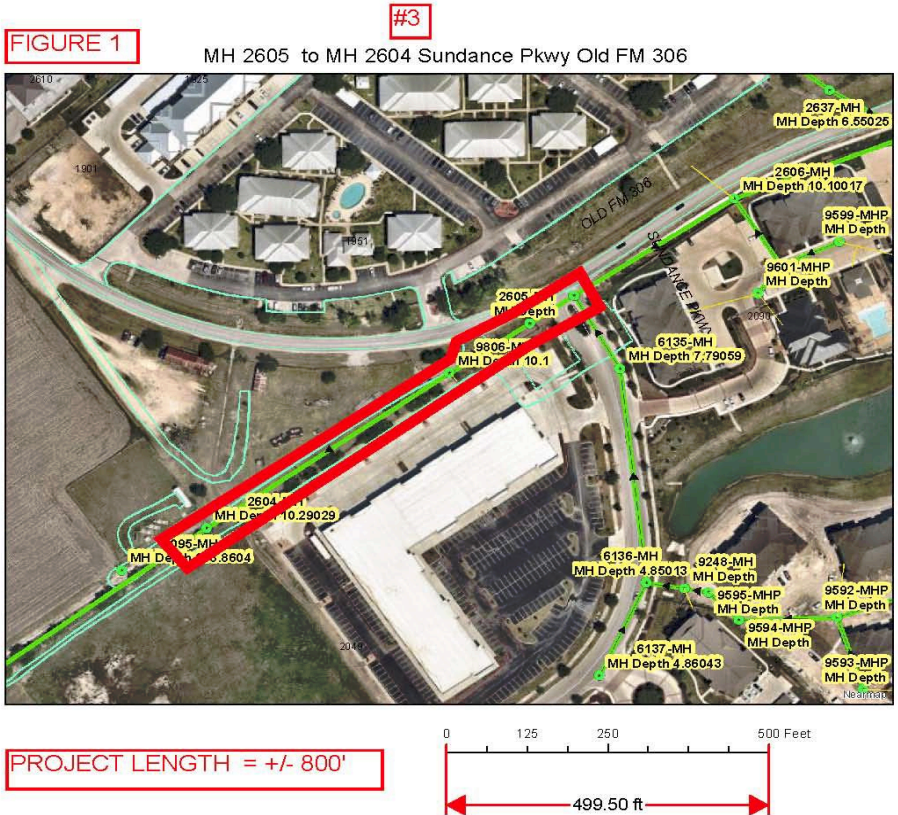


Figure 1

Site 4

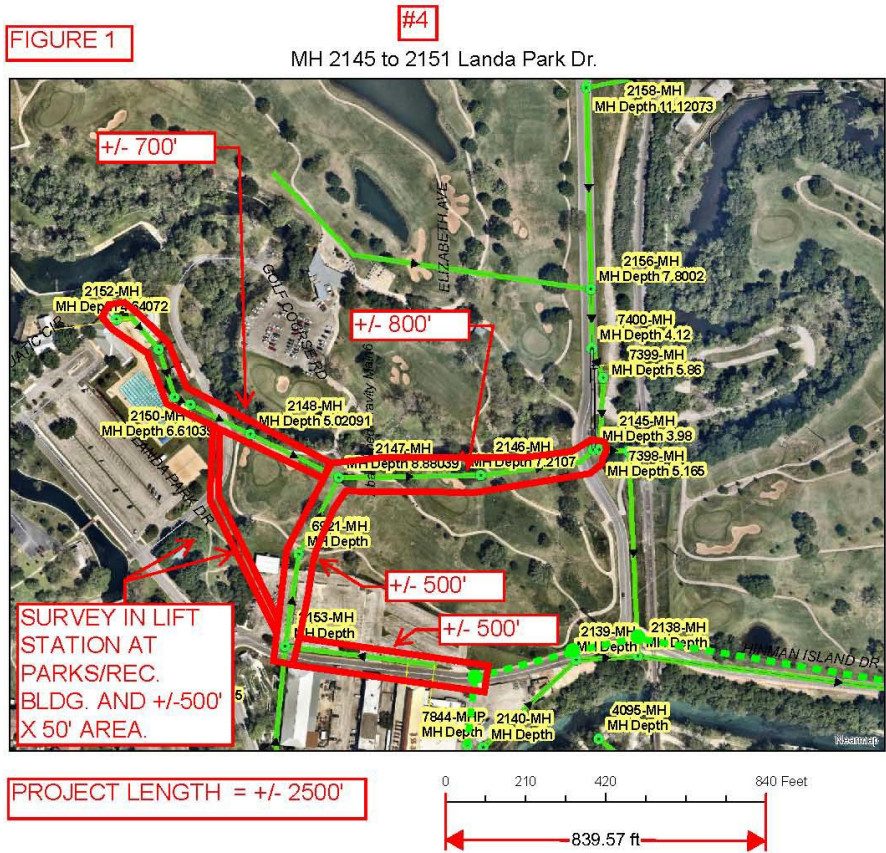


Exhibit B

Compensation

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

Services

NBU shall pay the Professional for the Services rendered under this Agreement in an amount not to exceed \$1,066,118.

| Services Cost Breakdown | | | |
|---------------------------------------|---------------------------|------------------------|--------------------|
| Task | Original Agreement | First Amendment | Total Cost |
| Task 1: Project Management | \$34,000 | \$29,650 | \$63,650 |
| Task 2: Preliminary Engineering Phase | \$154,370 | \$41,480 | \$195,850 |
| Task 3: Final Design Phase | \$218,890 | \$69,488 | \$288,378 |
| Task 4: Field Services | \$210,320 | \$26,570 | \$236,890 |
| Task 5: Permitting and Stakeholders | \$45,840 | \$4,120 | \$49,960 |
| Task 6: Bid Phase Services | \$10,200 | \$10,200 | \$20,400 |
| Task 7: Construction Phase Services | \$115,000 | \$95,990 | \$210,990 |
| Total | \$788,620 | \$277,498 | \$1,066,118 |

Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$75,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement prior to the Professional performing the Supplemental Services.

| Supplemental Services | Original Agreement | First Amendment | Balance |
|------------------------------|---------------------------|------------------------|-----------------|
| Supplemental Services | \$75,000 | \$0 | \$75,000 |
| Total | \$75,000 | \$0 | \$75,000 |



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Arcadis U.S. Inc. for the Design of the NBU Surface Water Treatment Plant Expansion Project

BACKGROUND

On February 3, 2020, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Services Agreement (the “Agreement”) with Arcadis U.S. Inc., (“Arcadis”) for professional engineering services for the NBU Surface Water Treatment Plant Expansion Project (the “Project”). On December 4, 2020 NBU approved a Professional Services Contract Amendment (the “First Amendment”) for project management services, assistance with the TWDB loan application services, coagulant jar testing services, and waste water lift station design and construction services.

Upon completion of final design tasks, NBU placed the Project on hold. NBU now desires to move forward with the Project to meet increasing customer water system demands. As a result, NBU staff requests that the Board approve the Second Amendment to the Agreement (the “Second Amendment”), which includes additional final design phase services and additional Supplemental Services not contemplated in the Agreement.

This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved.

Upon completion of the final design, NBU staff plans to begin construction in 2026 and complete construction in 2029.

FINANCIAL IMPACT

The total financial impact of the Second Amendment is \$3,112,200.00. The total contract amount for the Agreement, First Amendment, and Second Amendment with Arcadis for the Project is \$8,332,000.00, including Supplemental Services. The Project is budgeted within the Fiscal Year 2024 through Fiscal Year 2028 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Customers and Community

Stewardship

EXHIBITS

1. Second Amendment to the Professional Services Agreement with Arcadis

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(SURFACE WATER TREATMENT PLANT EXPANSION PROJECT)**

This **SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Second Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **ARCADIS U.S., INC.**, a Delaware corporation authorized to transact business in the State of Texas (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated February 3, 2020 (the “Original Agreement”), for professional engineering services (the “Original Services”) for the construction of the Surface Water Treatment Plant Expansion Project (the “Project”);

WHEREAS, NBU and the Professional included Additional Services in the Agreement for Project specific professional engineering services contemplated by Chapter 2254 of the Texas Government Code (the “Supplemental Services”), whereby NBU and the Professional could agree in writing to engage such Supplemental Services at a later date, if needed, in an amount not to exceed \$500,000;

WHEREAS, the Parties entered into the First Amendment to the Original Agreement on December 4, 2020, to (i) engage certain Supplemental Services defined in Exhibit A, Task 9, (ii) authorize the related compensation, and (iii) define a time of completion for the Supplemental Services (the “First Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, NBU now requires additional final design and permitting services and construction administration services (the “New Services, and together with the Original Services, the “Services”) as more specifically described in Exhibit A attached hereto;

WHEREAS, the New Services require an increase in the compensation to the Professional and an extension of the completion date to May 31, 2029;

WHEREAS, NBU has also identified a need to increase funding for the Supplemental Services to pay for additional engineering specific services not presently contemplated in the Agreement but likely to arise due to the complexity of the Project;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to amend or modify the Agreement; and

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New Services; (ii) authorize the related compensation for the New Services; (iii) increase the funding for the Supplemental Services; and (iv) extend the Project completion date to May 31, 2029.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this Second Amendment as of the effective date of this Second Amendment.

Section 2. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted in its entirety and replaced by Exhibit B to this Second Amendment as of the effective date of this Second Amendment.

Section 3. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 4. Entire Agreement. This Second Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 5. Binding Effect. This Second Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 6. Severability. If any term or provision of this Second Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Second Amendment shall not be affected thereby, and this Second Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this Second Amendment on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

THE PROFESSIONAL:

ARCADIS U.S., INC.
a Delaware corporation authorized to transact
business in the State of Texas


By: 
Name: Charles Schoening
Title: Principal-in-Charge

Exhibit A
Services

NO CHANGE

Task 1. Alternatives Evaluation

NO CHANGE

Task 2. Master Plan Development

NO CHANGE

Task 3. Raw Water Pump Station Emergency Action Plan

NO CHANGE

Task 4. Preliminary Design

NO CHANGE

Task 5. Final Design and Permitting

5.1 NO CHANGE

5.2 NO CHANGE

5.3 NO CHANGE

5.4 NO CHANGE

5.5 NO CHANGE

5.6 NO CHANGE

5.7 NO CHANGE

5.7.1 NO CHANGE

5.7.2 NO CHANGE

5.7.3 NO CHANGE

5.7.4 NO CHANGE

5.7.5 NO CHANGE

5.7.6 NO CHANGE

5.7.7 The Professional shall review the 100% design including drawings, specifications, and Opinion of Probable Cost (“OPCC”), and review the codes for any changes. The Professional shall update the drawings, and specifications as per the latest codes, and update the OPCC.

5.8 NO CHANGE

5.8.1 NO CHANGE

5.8.2 NO CHANGE

5.8.3 NO CHANGE

- 5.8.4 The Professional shall re-establish contact with permitting agencies, prepare permitting sets and necessary applications, submit, track, and respond to comments as required to obtain permits.
- 5.9 The Professional shall update the 100% design drawings and specifications, OPCC, to include the following:
 - 5.9.1 pump building sanitary drain installation;
 - 5.9.2 install climate control to high-service pump building;
 - 5.9.3 improve ventilation at chemical buildings;
 - 5.9.4 addition of variable-frequency drive to high service pumps No. 3 and No. 4;
 - 5.9.5 redesign of Crane in filter pipe gallery and decant;
 - 5.9.6 raise gearbox for decant basin drive;
 - 5.9.7 add two (2) discharge pressure transducers.
 - 5.9.8 SCADA architecture modifications and design updates, incorporating comments received on the existing 100% design documents;
 - 5.9.9 raw water pump station evaluation and submersible pump options updates; and
 - 5.9.10 emergency preparedness plan required – backup power generator.

Task 6. Bidding Phase Service

NO CHANGE

Task 7. Construction Administration

- 7.1 NO CHANGE
- 7.2 The Professional shall provide a resident project representative (“RPR”) for twenty-five (25) hours per week for a total duration of one hundred four (104) weeks. The Professional’s instrumentation and control engineers shall witness factory testing of hardware, software, and provide feedback to vendors/integrators to meet the 2024 SCADA standards identified in Section 5.9.
 - 7.2.1 NO CHANGE
 - 7.2.1.1 NO CHANGE
 - 7.2.1.2 NO CHANGE
 - 7.2.1.3 The Professional shall engage a subcontractor to perform all special inspections required to comply with International Building Code adopted by City of New Braunfels.
 - 7.2.2 NO CHANGE
 - 7.2.3 NO CHANGE
 - 7.2.4 NO CHANGE

- 7.2.5 NO CHANGE
- 7.2.6 NO CHANGE
- 7.2.7 NO CHANGE
- 7.2.8 NO CHANGE
- 7.2.9 NO CHANGE
- 7.2.10 NO CHANGE
- 7.2.11 NO CHANGE
- 7.2.12 NO CHANGE
- 7.2.13 NO CHANGE
- 7.2.14 NO CHANGE

- 7.3 NO CHANGE
- 7.4 NO CHANGE
- 7.5 NO CHANGE
- 7.6 NO CHANGE
- 7.7 NO CHANGE
- 7.8 NO CHANGE
- 7.9 NO CHANGE
- 7.10 NO CHANGE
- 7.11 NO CHANGE
- 7.12 NO CHANGE
- 7.13 NO CHANGE

7.14 The Professional shall provide on-site construction inspection (one inspector, forty (40) hours per week) for a duration of one hundred four (104) weeks under the direction of RPR.

Task 8. Startup, Commissioning, and Performance Evaluation

NO CHANGE

Task 9. Additional Services

NO CHANGE

Schedule

| Milestone | Start Date | End Date |
|--|-------------------|-------------------|
| Task 1 - Alternatives Identification Workshop | NO CHANGE | NO CHANGE |
| Task 1- Alternatives Evaluation Workshop | NO CHANGE | NO CHANGE |
| Task 2 - Draft Master Plan Document | NO CHANGE | NO CHANGE |
| Task 2 - Review Workshop | NO CHANGE | NO CHANGE |
| Task 3 - Raw Water Pump Station Emergency Action Plan Contract Documents | NO CHANGE | NO CHANGE |
| Task 3 - Raw Water Pump Station Emergency Action Plan Workshop | NO CHANGE | NO CHANGE |
| Task 4 – 30 Percent Design Submittal | NO CHANGE | NO CHANGE |
| Task 4 – 30 Percent Design Workshop | NO CHANGE | NO CHANGE |
| Task 4 – TCEQ Meeting | NO CHANGE | NO CHANGE |
| Task 2 – Final Master Plan Document | NO CHANGE | NO CHANGE |
| Task 5 – 60 Percent Design Submittal | NO CHANGE | NO CHANGE |
| Task 5 – 60 Percent Design Workshop | NO CHANGE | NO CHANGE |
| Task 5 – 90 Percent Design Submittal | NO CHANGE | NO CHANGE |
| Task 5 – 90 Percent Design Workshop | NO CHANGE | NO CHANGE |
| Task 5 – 100 Percent Design Notice to Proceed (NTP) | August 1, 2024 | |
| Task 5 – 100 Percent Design Submittal | August 1, 2024 | September 9, 2025 |
| Task 6 – Bidding Phase Services | September 9, 2025 | September 1, 2026 |
| Task 7 – Construction Completion | September 5, 2026 | January 17, 2029 |
| Task 7 – Record Drawings Submittal | January 17, 2029 | March 30, 2029 |

| | | |
|--|------------------|-------------------|
| Task 8 – Startup and Commissioning | January 18, 2029 | February 28, 2029 |
| Task 8 – Performance Monitoring Completion | March 1, 2029 | May 31, 2029 |
| Task 9 – Additional Services | NO CHANGE | NO CHANGE |

Exhibit B

Compensation

NBU shall pay the Professional for the Services and Supplemental Services rendered under this Second Amendment in accordance with the tables 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 \$7,632,000.

| Services Cost Breakdown | | | | |
|--|---------------------------|------------------------|-------------------------|--------------------|
| Task | Original Agreement | First Amendment | Second Amendment | Total |
| Task 1. Alternatives Evaluation | \$103,100 | \$0 | \$0 | \$103,100 |
| Task 2. Master Plan Development | \$64,300 | \$0 | \$0 | \$64,300 |
| Task 3. SWTP Raw Water Pump Station Emergency Action Plan | \$87,600 | \$0 | \$0 | \$87,600 |
| Task 4. Preliminary Design | \$853,200 | \$0 | \$0 | \$853,200 |
| Task 5. Final Design and Permitting | \$1,716,400 | \$0 | \$946,200 | \$2,662,600 |
| Task 6. Bidding Phase Services | \$98,700 | \$0 | \$24,100 | \$122,800 |
| Task 7. Construction Administration | \$1,493,000 | \$0 | \$1,876,800 | \$3,369,800 |
| Task 8. Startup, Commissioning, and Performance Evaluation | \$303,500 | \$0 | \$65,100 | \$368,600 |
| Services Total | \$4,719,800 | \$0 | \$2,912,200 | \$7,632,000 |

Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$700,000, as modified below; provided, however, that NBU must provide written approval in the form of a supplemental services agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.

| Supplemental Services Cost Breakdown | | | | |
|---|---------------------------|------------------------|-------------------------|--------------------|
| Task | Original Agreement | First Amendment | Second Amendment | Balance |
| Board Approved Sums for Supplemental Services | \$500,000 | \$0 | \$200,000 | \$700,000 |
| Task 9.1. Project Management | | (\$10,000) | \$0 | (\$10,000) |
| Task 9.2. TWDB Loan Application | | (\$74,000) | \$0 | (\$74,000) |
| Task 9.3. Coagulant Jar Testing | | (\$37,000) | \$0 | (\$37,000) |
| Task 9.4. WWLS Design and Construction | | (\$268,000) | \$0 | (\$268,000) |
| Total | \$500,000 | (\$389,000) | \$200,000 | \$311,000 |



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Fifth Amendment to the Work Authorization with Quiddity Engineering, LLC, for the Design of the Kuehler Water Reclamation Facility Expansion Project

BACKGROUND

On December 10, 2010, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Services Agreement (the “Agreement”) with Jones and Carter, Inc. (“Jones and Carter”) for professional engineering services for the North and South Kuehler Wastewater Treatment Plant (“WWTP”) (the “Project”). On December 15, 2017, a Work Authorization (the “12/15/17 WA”) was executed, which included services for North and South Kuehler WWTP Expansion, South Kuehler WWTP Major Permit Amendment, North and South Kuehler WWTP Rehabilitation, and South Kuehler SK-20 Relocation/Expansion. A supplement to the 12/15/17 WA was approved by the Board on February 27, 2020 (the “Supplement to WA”), amended on November 5, 2020 (the “First Amendment to WA”), amended on March 8, 2021 (the “Second Amendment to WA”), amended on January 6, 2023 (the “Third Amendment to WA”), and amended on May 23, 2023 (the “Fourth Amendment to WA”).

The First Amendment to WA split the Project into three (3) construction design packages, including (i) the North and South Kuehler WWTP Expansion Project, (ii) the North and South Kuehler WWTP Rehabilitation Project, and (iii) the North and South Kuehler WWTP Access Road Project. As a result of this split, several services included in the 12/15/17 WA were no longer needed.

The Second Amendment to WA removed all services no longer needed from the First Amendment to WA. The Third Amendment to WA rescinded all remaining work from the North and South Kuehler WWTP Expansion Project. The Third Amendment to WA was not previously presented to the Board, and staff requested that the Board ratify the Third Amendment to the WA on May 23, 2023. Before execution of the Third Amendment to WA, Jones and Carter changed its name to Quiddity Engineering, LLC (“Quiddity”).

The Fourth Amendment to WA included improvements for the treatment units and equipment planned to be decommissioned in the Expansion to extend their service life to enable the WWTP, now referred to as Water Reclamation Facility (“WRF”), to remain in compliance with NBU’s treatment permit.

The design of the North & South Kuehler Wastewater Treatment Plant Rehabilitation (“WWTP”) was completed, and approval received from the TCEQ and partial approvals from the City of New Braunfels permitting. Due to decreasing flows and budget constraints, NBU elected to reduce the scope, modify the design concept for the rehabilitation, and modify the design to include certain scope items as bid alternates to provide NBU with bid award flexibility to align with budget for the North & South Kuehler WWTP Rehabilitation.

As a result, NBU staff requests the Board approve the Fifth Amendment to the Agreement (the “Fifth Amendment”), which modifies the design to remove the proposed preliminary treatment unit, elevated flow splitter, pipe bridge that crosses the North Tributary, and various other items; adds to the design to rehabilitate the existing influent headworks, influent screens, and membrane thickener (“MBT”) screens, and rehabilitate the existing gas chemical feed rooms to be compliant with current TCEQ Chapter 217 design criteria; redesigns various remaining items impacted by the changes; prepares an updated drainage model and analysis for the North Tributary for floodplain impact assessment and to comply with updated City of New Braunfels criteria; and resubmits for agency approvals for the revised project design scope.

This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved.

Upon completion of the final design, NBU staff will solicit a construction contract and bring the construction contract to the Board for approval in October 2025. NBU staff plans to begin construction in 2026.

FINANCIAL IMPACT

The total financial impact for the Fifth Amendment is \$1,162,000.00. The total contract amount for the Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment with Quiddity for the Project is \$5,846,000. The Project is budgeted within the Fiscal Year 2017 through Fiscal Year 2027 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Customers and Community

Stewardship

EXHIBITS

1. Fifth Amendment to the Professional Services Agreement with Quiddity.

FIFTH AMENDMENT TO WORK AUTHORIZATION (“WA”)

PROJECT NAME: NORTH & SOUTH KUEHLER WASTEWATER TREATMENT PLANT EXPANSION (the “Project”)

TASK REQUEST: North and South Kuehler Wastewater Treatment Plant Expansion – Scope Change and Redesign for Decreased Flows

DATE ISSUED: April __, 2024

CLIENT: New Braunfels Utilities (“NBU”)
ENGINEER: Quiddity Engineering, LLC (“QE”)

CONTRACT: EP10-075
QE JOB NO.: 05487-0005-00

This Fifth Amendment to WA amends the Work Authorization dated November 6, 2017, between NBU and QE (the “12/15/17 WA”), which was supplemented on through Board action on February 27, 2020 (the “Supplement to WA”), amended on November 5, 2020 (the “First Amendment to WA”), amended on March 8, 2021 (the “Second Amendment to WA”), amended on January 6, 2023 (the “Third Amendment to WA”), and amended on May 25, 2023 (the “Fourth Amendment to WA”). The 12/15/17 WA, together with the Supplement to WA, the First Amendment to WA, the Second Amendment to WA, the Third Amendment to WA, and the Fourth Amendment to WA was issued under the Professional Services Agreement (“PSA”) dated December 10, 2010, between NBU and Jones & Carter, Inc. (now known as Quiddity Engineering, LLC, and all terms and provisions set forth therein. Except as stated herein, all other terms and conditions of the PSA remain in full force and effect.

Scope Description:

The design of the North & South Kuehler Wastewater Treatment Plant Rehabilitation (“WWTP”) was completed, and approval received from the TCEQ and partial approvals from the City of New Braunfels permitting. Due to decreasing flows and budget constraints, NBU elected to reduce the scope, modify the design concept for the rehabilitation, and modify the design to include certain scope items as bid alternates to provide NBU with bid award flexibility to align with budget for the North & South Kuehler WWTP Rehabilitation. This Fifth Amendment to WA modifies the 12/15/17 WA and Fourth Amendment to add the following tasks: (i) modify the design to remove the proposed preliminary treatment unit from the design including the screening area, aerated grit chambers, grit removal system including the screenings garage, lift station, and influent junction box; (ii) modify the design to remove the proposed odor control system for the preliminary treatment unit from the design; (iii) modify the design to remove the preliminary treatment unit fat, oils, and grease (“FOG”) removal system; (iv) modify the design to remove the electrical building and all electrical gear for the preliminary treatment unit from the design; (v) modify the design to remove the proposed elevated flow splitter from the design; (vi) modify the design to remove the proposed pipe bridge that crosses the North Tributary from the design; (vii) modify the design to remove the sludge dewatering box station from the design; (viii) modify the design to remove the North Kuehler WWTP drain return pumps from the design; (ix) modify the design to make a bid alternate and to design an alternate concept to replace the South Kuehler WWTP non-potable water (“NPW”) pump system; (x) as a bid alternate, modify the design to remove the proposed hydropneumatic tank at South Kuehler from the design; (xi) modify the design to replace the screens and screenings conveyor at the existing headworks at the North Kuehler WWTP; (xii) modify the design to include modifying the existing concrete screenings channel structure at the North Kuehler WWTP to lower the

floor, as needed, to accommodate the new screen and changing hydraulics as a result of NBU's SK-20 project (not part of this authorization); (xiii) modify the design to replace the screens and screenings conveyor at the existing headworks at the South Kuehler WWTP; (xiv) modify the design to include modifying the existing concrete structure at the South Kuehler WWTP to lower the floor, as needed, to accommodate the new screen and changing hydraulics as result of NBU's SK-20 project (not part of this authorization); (xv) modify the design to retain the existing storage buildings at the South Kuehler WWTP; (xvi) modify the design to include the replacement of the NPW system hydropneumatic tank ("HPT") at North Kuehler WWTP; (xvii) modify the design to include modifying the existing chlorine and sulfur dioxide feed rooms at the North Kuehler WWTP to install a ventilation system compliant with current TCEQ Chapter 217 design criteria; (xviii) modify the design to include modifying the existing chlorine and sulfur dioxide feed rooms at the South Kuehler WWTP to install a ventilation system compliant with current TCEQ Chapter 217 design criteria; (xix) modify the design to remove and replace the existing helical screw screen at the South Kuehler membrane thickeners ("MBTs") and; (xx) modify the design to remove and replace the existing step screens at the North Kuehler MBTs and digester; (xxi) as a bid alternate, modify the design to include the replacement of the existing South Kuehler MBTs and replacement with ceramic MBTs including replacement of the permeate pumping system; (xxii) as a bid alternate, modify the design to include replacement of the existing North Kuehler MBTs and replacement with ceramic MBTs including replacement of the permeate pumping system; (xxiii) modify the design to allow for alternate manufacturers for the electrical gear and VFDs for the North Kuehler WWTP; (xxiv) modify the design to allow for alternate manufacturers for the electrical gear and VFDs for the South Kuehler WWTP; (xxv) redesign of the influent sanitary sewer at South Kuehler WWTP to connect to the existing headworks in lieu of the currently proposed headworks to be removed; (xxvi) redesign the proposed yard piping arrangement and elevations at both North and South Kuehler WWTPs to accommodate the removal and modified process units noted above; (xxvii) redesign of site paving to accommodate site changes at both North and South Kuehler WWTPs for the removal and modified process units noted above; (xxviii) redesign of site drainage at both North and South Kuehler WWTPs to accommodate the removal and modifications of the process units noted above; (xxix) prepare a new, updated drainage model and analysis for the North Tributary for floodplain impact assessment and to comply with updated City of New Braunfels criteria; (xxx) modify the design to make the replacement of the existing aeration basin air delivery system, the existing the process blowers, and related blower electrical and controls modifications at the North Kuehler WWTP a bid alternate; (xxxi) modify the design to make the replacement of the existing digester and membrane thickener blowers, and related blower electrical and controls modifications at the North Kuehler WWTP a bid alternate; (xxxii) modify the design to make the replacement of the existing digester and membrane thickener blowers, and related blower electrical and controls modifications at the South Kuehler WWTP a bid alternate; and (xxxiii) resubmit for agency approvals for the revised project design scope. Detailed scope descriptions of these improvements are noted as follows:

- I. Removal of Preliminary Treatment Unit: Removal from the design of the entire preliminary treatment unit structure (screenings, grit removal and lift station) including all equipment, gates, piping, valves, instruments, panels, conduit, wire, and other miscellaneous items; concrete masonry unit ("CMU") screenings garage; the upstream influent junction box including all gates, piping, instruments, conduit, and wire, and all surrounding paving. This effort includes removal of certain plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- II. Removal of Preliminary Treatment Unit Odor Control System: Removal from the design of the entire preliminary treatment unit odor control system including the slab structure, equipment, piping, valves, instruments, panels, conduit, wire, and other miscellaneous items. This effort

includes removal of certain plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.

- III. Removal of Preliminary Treatment Unit FOG Removal System: Removal from the design of a wet well mixer and blower at the proposed preliminary process unit to address FOG in both wet wells and related electrical components to power the FOG Removal System including new conduit/wire and duct bank. This effort includes removal of certain plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- IV. Removal of Preliminary Treatment Unit Electrical Building: Removal from the design of the entire preliminary treatment unit electrical building including the CMU building, all electrical equipment, transformer, instruments, panels, conduit, wire, duct bank and other miscellaneous items. This effort includes removal of certain plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- V. Removal of Elevated Flow Splitter: Removal from the design of the entire elevated flow splitter structure including all gates, piping, valves, instruments, stairs, conduit, wire, duct bank and other miscellaneous items. This effort includes removal of certain plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- VI. Removal of Pipe Utility Bridge: Removal from the design of the entire pipe utility bridge that crosses the North tributary including all fencing, gates, supports, piping, and other miscellaneous items. This effort includes removal of certain plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- VII. Removal of Sludge Dewatering Box Station: Removal from the design of the entire sludge dewatering box station including the dewatering box equipment, the sunken concrete structure and drive approach, piping, valves, and other miscellaneous items. This effort includes removal of certain plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- VIII. Removal of North Kuehler WWTP Drain Return Pumps Replacement: Removal from the design of the entire replacement of the existing North Kuehler WWTP drain return pumps including the pump replacement, variable frequency drives (“VFDs”) addition, control panel replacement, piping, valves, and instruments. Due to the age of the electrical equipment in the room, the programmable logic controller (“PLC”) and motor control center (“MCC”) will be replaced, including conduit, wire, duct bank and other miscellaneous items. This effort includes removal of certain plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- IX. Replacement of South Kuehler WWTP NPW Pump System Replacement: To provide NBU with flexibility on the project scope to award in comparison to its available budget, the construction plans and technical specifications will be modified to show the South Kuehler WWTP NPW Pump System Replacement as a bid alternate. The bid alternate will include the demolition and replacement of the existing South Kuehler NPW system including demolition of the two existing pumps and installation of two self-priming centrifugal pumps, VFDs, new pump control system with an Allen-Bradley ControlLogix PLC that will be connected to the existing supervisory control and data acquisition (“SCADA”) system, a flow control valve for pressure maintenance, modifications to the control panel feeder breaker including new conduit and wire with new

controls for the pumps; addition of a double basket strainer on the discharge line within the existing building; demolition and replacement of the existing NPW suction and discharge piping inside the existing building and the interior wall of each line. The pumps will remain in the existing Drain Pump Station building and no modifications or alterations will be made to the structure or other components not listed above. The proposed pump capacities will be based on the demand determined by a review of the existing and proposed equipment. The new NPW system will not operate with a hydropneumatics tank.

- X. Replacement of North Kuehler WWTP Headworks Screens and Conveyor: Addition to the design of replacement of the two existing mechanical screens with two new catenary bar screens manufactured by Ovivo USA, LLC and each sized for a peak flow for 11.5 million gallons per day (“MGD”); a replacement screening conveyor to convey screenings from both screens to the dumpster area; replacement of each slide gate not replaced within the past 5 years with new slide gates (total of 4 anticipated); replacement stepover, if needed, to accommodate belt conveyor; new control panel; and associated instruments, conduit, wire, duct bank, and other miscellaneous items. This effort includes additional plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- XI. Modification of North Kuehler WWTP Headworks Structure: Addition to the design to analyze the hydraulics of the incoming sanitary sewer balancing line from the South Kuehler headworks and, if necessary to accommodate the new hydraulic condition, modify the existing headworks concrete structure to remove and reconstruct the finished floor of the screening area to a lower elevation; removal of the existing Parshall flume and all related instruments, conduit, and wire; and addition of a new flow measurement device on a process line upstream of the aeration basin. This effort includes additional plan sheets and technical specifications.
- XII. Replacement of South Kuehler WWTP Headworks Screens and Conveyor: Addition to the design of replacement of the one existing mechanical screen and one manual screen with two new mechanical screens utilizing catenary bar screens manufactured by Ovivo USA, LLC and each sized for a peak flow of 12.6 MGD; a replacement screening belt conveyor to convey screenings from both screens to the dumpster area; replacement of each slide gate not replaced within the past 5 years with new slide gates (total of 4 anticipated); replacement stepover, if needed to accommodate belt conveyor; new control panel; and associated instruments, conduit, wire, duct bank, and other miscellaneous items. This effort includes additional plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.
- XIII. Modification of South Kuehler WWTP Headworks Structure: Addition to the design to analyze the hydraulics of the incoming sanitary sewer line from the SK-20 project (separate authorization) and the balancing line from the North Kuehler headworks, and if necessary to accommodate the new hydraulic condition, modify the existing headworks concrete structure to remove and reconstruct the finished floor of the screening area to a lower elevation; removal of the existing Parshall flume and all related instruments, conduit, and wire; and addition of a new flow measurement device on a process line upstream of the aeration basin. This effort includes additional plan sheets and technical specifications.
- XIV. Modification of South Kuehler WWTP to Retain Existing Storage Buildings: Modify the site layout design to retain the two existing metal storage buildings that were proposed to be demolished as part of the existing rehabilitation scope but will now remain in the same location. This includes modifications to the site paving, site piping, and site drainage designs. This effort

includes additional plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications.

- XV. Replacement of North Kuehler WWTP NPW System High Pressure Tank (“HPT”): Removal and replacement of the existing pressure vessel with a new ASME certified pressure vessel of a similar size to be installed on the existing foundation and connect to the existing plant piping near the existing tank. This effort includes additional plan sheets and technical specifications and modifications to the remaining plan sheets.
- XVI. Modification of North Kuehler WWTP Chemical Feed Buildings Ventilation System: Removal of the existing mechanical ventilation equipment and louvers; modifications to the existing concrete masonry unit walls to isolate the two chemical rooms and add openings necessary for new fans and louvers; installation of a louver and mechanical fan in each room sized and located in accordance with TCEQ’s Chapter 217 WWTP design criteria; and associated instruments, conduit, wire, lighting panels, disconnects, and other miscellaneous items. This effort includes additional plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications. No structural modifications or expansions will be performed on the building.
- XVII. Modification of South Kuehler WWTP Chemical Feed Buildings Ventilation System: Removal of the existing mechanical ventilation equipment and louvers; modifications to the existing CMU walls to isolate the two chemical rooms and add openings necessary for new fans and louvers; installation of a louver and mechanical fan in each room sized and located in accordance with TCEQ’s Chapter 217 WWTP design criteria; and associated instruments, conduit, wire, lighting panels, disconnects, and other miscellaneous items. This effort includes additional plan sheets and technical specifications and modifications to remaining plan sheets and technical specifications. No structural modifications or expansions will be performed on the building.
- XVIII. South Kuehler WWTP Digester Fine Screen: Demolition and replacement of the existing Huber helical screw screen at South Kuehler WWTP digesters, upstream of the mechanical biological treatment (“MBT”) basin. The scope of work includes demolition of the existing fine screen and conveyor, installation of one new fine screen and screenings with necessary piping modifications required to accommodate the new screen and conveyor, concrete repairs necessary for structural modifications and support structures, and paving near the proposed discharge dumpster area.
- XIX. North Kuehler WWTP Digester Fine Screen: Demolition and replacement of the existing fine screens at North Kuehler WWTP digesters, upstream of the MBT basin. The scope of work includes demolition of the existing screens and conveyors, installation of two new fine screens and screenings conveyor, modifications to the existing air lifts, piping modifications required to accommodate the new screens and conveyor, concrete repairs necessary for modification to the air lift and support structures and modifications to paving near the proposed discharge dumpster area.
- XX. South Kuehler WWTP MBTs: To provide NBU with flexibility on the project scope to award in comparison to its available budget, the construction plans and technical specifications will be modified to include demolition of the existing MBTs at the South Kuehler WWTP and replacement of the MBT equipment as a bid alternate. The bid alternate will include demolition of the existing MBTs and associated piping and electrical; demolition of the existing permeate

pumps, piping and electrical; demolition of existing basin divider walls; new concrete divider walls; new SiIC-TAD™ submerged, ceramic MBT equipment (the MBTs will operate in a single train and provide single-stage thickening); two (2) new progressive cavity permeate pumps; one (1) HDPE permeate backpulse tank; extension of existing permeate pump slab and canopy; and all necessary piping, electrical, controls, supports, hardware, and miscellaneous items of work required.

- XXI. North Kuehler WWTP MBTs: To provide NBU with flexibility on the project scope to award in comparison to its available budget, the construction plans and technical specifications will be modified to include demolition of the existing MBTs at the North Kuehler WWTP and replacement of the MBT equipment as a bid alternate. The bid alternate will include demolition of the existing MBTs and associated piping and electrical; demolition of the existing permeate pumps, piping and electrical; demolition of existing basin divider walls; new concrete divider walls; new SiIC-TAD™ submerged, ceramic MBT equipment (the two MBT trains will operate in parallel to provide single-stage thickening); three (3) new progressive cavity permeate pumps; two (2) HDPE permeate backpulse tanks; extension of existing permeate pump slab; new permeate pump and backpulse tank canopy; and all necessary piping, electrical, controls, supports, hardware, and miscellaneous items of work required.
- XXII. Outdoor MCC Sun-Shade Installation: Addition of design scope to provide sunshade features to the existing outdoor MCCs at North and South Kuehler. NBU Operations has stated all outdoor MCCs were failing during the highest heat portions of the summer. The intent of this design would be to provide a sunshade feature for the outdoor MCCs to reduce the amount of direct sunlight seen during the hottest portion of the day during the summer months.
- XXIII. Modification of North Kuehler WWTP Electrical Gear to Allow Multiple Manufacturers: Modification of the design to provide a design that can include electrical equipment for the proposed MCCs and VFDs at the North Kuehler WWTP from Eaton, Schneider Electric/Square D. The design will include modifying MCC and panel specification requirements to remove infrared viewing windows and modifying layouts and footprints based on all allowable manufacturers. This effort includes modifications to existing plan sheets and technical specifications.
- XXIV. Modification of South Kuehler WWTP Electrical Gear to Allow Multiple Manufacturers: Modification of the design to provide a design that can include electrical equipment for the proposed MCCs and VFDs at the South Kuehler WWTP from Eaton, ABB, or Schneider Electric/Square D. The design will include modifying MCC and panel specification requirements to remove infrared viewing windows and modifying layouts and footprints based on all allowable manufacturers. This effort includes modifications to existing plan sheets and technical specifications.
- XXV. Redesign of South Kuehler WWTP Influent Sanitary Sewer: Redesign of the on-site sanitary sewer from the manhole termination of the SK-20 bid documents (separate authorization) to the existing South Kuehler headworks to allow existing structures to remain (as a result of other items in this amendment) and connect to the existing headworks. This includes a reassessment of the hydraulic conditions for the new alignment and coordination with the upstream conditions designed in the SK-20 replacement project (separate authorization); and removal and replacement of necessary portions of the existing junction box to accommodate the realigned sanitary sewer. This effort includes modifications to existing plan sheets and technical specifications.

- XXVI. Redesign of North and South Kuehler WWTPs Yard Piping: Redesign of the on-site yard piping at North and South Kuehler WWTPs to remove yard piping associated with structures removed from the design as noted above; redesign to modify alignment, depth, and connection points of yard piping to remain; and redesign of fitting and valve quantity, type, and locations. This effort includes modifications to existing plan sheets and technical specifications.
- XXVII. Redesign of North and South Kuehler WWTPs Site Paving and Grading: Redesign of the on-site site paving at the North and South Kuehler WWTPs to remove site paving that provided access to process units removed from the design as noted above; redesign to modify alignment, turn radius and location, and connection points of site paving to remain; and redesign of existing pavement to be removed and replaced as a result of the scope changes included herein. This effort includes modifications to existing plan sheets and technical specifications.
- XXVIII. Redesign of North and South Kuehler WWTPs Site Drainage: Redesign of the on-site drainage and conveyance at the North and South Kuehler WWTPs including sizing, location, and alignment of drainage system components to accommodate the scope changes included herein. This effort includes modifications to existing plan sheets and technical specifications.
- XXIX. Prepare New, Updated Drainage Model and Analysis: During the previous design phase, the City of New Braunfels changed their design criteria during the approval process necessitating a complete recreation of the model of the North Tributary from the Guadalupe River to upstream of the WWTP site. In addition to the effort required to complete the approval process dictated by the change in design criteria and multiple City reviews, the change in design scope noted above will necessitate a significant model update be prepared to accurately portray current scope of development for the property to be submitted for the City's review and approval.
- XXX. Modification of North Kuehler WWTP Aeration Delivery System and Process Blowers: To provide NBU with flexibility on the project scope to award in comparison to its available budget, the construction plans and technical specifications will be modified to include the North Kuehler WWTP aeration system and process blower scope as a bid alternate. The bid alternate will include the replacement of the aeration delivery system and diffusers at Aeration Basin Nos. 1 and 2, process blower replacement to remove the existing Kaeser blowers and replace with Aerzen blowers, VFD replacement and additions, disconnect switches, control panel replacement, MCC modifications, piping, valves, instruments, conduit, wire, duct bank, and other miscellaneous items including separation of the existing aeration basin air piping from the digester air piping. This effort includes the addition of plan sheets and modifications to remaining plan sheets and technical specifications.
- XXXI. Modification of North Kuehler WWTP Digester & Membrane Thickener Blowers: To provide NBU with flexibility on the project scope to award in comparison to its available budget, the construction plans and technical specifications will be modified to include the North Kuehler WWTP digester and membrane thickener blower scope as a bid alternate. The bid alternate will include the replacement of the digester and membrane thickener blower replacement to remove the existing Kaeser blowers and replace with Aerzen blowers, VFD replacement, disconnect switches, control panel replacement, MCC modifications, piping, valves, instruments, conduit, wire, duct bank and other miscellaneous items. This effort includes the addition of plan sheets and modifications to remaining plan sheets and technical specifications.

- XXXII. Modification of South Kuehler WWTP Digester & Membrane Thickener Blowers: To provide NBU with flexibility on the project scope to award in comparison to its available budget, the construction plans and technical specifications will be modified to include the South Kuehler WWTP digester and membrane thickener blower scope as a bid alternate. The bid alternate will include the replacement of the digester and membrane thickener blowers to remove the existing Kaeser blower and replace with Aerzen blowers, VFD replacement, disconnect switches, control panel replacement, MCC modifications, piping, valves, instruments, conduit, wire, duct bank and other miscellaneous items. This effort includes the addition of plan sheets and modifications to remaining plan sheets and technical specifications.
- Resubmission for Agency Approvals: The current design scope was submitted for agency review to the Texas Commission on Environmental Quality, City of New Braunfels Engineering Department, City of New Braunfels Commercial Building including City of New Braunfels Fire Marshal, City of New Braunfels Development Planning, and City of New Braunfels Floodplain Management. Comments were received, addressed, and approvals obtained from the TCEQ, City of New Braunfels Floodplain Management, City of New Braunfels Development Planning, and City of New Braunfels Fire Marshal. Due to the change in design scope, the redesign will need to be resubmitted for the revised scope and new scope of work items, review comments addressed, and then resubmitted for approvals from the agencies noted above.
 - i. Outstanding City of New Braunfels review comments remain concerning the approved plat and property ownership of the site, and coordination with the City of New Braunfels to provide the necessary assignment documents.
 - ii. The City of New Braunfels recently modified their City Building Code of Ordinances to require all buildings to comply with 2021 NEC, IBC, IMC, and IECC as opposed to the existing 2017 NEC, and 2018 IBC, IMC, and IECC as the original scope of work was designed from. Updated designs for the proposed South Kuehler Process blower building will need to be made and addressed on required COMCheck and engineering affidavits confirming design of the buildings for this scope.
 - iii. The extent of the project changes for this project, including the new scope of work, will require a new plan review submittal to all regulatory jurisdictions.

Detailed Assignment and Tasks:

The following tasks will be performed with the additional scope of work added, in addition to all prior work authorizations not removed from this scope:

Additional Design Phase Tasks

- ii. Management of project integration, scope, schedule, cost, quality, staff resources, sub-consultants, and communications.
- iii. Attending up to eleven (11) progress meetings with NBU.

- iv. Modification of the existing drawings and specifications to incorporate the proposed scope of work into the previously completed North & South Kuehler WWTP Rehabilitation design documents, including removal and addition of sheets for design items added/removed scope of work and providing design and administrative updates to every sheet.
- v. Preparation and submission of 90% plans, technical specifications, and engineer's opinion of probable construction cost ("OPCC") for the complete scope of work.
- vi. Review by NBU of 90% submittal of revised bid documents.
- vii. Attend a 90% design review meeting with NBU.
- viii. Incorporation of NBU revisions following 90% submittal review meeting.
- ix. Preparation and submission of 100% plans, technical specifications, and engineer's opinion of probable construction cost ("OPCC") for the complete scope of work.
- x. Revise and re-submit the Summary Transmittal submittal to TCEQ.
- xi. Revise and re-submit the plans and drainage reports to all City of New Braunfels review departments.
- xii. Review the contractor's provided documentation for work sequencing, phasing, shutdowns, and construction sequencing including service interruptions to existing treatment units.
- xiii. Attend up to four (4) additional Process Control Systems ("PCS") start-ups and observe bump tests, loop checking, manufacture certification of installation, results of performance testing required by individual technical specifications, NBU training documentation, and spare parts. The additional PCS start-ups include:
 - i. PCS #1 – South Kuehler Digester Fine Screen System;
 - ii. PCS #2 – North Kuehler Digester Fine Screen System;
 - iii. PCS #3 – South Kuehler MBT System;
 - iv. PCS #4 – North Kuehler MBT System.
- xiv. Provide additional contract administration including review of contractor pay requests and preparation and submission of necessary correspondence for the contract due to the additional scope of work.
- xv. Provide up to five (5) reviews of Contractor requests for information ("RFIs") for added equipment and scope of work.
- xvi. Provide up to eight (8) reviews of Contractor submittals for added equipment and scope of work.
- xvii. Provide up to four (4) reviews of Contractor Operation and Maintenance Manuals.
- xviii. Provide up to four (4) reviews of Contractor submitted field/change order requests. This scope does not include assistance or evaluation of contractor claims.
- xix. Prepare a memorandum that provides the asset information listed below for all above grade facilities constructed new in this project for insurance purposes within 90 days after substantial completion to include:
 - i. Address
 - ii. Year Built
 - iii. Description
 - iv. Square Footage of Building
 - v. Building Value
 - vi. Contents Value

Compensation:

Compensation for the services described above will be Method IIB-LUMP SUM (LS) as described in the PSA. NBU shall pay QE for the services rendered under this WA not to exceed \$1,162,000.

| Task | Engineering Fee |
|--|------------------------|
| Engineering for New Design Scope | \$759,000 |
| Plan Revisions for Removal of Scope and Bid Alternates | \$241,000 |
| Additional Floodplain Modeling | \$68,000 |
| Revised Regulatory Approvals | \$31,000 |
| Additional Construction Phase Services | \$63,000 |
| Total | \$1,162,000 |

Schedule:

QE will perform services in a timely manner in order to support NBU in meeting project milestones to have the project complete and on-line within the time frames noted below. QE shall complete the services within the execution of this Agreement.

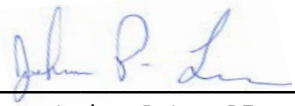
| Task | Project Milestone |
|-----------------------|--------------------------|
| 90% Design Submittal | 6 months |
| 100% Design Submittal | 3 months |
| Bid Phase | 6 months |
| Construction Phase | 24 months |

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NEW BRAUNFELS UTILITIES
263 East Main Plaza
New Braunfels, Texas 78130

Quiddity Engineering, LLC
6330 W. Loop South, Suite 150
Bellaire, Texas 77401

BY: _____
Ryan Kelso, PE

BY:  _____
Joshua P. Lee, PE

TITLE: Chief Executive Officer

TITLE: Vice President

DATE: _____

DATE: May 1, 2024

ATTEST:  _____



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Terracon Consultants, Inc. for Cultural Services for the Water and Wastewater Capital Improvements Program

BACKGROUND

On September 21, 2023 New Braunfels Utilities (“NBU”) issued a request for proposals for Cultural Services for the Water and Wastewater Capital Improvements Program (the “Services”), which provides Texas Historical Commission (“THC”) coordination, archeological surveying and test services, archeological assessments, THC antiquities permit coordination, mitigation excavation services, and reporting to THC as required for the New Braunfels Utilities (“NBU”) Water and Wastewater Capital Improvements Program.

On October 23, 2023, NBU accepted four (4) proposals for evaluation during the public solicitation process. The team evaluated the proposals and recommends the selection of Terracon Consultants, Inc. (“Terracon”). Terracon was selected as the respondent who provides the best value to NBU based on the selection criteria and the ranking evaluation, including their transmittal letter, firm qualifications and experience, past performance, and team member qualification and experience.

NBU staff requests that the Board of Trustees approve the Professional Service Agreement (the “Agreement”) with Terracon for the Project.

This item is being presented to the Board because the total amount of the Agreement is \$500,000.00.

FINANCIAL IMPACT

The total financial impact for the Agreement with Terracon for the Project is \$500,000.00. The Services are budgeted within the Fiscal Year 2024 through Fiscal Year 2029 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Safety and Security

Stewardship

EXHIBITS

1. Professional Services Agreement with Terracon
2. Request for Proposal/Response Evaluation Matrix – RFP (24-0019)

| Response Evaluation Matrix | | | | |
|--|---------------------|----------|-------------------------------|--------------|
| Criteria | Adams Environmental | Terracon | Colliers Engineering & Design | Raba Kistner |
| Transmittal Letter | 4.7 | 4.5 | 4.5 | 4 |
| Firm Qualifications and Experience | 42.5 | 47.3 | 40.8 | 46.7 |
| Past Performance | 33.2 | 33.8 | 30.8 | 30.8 |
| Team Member Qualification and Experience | 8.7 | 9.3 | 8.7 | 8 |
| Totals | 89 | 95 | 84.8 | 89.5 |

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 **TERRACON CONSULTANTS, INC.**, a Delaware corporation authorized to transact business in the State of Texas (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Term of Agreement.

This Agreement 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 July 1, 2024, to June 30, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 30, 2029.

Section 2. Scope of Services.

(A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The scope of work described in the Services constitutes the “Project.”

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

(C) The Professional shall perform the Services in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Professional may rely upon the accuracy of reports and surveys provided to it by NBU except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) Amount. The Professional shall be paid the amount set forth in Exhibit B as described herein.

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All

invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended, work performed in sufficient detail to justify payment, and a copy of the Work Authorization form. In the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

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

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

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

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

Section 5. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by NBU shall be delivered to and become the property of NBU. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to NBU without restriction or limitation on the further use of such materials; however, such materials are not intended or represented to be suitable for reuse by NBU or others. Any reuse of the materials related to the Services without prior verification or adaptation by the Professional for the specific purpose intended will be at NBU's sole risk and without liability to the Professional. Where applicable, the Professional shall retain all pre-existing proprietary rights in the materials provided to NBU but shall grant to NBU a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which

the information was provided. The Professional may, at the Professional's expense, have copies made of the documents or any other data furnished to NBU under or pursuant to this Agreement.

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

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

Section 8. Performance Warranty. The Professional warrants that the Services provided under this Agreement shall conform to the professional standards performed by professionals regularly rendering this type of service.

Section 9. Indemnification. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE OR AGENT THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY"), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER ("CLAIMS"), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE GOODS OR SERVICES PROVIDED BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH BELOW SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above

with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.
- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess

insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional’s owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers’ Compensation and Employer’s Liability Insurance. The Professional shall maintain Workers’ Compensation insurance to cover the Professional’s employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

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

Section 11. Termination.

(A) For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional’s control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely

payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

(C) Non-Collusion. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

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

the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

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

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

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

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

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

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

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

(H) No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.

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

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

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

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

(M) Offset.

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

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

If to NBU:

New Braunfels Utilities
 Attn: Director of 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:

Terracon Consultants, Inc.
 211 E. 7th Street
 Suite 620
 Austin, TX 78701

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

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

pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

(P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

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

Section 16. Information Technology

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

(B) Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **THE PROFESSIONAL SHALL INDEMNIFY, DEFEND, AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM THE PROFESSIONAL'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.**

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

PROFESSIONAL:

TERRACON CONSULTANTS, INC.,
a Delaware corporation authorized to transact
business in the State of Texas


By:  _____
Name: Lee Garrett
Title: Sr. Principal

Exhibit A

Services

The Professional shall provide all labor, equipment, materials, and transportation necessary to provide on-call cultural resource services on an as-needed basis for Water and Wastewater Capital Improvement Plan projects to meet both project-specific and Texas Historical Commission (“THC”) requirements (the “Services”). The Services include THC coordination, archeological surveying/test services, archeological assessments, THC antiquities permit coordination, mitigation excavation services, and reporting to THC as required per project site.

SCOPE OF SERVICES

The Services, as further defined in individual Work Authorizations, may include the following tasks:

- a. THC coordination meetings;
- b. pre-field preparations and targeted surveying/testing services, such as:
 - i. backhoe trenching, test unit excavation, and/or shovel testing;
 - ii. assessing the quality of archeological deposits and preservation measures;
 - iii. creation of preliminary summary letter report detailing findings and interpretations regarding the quality and three-dimensional extent of archeological deposits that may be impacted; and
 - iv. update and revise research design submitted to the THC with interpretations from the targeted surveying/testing;
- c. THC antiquities permit application packet creation and submission, to include a research design and budget to conduct mitigation excavation;
- d. mitigation excavation required for Antiquities Code of Texas compliance; and
- e. analyzing and summarizing data collected during field excavation and field investigation to include providing a draft interim report and submission to THC.

The Professional shall submit a proposed service plan and quote for each project that NBU requests to be performed under this Agreement. NBU will either approve or disapprove each proposed service plan. NBU’s approval shall be evidenced by a finalized Work Authorization executed by both parties, a form of which is attached as Exhibit C to this Agreement. The specific requirements as to location, conditions, procedures, timeframe for completion, and associated services pertaining to an assigned project shall be negotiated and set out in an individual Work Authorization, in the form attached as Exhibit C.

Work Authorizations shall be numbered sequentially, starting with number one (1) and shall reference this Agreement. The assigned and accepted Work Authorizations shall be incorporated into and become a part of this Agreement.

The Professional understands and agrees that NBU makes no minimum guarantees with regard to the amount of services under this Agreement.

Exhibit B

Compensation

The Professional shall perform the Services described in Exhibit A for a particular project outlined in each NBU Work Authorization, attached as Exhibit C, and in accordance with the Professional's Fee Schedule below; however, the compensation for all Services rendered under this Agreement shall not exceed \$100,000 annually, and \$500,000 for the duration of the Agreement.

The following rate table is included for informational purposes only.

Fee Schedule

| Service/Job Descriptions | Rate |
|----------------------------------|-------------|
| Principal | \$175 |
| QA/QC Manager | \$175 |
| Senior Principal Investigator | \$135 |
| Principle Investigator | \$120 |
| Architectural Historian | \$120 |
| Senior Project Archaeologist | \$90 |
| Project Archaeologist | 80 |
| Staff Archaeologist (Crew Chief) | \$75 |
| Archaeological Technician II | \$65 |
| Archaeological Technician I | \$55 |
| GIS Technician | \$85 |
| Administrative Assistant | \$65 |

Direct Costs

| Item | Cost (per day unless otherwise specified) |
|---------------------------------------|--|
| Trenching (one machine plus operator) | \$1,800 |
| GPS/GNSS/RTK (sub-meter) | \$35 |
| State Site Registry Form (per item) | \$110 |
| Curation Fee (per 3" of records) | \$210 |
| Curation Fee (per box) | \$325 |
| Mileage (per mile) | \$0.65 |

Exhibit C

Work Authorization



Work Authorization No. _____

| | |
|---|--|
| New Braunfels Utilities ("NBU") Attn: Director of Water Services 263 Main Plaza New Braunfels, Texas 78130 | CIP Project No.: |
| | Agreement No.: |
| | Date: |
| This Work Authorization No. ____ is in accordance with the terms and conditions outlined in the Professional Services Agreement between _____ ("Professional") and NBU dated _____ (the "Agreement"). | |
| Project Description: | |
| Description of Services: | |
| The Professional shall provide the Services in accordance with Exhibit A of the Agreement and more particularly described in Appendix __ to this Work Authorization. | |
| Deliverables: | |
| Compensation shall be as follows: Compensation shall be on a lump sum basis in the amount of \$##### for the Services and Deliverables described in this Work Authorization No. _____ in accordance with the Fee Schedule described in Exhibit B of the Agreement. | |
| | Amount of this Authorization \$ |
| Schedule shall be as follows: | |

The above described services shall proceed upon return of this Work Authorization. Services will be billed as they are done. If the Work Authorization conflicts with the Agreement, the Agreement controls.

This Work Authorization will serve as notice to proceed.

PROFESSIONAL:

NEW BRAUNFELS UTILITIES:

BY: _____

BY: _____

Print or Type Name

Print or Type Name

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____



| | | | |
|----------------------|---|---------------------|---|
| Meeting Date: | <u>June 27, 2024</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>Michael Short, P.E.</u> Director of Water Services and Compliance | Approved by: | <u>Ryan Kelso</u> Chief Executive Officer |

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with MGC Contractors, Inc. for Construction of the North Kuehler Interceptor Odor Control Facility Project

BACKGROUND

On March 1, 2024, New Braunfels Utilities (“NBU”) issued a request for bids for the North Kuehler Interceptor Odor Control Facility Project. The Project is anticipated to include some or all of the following items within its scope: (i) Construction of an EcoPure Mini Odor Control Facility installed at the inlet structure for the North Kuehler Interceptor siphon across the Guadalupe River near 450 Cross River Road (ii) associated structural slab and electrical work, (iii) fencing (iv) stormwater pollution prevention plan, (v) and all other appurtenances necessary to complete the Project (the “Project”). The Project will mitigate odors experienced near the upstream siphon box of the North Kuehler Interceptor near 450 Cross River Road.

On April 5, 2024, NBU received four (4) 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 selected as the respondent who provides the best value to NBU based on the selection criteria, the weighted value for those criteria, and the ranking evaluation, including their cost of work, proposed schedule, past performance on similar projects, overall qualifications, corporate history, and references. MGC’s proposal includes a base bid of \$478,000.00, which was the second lowest base bid out of the four (4) respondents.

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 this contract exceeds \$250,000.

FINANCIAL IMPACT

The total financial impact of the Contract with MGC for the Project is \$478,000. The Project is budgeted within the Fiscal Year 2024 through Fiscal Year 2025 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency of \$50,000.00, which is approximately 10% of the total contract amount, will be added to the project construction budget. The total contract amount plus contingency is \$528,000.00.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

Stewardship

EXHIBITS

1. Construction Contract with MGC
2. Bid Tab – (CSP 24-0040)

| Bid Tab | |
|--------------------------------------|----------------------------|
| <i>Bidder</i> | <i>Total Cost</i> |
| Pesado Construction Company | \$472,060 |
| <i>MGC Contractors, Inc</i> | <i>\$478,000</i> |
| Stolz Mechanical Contractors, LLC | \$544,400 (bid correction) |
| Associated Construction Partners Ltd | \$690,750 |

3. Bid Evaluation Matrix – Competitive Sealed Proposal (24-0040)

| Bid Evaluation Matrix | | | | | | |
|-----------------------|--|-----------------|----------------------|-------------------------|----------------------------------|------------------------------------|
| Item | Criteria | Possible Points | MGC Contractors, Inc | Pesado Construction Com | Associated Construction Partners | Stoltz Mechanical Contractors, LLC |
| 1. | Proposed Schedule | 10 | 9.5 | 8.8 | 8.8 | 2.0 |
| 2. | Past performance on similar projects | 20 | 19.2 | 16.3 | 17.0 | 3.7 |
| 3. | Overall Qualifications, Reputation, Past Relationship with NBU and Public Owners | 10 | 9.7 | 9.2 | 7.7 | 2.0 |
| 4. | Contractor's corporate history and stability | 5 | 5.0 | 4.2 | 4.5 | 1.3 |

| | | | | | | |
|----|----------------|-----|------|------|------|------|
| 5. | References | 5 | 5.0 | 4.7 | 4.7 | 1.3 |
| 6. | Purchase Price | 50 | 49.4 | 50.0 | 34.2 | 43.1 |
| | Total Score | 100 | 97.7 | 93.2 | 76.8 | 53.4 |
| | Rank | | 1 | 2 | 3 | 4 |

THIS AGREEMENT (the “Agreement” or the “Contract”) is between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **MGC CONTRACTORS, INC.**, an Arizona corporation authorized to transact business in the State of Texas (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;**
- 100% Design Drawings produced by Freese and Nichols, Inc. dated December 06, 2023; and**
- 100% Technical Specifications produced by Freese and Nichols, Inc. dated August 08, 2023.**

1.02 The Work is generally described as follows:

The Project is anticipated to include some or all of the following items within its scope: (i) Construction of an EcoPure Mini Odor Control Facility installed at the inlet structure for the North Kuehler Interceptor siphon across the Guadalupe River near 450 Cross River Road, (ii) associated structural slab and electrical work, (iii) fencing, (iv) storm water pollution prevention plan, and (v) 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:

North Kuehler Interceptor Odor Control Facility

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

**Erin Mills, P.E.
Freese and Nichols, Inc.
9601 McAllister Freeway Suite 1008,
San Antonio, Texas 78216
(210) 298-3800**

(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 **two hundred ten (210) calendar days from the Notice to Proceed date** and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

4.03 *Damages*

- A. The Contractor shall achieve Substantial Completion of the entire Work within 210 calendar days from the Notice to Proceed date, subject to and adjustments of the Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between NBU and the Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a material breach of this Agreement.
- B. Should the Contractor default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, NBU may withhold, deduct, or recover from the Contractor all costs and damages for compensable delay caused by the Contractor from the Contract Price. Such costs shall include any professional or consultant's fees (including but not limited to fees for attorneys, architects, engineers, and construction managers), and all other costs, expenses, and damages actually incurred by NBU as a result of such delay. NBU's delay damages may be incidental to and not directly associated with the Project.
- C. Timely final completion is an essential condition of this Agreement. The Contractor agrees to achieve final completion of the Work within 30 days of the designated or extended Substantial Completion date. The date of Substantial Completion shall be fixed by this Agreement, unless modified by Change Order, and memorialized by a Certificate of Substantial Completion as provided in the General Conditions.

4.04 *Special Damages*

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

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

ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

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

6.03 *Final Payment*

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

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

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

- A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. The Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site that may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means,

methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

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

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

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

8.02 *Assignment of Contract*

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

8.03 *Successors and Assigns*

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

8.04 *Severability*

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

8.05 *Governing Law*

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

8.06 *Venue*

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

8.07 *Prohibition on Contracts with Companies Boycotting Israel*

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

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

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

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

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

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

- A. If the Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Contractor represents the following:
 - 1. it is not owned by or the majority of stock or other ownership interest in the Contractor is not held or controlled by:
 - a. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or

b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

2. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

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

8.10 *Prohibition on Contracts with Companies Boycotting Energy Companies*

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

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

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

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

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

8.12 *Texas Public Information Act*

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

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

8.13 *Electronic Signatures*

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

ARTICLE 9 - INSURANCE

9.01 *Evidence of the Contractor's Insurance*

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

Bidding Requirements, Contracts Forms & Conditions of the Contract
CONTRACT AGREEMENT

Item 11.

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:
NEW BRAUNFELS UTILITIES

By: _____
Printed Name: Ryan Kelso
Title: Chief Executive Officer

CONTRACTOR:
MGC CONTRACTORS, INC.

By: _____
Printed Name: Mike Panter
Title: Vice President

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest:  _____

Title: _____

Title: Witness

Address for giving notices:

Address for giving notices:

New Braunfels Utilities

7037 FM 1044 Bldg #7

Attention: Director of Water Services

Marion, TX 78124

355 FM 306

New Braunfels, Texas 78130

(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.: N/A
(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) | <p>Amounts of coverage shall be no less than:</p> <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 |

| | | |
|---|--|--|
| <p>Business Auto Liability</p> | <p>Amount of coverage shall be no less than:</p> <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 |
| <p>Workers' Compensation and Employer's Liability</p> | <p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ Statutory Limits ▪ \$1,000,000 Each Accident and Disease ▪ Alternate Employer endorsement | <ul style="list-style-type: none"> ▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page ▪ 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. |
| <p>Excess Liability (Occurrence Basis)</p> | <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. |
| <p>Professional Liability</p> | <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. |

| | | |
|---|---|---|
| <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 | <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 |

| | | |
|--|---|--|
| | <p>shall be primary to any other insurance coverage available to the named insured 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 \$1,000,000 ○ Debris removal additional limit \$5,000,000 ○ Earthquake and Earthquake Sprinkler Leakage Included Included ○ Flood ○ Freezing \$1,000,000 ○ Mechanical breakdown including hot & cold testing \$ 25,000 Included ○ Ordinance or law Included ○ Pollutant clean up and removal \$10,000 ○ Preservation of property ○ Theft 2% subject to \$50,000 minimum • Deductible shall not exceed \$100,000 <ul style="list-style-type: none"> ○ All Risks of Direct Damage, Per Occurrence, except \$100,000 ○ Named Storm \$100,000 ○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence ○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V | <p>and roadways, bridges, glass, foundation(s), footings, underground pipes 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. |
|--|---|--|

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.**

New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

PROJECT: North Kuehler Interceptor Odor Control Facility

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with New Braunfels Utilities (“NBU”) in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all the terms and conditions of the Request for Bid, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to RFP: evaluation and ranking for forty-five (45) days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other Documents required by the Bidding Requirements within ten (10) days after the date of NBU’s Notice of Award.
3. In submitting this bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - a) BIDDER has examined copies of all the Bidding Documents and of all addenda.
 - b) BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
 - c) BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies that pertain to the subsurface of physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of Work as BIDDER considers necessary for the performance or finishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.02 of the Standard General Conditions of the Contract; and no additional examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by BIDDER for such purposes.
 - d) BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumed responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by the BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.04 of the Standard General Conditions of the Contract.
 - e) BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
 - f) BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable by BIDDER.
 - g) The Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has no solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over NBU.

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

Item 11.

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

Base Bid

| <u>ITEM NO.</u> | <u>DESCRIPTION</u> | <u>UNIT</u> | <u>QUANTITY</u> | <u>UNIT COST, \$</u> | <u>TOTAL, \$</u> |
|-----------------|---|-------------|-----------------|----------------------|------------------|
| A-01 | Mobilization | LS | 1 | \$45,000.00 | \$45,000.00 |
| A-02 | Storm Water Pollution Prevention Plan (SWPPP) | LS | 1 | \$5,000.00 | \$5,000.00 |
| A-03 | EcoPure Mini Odor Control Facility & Installation | LS | 1 | \$201,000.00 | \$201,000.00 |
| A-04 | 10' Swing Gate | EA | 2 | \$500.00 | \$1,000.00 |
| A-05 | Concrete Slab | LS | 1 | \$40,000.00 | \$40,000.00 |
| A-06 | 4" Crushed Limestone | SY | 60 | \$25.00 | \$1,500.00 |
| A-07 | Power Requirements | LS | 1 | \$19,000.00 | \$19,000.00 |
| A-08 | 8' Chain Link, Slated Fence with Barbed Wire | LF | 65 | \$100.00 | \$6,500.00 |
| A-09 | 1" Water Meter and Meter Box | LS | 1 | \$25,000.00 | \$25,000.00 |
| A-10 | 8" FRP Pipe and Fittings | LF | 10 | \$2,000.00 | \$20,000.00 |
| A-11 | Silt Fence | LF | 350 | \$5.00 | \$1,750.00 |
| A-12 | 1" Water Service & Connection to 8" Water Line | LF | 200 | \$180.00 | \$36,000.00 |
| A-13 | 2" SCH 80 PVC Drain Line and Fittings | LF | 10 | \$45.00 | \$450.00 |
| A-14 | Pavement Trench Repair | SY | 10 | \$80.00 | \$800.00 |
| A-15 | Gravel Trench Repair | SY | 40 | \$25.00 | \$1,000.00 |

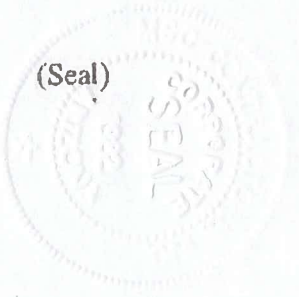
Exhibit B to Contract Agreement
Bidding Requirements, Contract Forms & Conditions of the Contract
BID FORM

| | | | | | |
|------|-------------------------|----|-----|-------------|-------------|
| A-16 | Sod Trench Repair | SY | 10 | \$100.00 | \$1,000.00 |
| A-17 | Electrical Panel | EA | 1 | \$24,000.00 | \$24,000.00 |
| A-18 | Electrical Service Line | LF | 40 | \$500.00 | \$20,000.00 |
| A-19 | Fall Protection | EA | 1 | \$14,000.00 | \$14,000.00 |
| A-20 | Light Pole | LS | 1 | \$14,000.00 | \$14,000.00 |
| A-21 | Trench Safety | LF | 200 | \$5.00 | \$1,000.00 |

TOTAL BASE BID \$ 478,000.00

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to delay damages and special damages in the event of failure to complete the Work on time.
6. The following documents are attached to and made a condition of this Bid:
 - a) Required Bid security of five percent (5%) of the Bidder’s maximum base bid price and in the form of approved Bid Bond.
 - b) List of BIDDER’s primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
7. Communication concerning this Bid shall be addressed to:
 New Braunfels Utilities
 Purchasing Manager
 355 FM 306
 New Braunfels, TX 78130
 Phone: 830-608-8867
 Email: Purchasing@NBUTexas.com
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 3/15/2024 Received MP
 Addendum No. 2 dated 4/3/2024 Received MP
 Addendum No. 3 dated _____ Received _____

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



(Seal)

MGC Contractors, Inc.
Company Name of Bidder

MJP

Authorized Signature

April 1, 2024
Date

Mike Panter
Printed Name of Authorized Signatory

7037 FM 1044 Building 7

Marion TX 78124
Address

(210) 694-0565
Telephone Number/Fax Number

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

END OF DOCUMENT

| ITEM NO. | DESCRIPTION | UNIT | Bid Quantity | Associated Constructi on Parterns, LTD Unit Cost (\$) | Associated Constructi on Parterns, LTD Total Cost (\$) | MGC Unit Cost (\$) | MGC Total Cost (\$) | Stoltz Mechanical Contractors, LLC Unit Cost (\$) | Stoltz Mechanical Contractors, LLC Total Cost (\$) | Pesado Construction Unit Cost (\$) | Pesado Construction Total Cost (\$) |
|---------------|---|------|--------------|---|--|-----------------------|------------------------|---|--|--|---|
| A-01 | Mobilization | LS | 1 | \$34,000 | \$34,000 | \$45,000 | \$45,000 | \$50,000 | \$50,000 | \$47,186 | \$47,186 |
| A-02 | Storm Water Pollution Prevention Plan (SWPPP) | LS | 1 | \$5,000 | \$5,000 | \$5,000 | \$5,000 | \$2,500 | \$2,500 | \$1,375 | \$1,375 |
| A-03 | EcoPure Mini Odor Control Facility & Installation | LS | 1 | \$520,000 | \$520,000 | \$201,000 | \$201,000 | \$259,000 | \$259,000 | \$226,090 | \$226,090 |
| A-04 | 10' Swing Gate | EA | 2 | \$1,000 | \$2,000 | \$500 | \$1,000 | \$3,100 | \$3,100 | \$1,187 | \$2,374 |
| A-05 | Concrete Slab | LS | 1 | \$25,600 | \$25,600 | \$40,000 | \$40,000 | \$15,000 | \$15,000 | \$17,000 | \$17,000 |
| A-06 | 4" Crushed Limestone | SY | 60 | \$100 | \$6,000 | \$25 | \$1,500 | \$20 | \$1,200 | \$167 | \$10,020 |
| A-07 | Power Requirements | LS | 1 | \$25,000 | \$25,000 | \$19,000 | \$19,000 | \$24,000 | \$24,000 | \$20,900 | \$20,900 |
| A-08 | 8' Chain Link, Slatd Fence with Barbed Wire | LF | 65 | \$110 | \$7,150 | \$100 | \$6,500 | \$100 | \$6,500 | \$149 | \$9,685 |
| A-09 | 1" Water Meter and Meter Box | LS | 1 | \$7,500 | \$7,500 | \$25,000 | \$25,000 | \$3,100 | \$3,100 | \$6,000 | \$6,000 |
| A-10 | 8" FRP Pipe and Fittings | LF | 10 | \$1,000 | \$10,000 | \$2,000 | \$20,000 | \$4,400 | \$44,000 | \$805 | \$8,050 |
| A-11 | Silt Fence | LF | 350 | \$10 | \$3,500 | \$5 | \$1,750 | \$10 | \$3,500 | \$4 | \$1,400 |
| A-12 | 1" Water Service & Connection to 8" Water Line | LF | 200 | \$75 | \$15,000 | \$180 | \$36,000 | \$60 | \$12,000 | \$63 | \$12,600 |
| A-13 | 2" SCH 80 PVC Drain Line and Fittings | LF | 10 | \$200 | \$2,000 | \$45 | \$450 | \$50 | \$500 | \$613 | \$6,130 |
| A-14 | Pavement Trench Repair | SY | 10 | \$300 | \$3,000 | \$80 | \$800 | \$340 | \$3,400 | \$886 | \$8,860 |
| A-15 | Gravel Trench Repair | SY | 40 | \$100 | \$4,000 | \$25 | \$1,000 | \$190 | \$7,600 | \$131 | \$5,240 |
| A-16 | Sod Trench Repair | SY | 10 | \$100 | \$1,000 | \$100 | \$1,000 | \$200 | \$2,000 | \$200 | \$2,000 |
| A-17 | Electrical Panel | EA | 1 | \$6,000 | \$6,000 | \$24,000 | \$24,000 | \$39,000 | \$39,000 | \$34,100 | \$34,100 |
| A-18 | Electrical Service Line | LF | 40 | \$100 | \$4,000 | \$500 | \$20,000 | \$600 | \$24,000 | \$495 | \$19,800 |
| A-19 | Fall Protection | EA | 1 | \$1,000 | \$1,000 | \$14,000 | \$14,000 | \$12,000 | \$12,000 | \$7,800 | \$7,800 |
| A-20 | Light Pole | LS | 1 | \$8,000 | \$8,000 | \$14,000 | \$14,000 | \$28,000 | \$28,000 | \$24,200 | \$24,200 |
| A-21 | Trench Safety | LF | 200 | \$5 | \$1,000 | \$5 | \$1,000 | \$20 | \$4,000 | \$6.25 | \$1,250 |
| | | | | Calculated | \$690,750 | | \$478,000 | | \$544,400 | | \$472,060 |
| Cont. OH&P | | | | Submitted | \$690,750 | | \$478,000 | | \$547,500 | | \$472,060 |
| | | | | | | | | | (\$3,100) | | |

**Schertz-Cibolo-Universal City ISD
RFP 20-003, K-3 Phonics Program
EVALUATION SCORE SUMMARY**

Item 11.

| Evaluation Criteria | Possible Points | Associated Construction Partners | MGC Contractors Inc. | Pesado Construction Company | Stolz Mechanical Contracors, LLC. |
|--|-----------------|----------------------------------|----------------------|-----------------------------|-----------------------------------|
| 1. Proposed Schedule/Contract Time | 10 | 8.8 | 9.5 | 8.8 | 2.0 |
| 2. Past performance on similar projects | 20 | 17.0 | 19.2 | 16.3 | 3.7 |
| 3. Overall Qualifications, Reputation, Past Relationship with NBJJ and Public Owners | 10 | 7.7 | 9.7 | 9.2 | 2.0 |
| 4. Contractor's corporate history and stability | 5 | 4.5 | 5.0 | 4.2 | 1.3 |
| 5. References | 5 | 4.7 | 5.0 | 4.7 | 1.3 |
| 6. Purchase Price | 50 | 34.2 | 49.4 | 50.0 | 43.1 |
| TOTAL POINTS | 100 | 76.8 | 97.7 | 93.2 | 53.4 |
| Rank | | 3 | 1 | 2 | 4 |

Award Recommendation:

**Schertz-Cibolo-Universal City ISD
RFP 20-003, K-3 ELAR Phonics Program
EVALUATION SCORE SUMMARY**

Item 11.

| | Associated Construction Partners | | | | | MGC Contractors Inc. | | | | | Pesado Construction Company | | | | | Stolz Mechanical Contractors, LLC. | | | | |
|-------------------------------|----------------------------------|------|-----|-----|-----|----------------------|------|-----|-----|-----|-----------------------------|------|-----|-----|-----|------------------------------------|-----|-----|-----|-----|
| Evaluation Criteria | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Total Possible Pts | 10 | 20 | 10 | 5 | 5 | 10 | 20 | 10 | 5 | 5 | 10 | 20 | 10 | 5 | 5 | 10 | 20 | 10 | 5 | 5 |
| Evaluator A | 8.5 | 16 | 6 | 4.5 | 5 | 9.5 | 19.5 | 10 | 5 | 5 | 8.5 | 15 | 9.5 | 4.5 | 5 | 0 | 0 | 0 | 0 | 0 |
| Evaluator B | 9 | 17 | 7 | 5 | 5 | 10 | 19 | 9 | 5 | 5 | 9 | 18 | 8 | 4 | 5 | 5 | 10 | 5 | 3 | 3 |
| Evaluator C | 9 | 18 | 10 | 4 | 4 | 9 | 19 | 10 | 5 | 5 | 9 | 16 | 10 | 4 | 4 | 1 | 1 | 1 | 1 | 1 |
| Average Total Points | 8.8 | 17.0 | 7.7 | 4.5 | 4.7 | 9.5 | 19.2 | 9.7 | 5.0 | 5.0 | 8.8 | 16.3 | 9.2 | 4.2 | 4.7 | 2.0 | 3.7 | 2.0 | 1.3 | 1.3 |
| Cost Proposal (Max 50 points) | 34.2 | | | | | 49.4 | | | | | 50.0 | | | | | 43.1 | | | | |
| Total Points | 76.8 | | | | | 97.7 | | | | | 93.2 | | | | | 53.4 | | | | |

Point Assignment Based on the following formula:
 (Lowest Total / Respondent Total) x Maxium Possible Points

| Evaluation Scenario | Associated Construction Partners | MGC Contractors, Inc | Pesado Construction Company | Stolz Mechanical Contractors, LLC. |
|--------------------------------|----------------------------------|----------------------|-----------------------------|------------------------------------|
| | \$ 690,750.00 | \$ 478,000.00 | \$ 472,060.00 | \$ 547,500.00 |
| Total Amount | \$ 690,750.00 | \$ 478,000.00 | \$ 472,060.00 | \$ 547,500.00 |
| Point Assignment - Max. 50 pts | 34.2 | 49.4 | 50.0 | 43.1 |

** Did not provide the information



Meeting Date: June 27,2024 **Agenda Type:** Consent Items for Action

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

Submitted by: _____ **Approved by:** Ryan Kelso
 Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Grant Agreement for Fiscal Year 2025 between New Braunfels Utilities and Headwaters at the Comal

BACKGROUND

In keeping with NBU’s longstanding commitment to the environment and community and delivering on the Master Plan for the Comal Headwaters Conservation Center (Headwaters), and NBU’s conservation legacy project, NBU desires to grant public money and administrative support to Headwaters through a grant contract to assist NBU in the process of restoring the site (the “Agreement”).

Article III, Section 52 of the Texas Constitution prohibits a municipal owned utility from lending its credit or granting public money or other things of value to an individual, association, or corporation to prevent the gratuitous application of public funds for private use. However, the Texas Constitution provides an exception to Article III, Section 52, when an expenditure benefits a private interest if made for the direct accomplishment of a legitimate public interest.

The Headwaters is willing to accept the grant of public money and administrative support for the development of the cultural and environmental history of the site and encouraging future stewardship of the environment, water, and community as provided for within the Agreement.

Under the Agreement, the grant shall be used for the following purposes:

1. Programs that promote the safe and efficient use of water;
2. Programs that promote water education;
3. Programs that promote and/or provide education regarding environmental preservation and conservation;
4. Programs that enhance NBU’s support for and standing in the national, state, and regional water utility industry;
5. Programs that include NBU’s participation in professional association events offering information exchanges and educational benefits;
6. Maintenance of the Headwaters site; or

7. Promotion and/or administrative support of the aforementioned items.

NBU staff requests that the Board of Trustees approve the Agreement with the Headwaters.

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

FINANCIAL IMPACT

The total financial impact of the Agreement with the Headwaters is \$250,000, which was approved in the Fiscal Year 2025 Operations and Maintenance Budget.

LINK TO STRATEGIC PLAN

Stewardship

EXHIBITS

1. Grant Agreement (Fiscal Year 2024)

**GRANT AGREEMENT
(Fiscal Year 2025)**

THIS GRANT AGREEMENT (“Agreement”) is between **NEW BRAUNFELS UTILITIES**, a municipally owned utility (“NBU”), and **HEADWATERS AT THE COMAL**, a 501(c)(3) nonprofit organization (“Headwaters” and, individually, referred to as “Party” or collectively, with NBU, referred to as the “Parties.”).

WHEREAS, Article III, Section 52 of the Texas Constitution prohibits a municipal owned utility from lending its credit or granting public money or other things of value to an individual, association, or corporation in order to prevent the gratuitous application of public funds for private use;

WHEREAS, the Texas Constitution provides an exception to Article III, Section 52 of the Texas Constitution, when an expenditure benefits a private interest if it is made for the direct accomplishment of a legitimate public interest;

WHEREAS, as agent of the City of New Braunfels, NBU owns sixteen (16) acres of real property located at 333 E. Klingemann Street, New Braunfels, Texas 78130 (“Site”), which is adjacent to the Comal River and the springs that feed it;

WHEREAS, in keeping with a longstanding commitment to the environment and to the community, NBU engaged with stakeholders and community members in a visioning process to restore and redevelop the Site into an education and community center that highlights the cultural and environmental significance of the Comal Springs (the “Center”);

WHEREAS, in 2012, following input from stakeholders and community members, NBU completed a master plan dated April 20, 2012, and designated “Comal Headwaters Conservation Center,” outlining NBU’s intention for the Site to be a place that enhances the community’s connection with nature and honors the cultural and environmental history of the Site, encouraging future stewardship of the environment, water, and community (“Master Plan”);

WHEREAS, in 2017, Headwaters was formed as a tax-exempt nonprofit organization to facilitate the process of restoring the Site in accordance with the Master Plan;

WHEREAS, NBU desires to grant public money and administrative support to Headwaters under an annual contract to assist NBU in the process of restoring the Site; and

WHEREAS, Headwaters is willing to accept the grant of public money and administrative support for the development of the cultural and environmental history of the Site and encouraging future stewardship of the environment, water, and community as provided for within this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained in this agreement and as authorized by the laws of the State of Texas:

AGREEMENT:

1. **Term:** This Agreement is for the NBU’s fiscal year beginning on August 1, 2024, and ending July 31, 2025.
2. **Grant:** NBU shall provide a grant in the sum of \$250,000 (the “Grant”) to Headwaters for the purposes described herein. The Grant shall be distributed to Headwaters in one lump-sum payment no later than September 30, 2024.
3. **Sources for Grant Funding.** In compliance with Texas law, the Grant shall be paid from any source lawfully available to the NBU, including NBU revenues but shall not include the proceeds of any bonds or other obligations.
4. **Headwaters’ Responsibility.** During the term of this Agreement, Headwaters shall:
 - a. ensure the Grant funds provided under this Agreement are utilized only for the purposes described in Exhibit A to this Agreement;
 - b. submit any proposed change in use of funds for prior approval to the NBU Board of Trustees.
 - c. serve as the first point of contact for restoring the Site to a world class environmental education center highlighting the cultural and environmental significance of the Comal Springs;
 - d. assist in the maintenance of Phase One of the Center, which includes the environmental zones, water quality improvement through construction of bioswales and grasslands, partial removal of the spring cap, restoration of the spring run, walking trails and an outdoor classroom;
 - e. seek and ensure additional funds to assist in the completion of Phase Two of the Center, which includes the modification, renovation and improvement of the existing facilities to create an education and exhibition space, conference and meeting rooms, visitor’s center and restroom facility and the related professional services and fees associated with the design, development, and construction of the Center;
 - f. develop, manage, and operate the Center to provide safe access to the community;
 - g. maintain all documents, papers, and records, and other evidence pertaining to the Grant funds provided hereunder in an accurate and complete manner, and make such materials available to NBU at its office and at a reasonable time if NBU deems necessary during the Term for purposes of inspection, examination, and making excerpts and/or copies of same by NBU or its authorized representatives;

- h. work in conjunction with NBU to establish and use commercially reasonable internal accounting and administrative controls to preclude theft, embezzlement, and to prevent fraud or abuse;
 - i. produce materials that market the Center, including a website that caters to existing and prospective donors and information packets for targeted companies to donate;
 - j. hold workshops or educational seminars highlighting the cultural and environmental significance of the Center; and
 - k. collaborate with NBU and the media to promote the Center.
5. **NBU Responsibility.** During the term of this Agreement, NBU shall provide the following to Headwaters:
- a. an annual grant as described in this Agreement;
 - b. three full-time NBU employees, including the Headwaters Managing Director, the Headwaters Assistant Manager, and the Headwaters Program and Restoration Coordinator, for Headwaters professional and administrative services;
 - c. technical support with IT, fiduciary record keeping, and other administrative support for Headwaters;
 - d. procurement assistance for purchases of goods and services for contracts that include NBU as a party; and
 - e. office space to facilitate the business operations of Headwaters.
6. **Default, Termination, and Repayment of Grant:** During the Term, if NBU determines that Headwaters has failed to comply with any term or condition of this Agreement (each, a “*Default*”), NBU may declare a Default and terminate this Agreement in accordance with the procedure described herein. If NBU provides written notice of a Default(s) (“*Default Notice*”) to Headwaters, and the Default(s) as identified in the Default Notice is not cured within sixty (60) days from the date the Default Notice is sent (“*Cure Period*”), then this Agreement shall automatically terminate effective as of the date of the expiration of the Cure Period (“*Termination Date*”). NBU may, in its sole discretion, extend the Cure Period if Headwaters commences the cure within the Cure Period and is diligently pursuing such cure. Upon termination of this Agreement, any Grant funds that have not been utilized upon the Termination Date shall be the property of NBU and Headwaters hereby agrees to return such funds to NBU immediately.

It is not, and shall not be construed as, a waiver if NBU fails to declare immediately a Default, or delays in taking any action with respect to a Default, or fails to take any action

with respect to a Default. Additionally, the remedies contained herein are non-exclusive, and NBU shall have any and all remedies it may be entitled to in law or in equity. The exercise of any remedy by NBU shall not be deemed as a waiver of any other remedy to which NBU may be entitled.

7. **Notices:** All notices provided to be given under this Agreement must be in writing, and shall either be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid, and addressed to the proper Party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to NBU: New Braunfels Utilities
 263 Main Plaza
 New Braunfels, Texas 78130
 Attention: Chief Financial Officer
 Attention: General Counsel

Headwaters: Headwaters
 333 E. Klingemann Street
 New Braunfels, Texas 78130
 Attention: President, Headwaters Board of Directors
 Attention: Managing Director

8. **Contract Administration:** The NBU Chief Executive Officer or his designated representative shall be the administrator for this Agreement. The Headwaters Board President or his/her designated representative shall be the primary contact for all matters pertaining to this Agreement.
9. **Entire Agreement:** It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.
10. **Amendments and Waivers:** No modification of this Agreement shall be binding unless made in writing and executed by both parties. No waiver by either party or any breach or obligation of the other party under this Agreement shall constitute a waiver of any other prior or subsequent breach or obligation.
11. **Authority:** NBU and Headwaters represent that the execution and performance of this Agreement has been duly authorized by its respective board and does not require the consent or approval of any other person or entity that has not been obtained. Additionally, the individuals executing this Agreement on behalf of NBU and Headwaters represent, warrant, assure, and guarantee that they have full legal authority to execute this Agreement

on behalf of NBU and Headwaters and to bind NBU and Headwaters to all terms, performances, and provisions herein contained.

12. **Assignment:** No legal or business entity other than Headwaters shall be entitled to receive the benefit of the Grant provided under this Agreement, including any entity resulting from a reorganization, or any other form of business combination involving Headwaters, without the prior written consent of NBU. In addition, this Agreement shall not be assigned by Headwaters to any other legal entity without the prior written consent of NBU. Any attempted transfer of the rights and responsibilities under this Agreement or the assignment of this Agreement without prior approval of NBU shall be void and this Agreement shall terminate.
13. **Severability:** In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word contained in this Agreement is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In such event, there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal, and enforceable to effectuate the purpose of this Agreement.
14. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles that would require the application of the laws of any other state. Venue for any action brought hereunder will be exclusively in Comal County, Texas.

(The remainder of this page is left blank intentionally.)

IN WITNESS WHEREOF, THIS AGREEMENT IS EXECUTED THIS _____ DAY OF _____, 2024.

NEW BRAUNFELS UTILITIES

HEADWATERS AT THE COMAL

By: _____
Ryan Kelso, Chief Executive Officer

By: _____
Dawn Schriewer, President

Exhibit A

The Grant shall only be used for the following purposes:

1. programs that promote the safe and efficient use of water;
2. programs that promote water education;
3. programs that promote and/or provide education regarding environmental preservation and conservation;
4. programs that enhance NBU's support for and standing in the national, state, and regional water utility industry;
5. programs that include NBU's participation in professional association events offering information exchanges and educational benefits;
6. maintenance of the Site;
7. promotion of the programs specified in this Exhibit; or
8. administrative support of the programs specified in this Exhibit.



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

From: Jacob Tschoepe **Reviewed by:** Nancy Pappas
Program Portfolio Manager Managing Director Headwaters at the Comal

Submitted by: Dawn Schriewer **Approved by:** Ryan Kelso
Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Execute a Change Order to the Guaranteed Maximum Price Amendment with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase 2 Sitework and Envelope

BACKGROUND

On March 31, 2016, the New Braunfels Utilities (“NBU”) Board approved a Construction Manager at Risk Contract (“CMAR”) contract with Thos. S. Byrne, Inc. (“Byrne”) for the construction of the Comal Springs Conservation Center, now called the Headwaters at the Comal. Phase One of the Master Plan was completed within the Guaranteed Maximum Price (“GMP”) amendment limit of \$5,600,000.00.

On February 23, 2023, the NBU Board approved the execution of an amendment to the CMAR contract for Phase Two of the Master Plan to include site work and the building envelope. The original amount of that amendment was \$5,406,714.00. During the construction, there were delays in the archeological permits and inspections. The project was delayed eighty-four days. This led to additional costs for Byrne in their General Conditions, totaling \$154,644.00. This cost was derived by taking the General Conditions cost per day of \$1,841.00 for the eighty-four days. Further itemization of these costs can be found in the attached exhibit.

NBU Staff requests the Board approve the Change Order for the additional General Conditions costs with Byrne for the project.

This item is being presented to the Board because the total amount of the contract exceeds \$250,000.00.

FINANCIAL IMPACT

The financial impact to NBU for phase two was \$4,000,000.00 for the project. The community, through the Headwaters at the Comal, reimbursed NBU the \$1,406,714.00 through grants and donations. This \$154,644.00 is being funded from additional grants and donations from the community.

LINK TO STRATEGIC PLAN

Stewardship

EXHIBITS

1. G701-2017 – 1660 NBU Change Order #001
2. 1660 NBU Headwaters Phase 2 PCCO #002 – Schedule Impact 01

AIA® Document G701® – 2017

Change Order

PROJECT: *(Name and address)*
Comal Springs Conservation Center 333
East Klingeman Street
New Braunfels, TX 78130

CONTRACT INFORMATION:
Contract For: Phase 2 - Sitework &
Envelope ("Phase 2")
Arch Project #: 11014

CHANGE ORDER INFORMATION:
Change Order Number: 001

Date: December 8, 2022

Date: April 8, 2024

OWNER: *(Name and address)*
New Braunfels Utilities (NBU),
a municipally owned utility
263 Main Plaza
New Braunfels, TX 78130

ARCHITECT: *(Name and address)*
Lake Flato Architects, INC.
311 Third Street
San Antonio, TX 78205

CONTRACTOR: *(Name and address)*
Thos. S. Byrne, Inc.
5851 Sebastian Place
San Antonio, TX 78249

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Includes the adjustments made to the GMP included in the Prime Contract Change Order's #001 and #002 (attached)

| | |
|--|-----------------|
| The original Guaranteed Maximum Price was | \$ 5,406,714.00 |
| The net change by previously authorized Change Orders | \$ 0.00 |
| The Guaranteed Maximum Price prior to this Change Order was | \$ 5,406,714.00 |
| The Guaranteed Maximum Price will be increased by this Change Order in the amount of | \$ 154,644.00 |
| The new Guaranteed Maximum Price including this Change Order will be | \$ 5,561,358.00 |

The Contract Time will be increased by One Hundred Twenty Four (124) days.
The new date of Substantial Completion will be July 2, 2024

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT *(Firm name)*


Thos. S. Byrne, Inc

CONTRACTOR *(Firm name)*

New Braunfels Utilities

OWNER *(Firm name)*

SIGNATURE



SIGNATURE

SIGNATURE

PRINTED NAME AND TITLE

Tony Battle, President

PRINTED NAME AND TITLE

Ryan Kelso

PRINTED NAME AND TITLE

DATE

DATE

DATE

Byrne Construction Services
5851 Sebastian Place
San Antonio, Texas 78249
Phone: +12104023335

Project: 1660 - NBU Headwaters Phase 2
333 East Klingemann St
New Braunfels, Texas 78130

Prime Contract Change Order #002: Schedule Impact 01 - Archeological Approvals

| | | | |
|---|--|----------------------|--|
| TO: | Headwaters at the Comal 333 E Klingermaann St New Braundels, Texas 78130 | FROM: | THOS. S. BYRNE, INC. 551 E BERRY STREET FORT WORTH Texas 76110 |
| DATE CREATED: | 2/ 23 /2024 | CREATED BY: | Oscar Siegfried (THOS. S. BYRNE, INC.) |
| CONTRACT STATUS: | Pending - In Review | REVISION: | 0 |
| DESIGNATED REVIEWER: | | REVIEWED BY: | |
| DUE DATE: | | REVIEW DATE: | |
| INVOICED DATE: | | PAID DATE: | |
| SCHEDULE IMPACT: | 84 days | EXECUTED: | No |
| REVISED SUBSTANTIAL COMPLETION DATE: | | | |
| CONTRACT FOR: | 1660:Prime Contract | TOTAL AMOUNT: | \$ 154,644.00 |

DESCRIPTION:

Schedule Impact 01: USACE and Archeological Approvals
Time and general conditions cost impacts due to the inability to commence sitework until USACE approvals are awarded.

Construction sequence of approvals confirmed as follows:

1. Investigative Mobilization (2 weeks)
2. Investigative Trenching (3 weeks)
3. Investigative Hand Excavation (3 weeks)
4. THC Report Submittal (1 week)
5. THC Construction Review and Approval (30 days)
6. Additional Investigative Zones Identified (2 weeks)

Original Substantial Completion Date: March 8th, 2024
Revised Substantial Completion: July 2nd, 2024

Note, General Conditions associated with this impact are concurrent with TSB's PCO 008 White Box Finishout, included in TSB's PCCO 002 Rainwater Cisterns and White Box Finishout. If PCO 008 and PCCO 02 are approved, TSB will issue a deductive PCO for the overlapping general conditions cost.

ATTACHMENTS:

[NBU Archeological Impact Schedule.pdf](#) [1660 GCs Breakdown.pdf](#) [Byrne GCs.pdf](#)

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER:

| PCO # | Title | Schedule Impact | Amount |
|---------------|--|-----------------|---------------------|
| 016 | Schedule Impact 01 - Archeological Approvals | 84 days | 154,644.00 |
| TOTAL: | | | \$154,644.00 |

CHANGE ORDER LINE ITEMS:

PCO # 016 : Schedule Impact 01 - Archeological Approvals

| # | Cost Code | Description | Type | Amount |
|---------------------|------------------------------|------------------------------------|-------------------|---------------------|
| 1 | 010-0100-100 - Project Staff | Impact 01: General Conditions Cost | Bi-Weekly Payroll | \$ 154,644.00 |
| Subtotal: | | | | \$154,644.00 |
| Grand Total: | | | | \$154,644.00 |

| | |
|---|-----------------|
| The original (Contract Sum) | \$ 5,406,714.00 |
| Net change by previously authorized Change Orders | \$ 0.00 |
| The contract sum prior to this Change Order was | \$ 5,406,714.00 |
| The contract sum would be changed by this Change Order in the amount of | \$ 154,644.00 |
| The new contract sum including this Change Order will be | \$ 5,561,358.00 |
| The contract time will be increased by this Change Order by 84 days | |

| | | |
|---------------------------------|-----------------------|--------------|
| Contractor's Contingency | Current Contingency | \$182,778.00 |
| | Amount Funded | \$97,920.36 |
| | Remaining Contingency | \$84,857.37 |

| | | |
|----------------------------|-----------------------|-------------|
| Owner's Contingency | Current Contingency | \$67,065.00 |
| | Amount Funded | \$53,389.00 |
| | Remaining Contingency | \$13,676.00 |


We have reviewed this PCCO 02 dated February 23, 2024 and take No Exceptions as submitted and recommend it for Approval

Jacobo Morales - dated February 23, 2024


LAKE FLATO ARCHITECTS
311 3rd Street
San Antonio Texas 78205

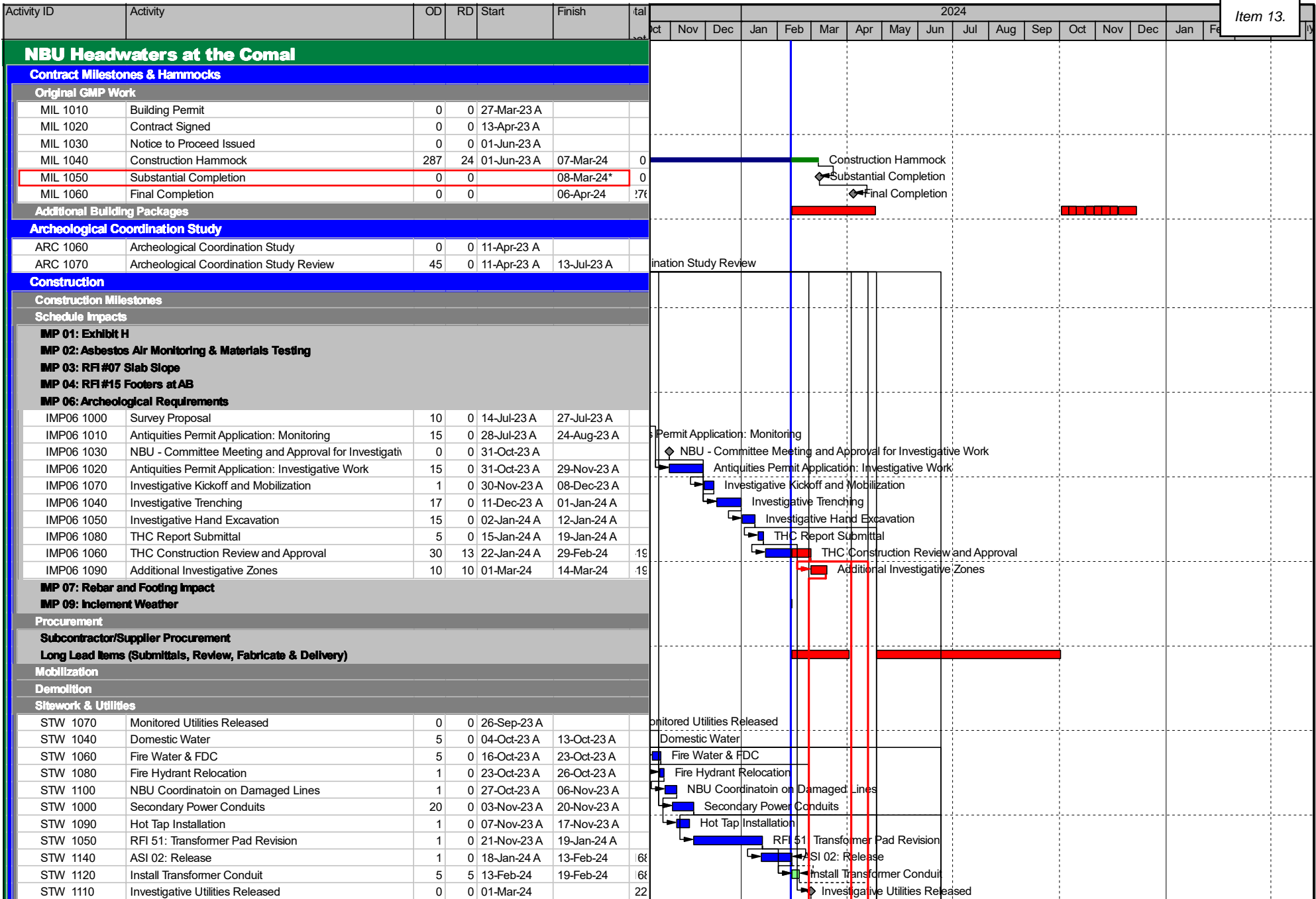
Headwaters at the Comal
333 E Klingermaann St
New Braundels Texas 78130

THOS. S. BYRNE, INC.
551 E BERRY STREET
FORT WORTH Texas 76110

 02/24/2024
SIGNATURE DATE

SIGNATURE DATE

 02/23/24
SIGNATURE DATE



■ Remaining Level of Effort ◆ Milestone
■ Actual Level of Effort
■ Actual Work
■ Remaining Work
■ Critical Remaining Work

NBU Headwaters at the Comal

Monthly Update
As of 13-Feb-24

Project Start Date: 27-Mar-23
 Project Finish Date: 07-Jan-25
 Data Date: 13-Feb-24
 Page 1 of 2

| Activity ID | Activity | OD | RD | Start | Finish | Est | 2024 | | | | | | | | | | | | | | | | | | | |
|--------------------------------|---|----|----|------------|-----------|-----|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--|--|--|--|
| | | | | | | | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Jan | | | | |
| STW 1010 | Sanitary Sewer and Non-Potable Water Lines | 20 | 20 | 16-Apr-24 | 14-May-24 | 10 | | | | | | | | | | | | | | | | | | | | |
| STW 1130 | Concrete Pads | 5 | 5 | 01-May-24 | 07-May-24 | 17 | | | | | | | | | | | | | | | | | | | | |
| STW 1030 | Set Transformer & Pull Wire | 5 | 5 | 08-May-24 | 14-May-24 | 11 | | | | | | | | | | | | | | | | | | | | |
| Structural | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Main Building | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Trellis and Arbor | | | | | | | | | | | | | | | | | | | | | | | | | | |
| STR 1020 | Helical Piles | 5 | 5 | 01-May-24 | 07-May-24 | 10 | | | | | | | | | | | | | | | | | | | | |
| STR 1120 | Erect Structural Steel & Deck | 10 | 10 | 08-May-24 | 21-May-24 | 11 | | | | | | | | | | | | | | | | | | | | |
| STR 1130 | Paint Exposed Structural Steel | 3 | 3 | 22-May-24 | 24-May-24 | 11 | | | | | | | | | | | | | | | | | | | | |
| STR 1140 | Install T&G Wood Decking | 5 | 5 | 28-May-24 | 03-Jun-24 | 11 | | | | | | | | | | | | | | | | | | | | |
| STR 1060 | Metal Plank Decking (Walkway) | 10 | 10 | 04-Jun-24 | 17-Jun-24 | 9 | | | | | | | | | | | | | | | | | | | | |
| Exterior Envelope | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Interiors | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Site Improvements | | | | | | | | | | | | | | | | | | | | | | | | | | |
| STI 1000 | Remaining Site Demo - Asphalt | 5 | 5 | 11-Mar-24 | 15-Mar-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| STI 1010 | Import, Grading & Subgrade Prep Courtyard | 20 | 20 | 18-Mar-24 | 15-Apr-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| STI 1030 | Site Lighting Conduits | 10 | 10 | 16-Apr-24 | 30-Apr-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| STI 1050 | Concrete Paving, Sidewalks & Misc. Structures | 25 | 25 | 01-May-24 | 07-Jun-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| STI 1060 | Asphalt Paving | 10 | 10 | 10-Jun-24 | 21-Jun-24 | 16 | | | | | | | | | | | | | | | | | | | | |
| STI 1080 | Site Lighting Trim | 5 | 5 | 10-Jun-24 | 14-Jun-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| STI 1090 | Recycled Concrete Pavers | 10 | 10 | 10-Jun-24 | 21-Jun-24 | 11 | | | | | | | | | | | | | | | | | | | | |
| STI 1130 | Decomposed Granite | 10 | 10 | 17-Jun-24 | 01-Jul-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| STI 1160 | Site Accessories | 5 | 5 | 24-Jun-24 | 01-Jul-24 | 16 | | | | | | | | | | | | | | | | | | | | |
| STI 1100 | Parking Lot Striping & Signage | 2 | 2 | 24-Jun-24 | 25-Jun-24 | 15 | | | | | | | | | | | | | | | | | | | | |
| STI 1170 | Contractor Punch | 2 | 2 | 02-Jul-24 | 03-Jul-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| Closeout | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Closeout (GMP) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CLO 1020 | OAE Punchlist | 20 | 20 | 24-Jun-24 | 22-Jul-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| CLO 1030 | O&M's and Training | 20 | 20 | 24-Jun-24 | 22-Jul-24 | 18 | | | | | | | | | | | | | | | | | | | | |
| CLO 1010 | Substantial Completion | 0 | 0 | 03-Jul-24* | | 27 | | | | | | | | | | | | | | | | | | | | |
| CLO 1040 | Final Clean | 5 | 5 | 05-Jul-24 | 11-Jul-24 | 22 | | | | | | | | | | | | | | | | | | | | |
| CLO 1050 | Final Completion | 0 | 0 | 02-Aug-24 | | 58 | | | | | | | | | | | | | | | | | | | | |
| Closeout (Out of Scope) | | | | | | | | | | | | | | | | | | | | | | | | | | |



- Remaining Level of Effort
- Actual Level of Effort
- Actual Work
- Remaining Work
- Critical Remaining Work

Milestone

NBU Headwaters at the Comal
Monthly Update
 As of 13-Feb-24

Project Start Date: 27-Mar-23
 Project Finish Date: 07-Jan-25
 Data Date: 13-Feb-24
 Page 2 of 2



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

From: Jacob Tschoepe **Reviewed by:** Nancy Pappas
Program Portfolio Manager Managing Director Headwaters at the Comal

Submitted by: Dawn Schriewer **Approved by:** Ryan Kelso
Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize the CEO or His Designee to Execute a Guaranteed Maximum Price Amendment with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase 2 for Additional Site Improvements and Fencing

BACKGROUND

On March 31, 2016, the New Braunfels Utilities (“NBU”) Board approved a Construction Manager at Risk Contract (“CMAR”) contract with Thos. S. Byrne, Inc. (“Byrne”) for the construction of the Comal Springs Conservation Center, now called the Headwaters at the Comal. The Guaranteed Maximum Price (“GMP”) amendment to the CMAR for Phase One of the Master Plan was completed within the GMP of \$5,600,000.00.

On February 23, 2023, the NBU Board approved the execution of an amendment to the CMAR contract for Phase Two of the Master Plan to include site work and the building envelope. The original amount of that amendment was \$5,406,714.00. Due to a delay in the execution of the contract not in Byrne's control, NBU staff requested at the June 27, 2024, Board meeting approval of a change order totaling \$154,644.00. This would bring the total of GMP #2 to \$5,561,358.00.

The Headwaters at the Comal has secured additional funding from the community and has worked with Byrne to prepare an additional scope of work for the exterior of the building. The scope of work includes concrete bench and bike rack footings, both steel and swale retaining walls to include drains and backfill, site and envelope light fixtures, fence piers, irrigation, stormwater utility, and cisterns tanks. This is being referred to as GMP #3. The total cost impact of GMP #3 is \$1,862,485.

NBU Staff requests the Board approve the GMP #3 costs with Byrne for the project.

This item is being presented to the Board because the total amount of the contract exceeds \$250,000.00.

FINANCIAL IMPACT

The financial impact to NBU for GMP #3 to NBU is \$0.00 The \$1,862,485.00 for this GMP is being funded from additional grants and donations from the community to the Headwaters at the Comal.

LINK TO STRATEGIC PLAN

Stewardship**EXHIBITS**

1. A133 ExhibitA-2019-1660 Additional Site Improvements
2. A133 Exhibit B Cost Estimate and Clarifications
3. A133 Exhibit C Contract Documents
4. Headwaters at the Comal Statement of Financial Position

AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the 12th day of April in the year 2024, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 21st day of March in the year 2016 (the “Agreement”)
(In words, indicate day, month, and year.)

for the following **PROJECT:**
(Name and address or location)

Comal Springs Conservation Center
333 East Klingemann Street
New Braunfels, Texas 78130

Phase 2 – Additional Site Improvements

THE OWNER:
(Name, legal status, and address)

New Braunfels Utilities (NBU), a municipally owned utility
263 Main Plaza
New Braunfels, Texas 78130

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Thos. S. Byrne, Inc.
5851 Sebastian Place
San Antonio, Texas 78249

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price for Phase 2 Additional Site Improvements of the Project. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed One Million Eight Hundred Sixty Two Thousand Four Hundred Eighty Five Dollars (\$ 1,862,485.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager’s contingency; alternates; the Construction Manager’s Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

A detailed cost breakdown of the site improvement components included in the Phase 2 Additional Site Improvement GMP are shown in Exhibit B – Phased Cost Estimate Summary Sheet. The Phase 2 Additional Site Improvement GMP includes construction of the site improvement components listed in the Contract Documents List (Exhibit C).

§ A.1.1.3 The Construction Manager’s Fee is a fixed fee of Fifty Three Thousand Three Hundred Sixty Nine dollars (\$53,369) based on a fee percentage of 2.95% of the Cost of the Work.

§ A.1.1.4 The method of adjustment of the Construction Manager’s Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

| Item | Price |
|---------------|-------|
| See Exhibit B | |

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
|------|-------|---------------------------|

§ A.1.1.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|---------------|-----------------------|-------------------------|
| See Exhibit B | | |

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

The date of execution of this Amendment.

Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

The Date of commencement of the Work shall be the date the Owner issues a written Notice to Proceed following receipt of any required building permits.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

Init.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[] Not later than () calendar days from the date of commencement of the Work.

[X] By the following date: November 18, 2024 based on receipt of Notice to Proceed on July 19, 2024.

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
|-----------------|-----------------------------|

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

§ A.3.1.2 The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

See Exhibit C

| Section | Title | Date | Pages |
|---------|-------|------|-------|
|---------|-------|------|-------|

§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

See Exhibit C

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Init.

Title

Date

Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

| Item | Price |
|---------------|-------|
| See Exhibit B | |

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

See Exhibit B and the following:

Material costs have been calculated based on the current prices for labor, equipment, and the component building materials. However, the market for building materials has been volatile, labor shortages are possible, and sudden price increases could occur.

If prices have escalated due to tariffs, material shortages, labor unavailability, or other financial market events beyond Contractor’s control, Contractor may be entitled to an equitable adjustment in the contract sum.

Any claim by Contractor for an equitable adjustment, as provided above, requires advance written notice delivered by Contractor to Owner. Contractor’s notice shall include the following items: an explanation of the increase in cost for the impacted labor, building materials, or equipment; the source of supply supported by invoices, bills of sale, payroll reports, pricing sheets, work orders, etc. to substantiate the equitable adjustment, and such supporting data shall be subject to Owner’s satisfaction.

Owner shall consider all provided pricing data. Owner may request additional data. If approved by Owner, Contractor shall prepare a change order memorializing adjustment in price prior to commencement of the Work subject to the claim.

In the event Owner elects, in its sole discretion, to reject Contractor’s request for equitable adjustment, Contractor is not excused from continuing performance. However, Contractor then reserves its right to submit a claim through the dispute resolution process set forth in this Agreement. Owner’s failure to continue performance under these circumstances shall be considered a material breach of this Agreement.

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

See Exhibits B & C, which are attached and incorporated herein by reference.

ARTICLE A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

To be determined.

This Amendment to the Agreement entered into as of the day and year first written above.

Init.

DocuSigned by:

Tony Battle

OWNER (Signature)

Ryan Kelso Chief Executive Officer

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Tony Battle, President

(Printed name and title)

Init.

Additions and Deletions Report for **AIA® Document A133® – 2019 Exhibit A**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:34:27 ET on 05/16/2024.

PAGE 1

This Amendment dated the 12th day of April in the year 2024, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 21st day of March in the year 2016 (the “Agreement”)

...

Comal Springs Conservation Center
333 East Klingemann Street
New Braunfels, Texas 78130

Phase 2 – Additional Site Improvements

...

New Braunfels Utilities (NBU), a municipally owned utility
263 Main Plaza
New Braunfels, Texas 78130

...

Thos. S. Byrne, Inc.
5851 Sebastian Place
San Antonio, Texas 78249

...

Pursuant to Section ~~3-2-6-2.2~~ of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum ~~Price~~ Price for Phase 2 Additional Site Improvements of the Project. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

PAGE 2

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed One Million Eight Hundred Sixty Two Thousand Four Hundred Eighty Five Dollars (\$ 1,862,485.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

...

A detailed cost breakdown of the site improvement components included in the Phase 2 Additional Site Improvement GMP are shown in Exhibit B – Phased Cost Estimate Summary Sheet. The Phase 2 Additional Site Improvement GMP includes construction of the site improvement components listed in the Contract Documents List (Exhibit C).

...

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement, a fixed fee of Fifty Three Thousand Three Hundred Sixty Nine dollars (\$53,369) based on a fee percentage of 2.95% of the Cost of the Work.

...

See Exhibit B

...

See Exhibit B

...

Established as follows:

...

The Date of commencement of the Work shall be the date the Owner issues a written Notice to Proceed following receipt of any required building permits.

PAGE 3

By the following date: November 18, 2024 based on receipt of Notice to Proceed on July 19, 2024.

...

See Exhibit C

...

See Exhibit C

PAGE 4

See Exhibit B

...

See Exhibit B and the following:

...

Material costs have been calculated based on the current prices for labor, equipment, and the component building materials. However, the market for building materials has been volatile, labor shortages are possible, and sudden price increases could occur.

...

If prices have escalated due to tariffs, material shortages, labor unavailability, or other financial market events beyond Contractor’s control, Contractor may be entitled to an equitable adjustment in the contract sum.

...

Any claim by Contractor for an equitable adjustment, as provided above, requires advance written notice delivered by Contractor to Owner. Contractor’s notice shall include the following items: an explanation of the increase in cost for the impacted labor, building materials, or equipment; the source of supply supported by invoices, bills of sale, payroll reports, pricing sheets, work orders, etc. to substantiate the equitable adjustment, and such supporting data shall be subject to Owner’s satisfaction.

...

Owner shall consider all provided pricing data. Owner may request additional data. If approved by Owner, Contractor shall prepare a change order memorializing adjustment in price prior to commencement of the Work subject to the claim.

...

In the event Owner elects, in its sole discretion, to reject Contractor’s request for equitable adjustment, Contractor is not excused from continuing performance. However, Contractor then reserves its right to submit a claim through the dispute resolution process set forth in this Agreement. Owner’s failure to continue performance under these circumstances shall be considered a material breach of this Agreement.

...

See Exhibits B & C, which are attached and incorporated herein by reference.

...

To be determined.

PAGE 5

Ryan Kelso Chief Executive Officer

Tony Battle, President

[Faint signature or stamp]

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:34:27 ET on 05/16/2024 under Order No. 4104247118 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ - 2019 Exhibit A, Guaranteed Maximum Price Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:
Tony Battle

EB9A1F0D5B0848D...
(Signed)

President - STX

(Title)

June 3, 2024

(Dated)

EXHIBIT B

Phased Cost Estimate Summary Sheet

Headwaters at the Comal - Phase 2 [Site Improvement GMP]

100% Construction Documents for GMP

Date: May 17, 2024

| Bid Package # | Bid Package Description | | Site Improvement GMP | Notes |
|--|---|-------|----------------------|---------------------|
| | | | | |
| 010020 | Temporary Construction | | \$ 8,000 | |
| 033000 | Concrete - Bench Footings | | \$ 5,920 | TD Moravits |
| 033000 | Concrete - Bike Rack Footings | | \$ 3,539 | TD Moravits |
| 051000 | Steel Retaining Walls | | \$ 39,532 | Maas Verde |
| 051000 | Steel Retaining Wall Drains | | \$ 6,229 | Maas Verde |
| 051000 | Steel Retaining Wall Backfill | | \$ 27,478 | Maas Verde |
| 055000 | Steel Railings at Picnic Area | | \$ 10,034 | RMW Fabrications |
| 061000 | Rough Carpentry | | \$ 4,779 | Byrne Self-Perform |
| 099100 | Painting Allowance | | \$ 8,333 | Allowance |
| 260000 | Site and Envelope Light Fixtures | | \$ 364,400 | IES Commercial |
| 310000 | Display Garden Earthwork | | \$ 43,275 | Allowance |
| 310001 | Enabling | | \$ 4,639 | Byrne Self-Perform |
| 311662 | Fence Helical Piers | | \$ 124,435 | Ram Jack |
| 321410 | Site Steel: Fencing & Gates | | \$ 59,803 | RMW Fabrications |
| 323000 | Display Garden Limestone Retaining Wall | | \$ 29,075 | Maas Verde |
| 323000 | Swale Terraced Retaining Walls | | \$ 42,953 | Maas Verde |
| 323000 | Swale Low Boulder Retaining Walls | | \$ 47,294 | Maas Verde |
| 324000 | Landscape Boulders | | \$ 27,998 | Maas Verde |
| 329000 | Temp. Stabilization - Mulch | | \$ 80,000 | Allowance |
| 329000 | Irrigation | | \$ 339,595 | Maas Verde |
| 329000 | Check Dam Swale | | \$ 8,818 | Maas Verde |
| 329000 | Drainage Swale Rip Rap Cobble | | \$ 10,408 | Maas Verde |
| 330000 | Stormwater Utility | | \$ 77,464 | CK Utilities |
| 331600 | Cisterns Tanks | | \$ 63,268 | SpecWater |
| 331600 | Cistern Allowance | | \$ 10,000 | Allowance |
| Cost of Work Subtotal | | | \$ 1,447,269 | |
| | Design Completion Factor | 0.00% | \$ - | Excluded |
| | Market Volatility Contingency | 0.00% | \$ - | |
| | Contractor Contingency | 4.00% | \$ 57,891 | |
| | Owner Contingency | 5.00% | \$ 72,363 | |
| | Building Permit | 0.00% | \$ - | Excluded / By Owner |
| Construction Costs Subtotal | | | \$ 1,577,523 | |
| | CGL & Umbrella Insurance | 0.96% | \$ 15,160 | |
| | Professional Liability | 0.00% | \$ - | Excluded |
| | Builder's Risk | 0.16% | \$ 2,467 | |
| | Payment & Performance Bond | Calc. | \$ 19,925 | |
| Construction Costs & Insurance Subtotal | | | \$ 1,615,075 | |
| | General Conditions & General Requirements | LSUM | \$ 194,041 | |
| Subtotal | | | \$ 1,809,116 | |
| | Preconstruction Fee | 0.00% | \$ - | None / Excluded |

Cost Breakdown - Site C

EXHIBIT B

Phased Cost Estimate Summary Sheet

Headwaters at the Comal - Phase 2 [Site Improvement GMP]

100% Construction Documents for GMP

Date: May 17, 2024

| Bid Package # | Bid Package Description | | Site Improvement GMP | Notes |
|---------------|--------------------------|-------|----------------------|-------------------------|
| | Fee | 2.95% | \$ 53,369 | |
| | Project Subtotal | | \$ 1,862,485 | |
| | Remodel / Renovation Tax | 0.00% | Excluded | Tax Exempt Entity (NBU) |
| | Project Total | | \$ 1,862,485 | |

Site Improvement
GMP



Qualifications & Clarifications

Headwaters at the Comal - Phase 2 [Site Improvement GMP]

100% Construction Documents for GMP

Date: May 16, 2024

| General Conditions: | |
|--|--|
| 1 | A Contractor's Construction Contingency of 4% is included in this estimate, and is intended for construction use only. Owner contingency is excluded from this estimate. |
| 2 | A construction fee of 2.95% is included on the cost summary, and is based upon the total construction cost. |
| 3 | Builders Risk Insurance is included, and based upon the total cost. Sublimits for Wind & Hail and Flood & Earthquake are \$10,000,000, respectively. |
| 4 | CGL & Umbrella Insurance is included, and based upon the total cost. |
| 5 | Payment and Performance bonds for Byrne have been included on the cost summary, and are based upon the total cost. |
| 6 | All costs associated with approvals, easements, assessments, fees, deposits, charges, permits, studies, impact fees, tap fees, services fees, or similar, required by any governing agency to include County, City, State, or Federal entities, in addition to any and all utility entities are specifically excluded. |
| 7 | Building permit cost is not included. |
| 8 | Testing Lab services for materials, mock-ups, or delegated engineering components are to be provided by the Owner, and are excluded. |
| 9 | Testing of building components for water or air intrusion is not included and is to be provided by the Owner. |
| 10 | Commissioning Agent and Services are to be provided by the Owner. |
| 11 | The General Conditions included in this estimate are a lump sum cost based upon approximately 4 months to substantial completion and a receipt of a Notice to Proceed by July 19th, 2024. |
| 12 | Design Fees or services are not included. Where required in the specifications, the Construction Manager will provide design calculations and information provided by the Trade Contractors to the Architect and Engineer for approval and acceptance of the design. |
| 13 | Includes trucks, fuel, tolls, and maintenance related to the Byrne personnel assigned to this project. Truck / Auto Allowance is inclusive of vehicle costs, insurance, fuel and maintenance. |
| 14 | All costs for mobile phones is inclusive of mobile data management. |
| 15 | All initial and final survey's and plats required by the City are by the Owner. |
| 16 | All electrical costs associated with construction is included. |
| 17 | All water costs associated with construction is included. |
| 18 | This budget is to be reviewed as a whole; not as individual line items. |
| Temporary Construction Cost of Work Items: | |
| 1 | Sales tax is excluded. |
| 2 | This budget is based upon electronic design document files and models being available to all subcontractors at no additional cost. |
| 3 | All furnishings, fixtures, and equipment are excluded from this budget, unless specifically noted in the budget detail. |
| 4 | All hazardous or contaminated material and soil testing, remediation and investigation is excluded. |
| 5 | Site is assumed to be free of any contaminates, unencumbered, and ready to begin excavation work. Byrne to coordinate with archeological surveyor/oversight as required, however associated cost for oversight is excluded. |
| 6 | CM excludes responsibility for compliance and/or viability of point selections with regard to the design components or specifications. |
| 7 | BIM coordination and clash detection is not included for structure and M/E/P during construction. |
| 8 | LEED management of onsite waste and documentation of LEED compliances is not included. |
| 9 | All costs associated with temporary fencing and gates is included. |
| 10 | Includes dumpster costs. |



Qualifications & Clarifications

Headwaters at the Comal - Phase 2 [Site Improvement GMP]

100% Construction Documents for GMP

Date: May 16, 2024

| | |
|--|---|
| 10 | Periodical clean up included. |
| General Comment: | |
| 1 | Because this GMP is not completely inclusive of the entire set of current construction documents, whereas we have delineated a certain portion of work to be completed under this GMP, the balance of remaining scopes are being deferred to a later date and may be added to the GMP via Change Order once Buyout Savings and/or additional projects funds have been realized. |
| Division 2 - Existing Conditions: | |
| 1 | Demolition and Hauloff is excluded. |
| 2 | Demo beyond the display garden area is excluded. |
| 3 | Any 3rd party monitoring are excluded. |
| Division 3 - Concrete: | |
| 1 | Includes Recycled Concrete Bench Footings per detail 3/L503 |
| 2 | Bike Rack Footings per detail 15/L501 |
| 3 | Polished or stained concrete is excluded |
| Division 4 - Masonry: | |
| 1 | None/Excluded. |
| Division 5 - Metals: | |
| 1 | Steel Retaining Walls: Including french drains, fill and compaction per L201 Hardscape Plan and L503: Wall Details |
| 2 | Steel Railing at Employee Picnic Area |
| Division 6 - Wood, Plastics and Composites: | |
| 1 | Rough carpentry as required for site improvement construction of retaining walls, gear, and blocking |
| 2 | Architectural wood work is excluded |
| Division 7 - Thermal and Moisture Protection: | |
| 1 | None/Excluded. |
| Division 8 - Openings: | |
| 1 | None/Excluded. |
| Division 9 - Finishes: | |
| 1 | Allowance included for painting site miscellaneous steel including exterior structural steel elements, custom wheel stops and railings. |
| 2 | Mesh fence paint is excluded. |
| Division 10 - Specialties: | |
| 1 | All signage, toilet and bath accessories, fire extinguishers and cabinets, site furnishings are excluded. |
| Division 11 - Equipment: | |
| 1 | None/Excluded. |
| Division 12 - Furnishings: | |
| 1 | None/Excluded. |
| Division 13 - Special Construction: | |
| 1 | None/Excluded. |
| Division 14 - Conveying Equipment: | |
| 1 | None/Excluded. |
| Division 21 - Fire Suppression: | |
| 1 | None/Excluded. |
| Division 22 - Plumbing: | |
| 1 | None/Excluded. |



Qualifications & Clarifications

Headwaters at the Comal - Phase 2 [Site Improvement GMP]

100% Construction Documents for GMP

Date: May 16, 2024

| | |
|---|---|
| Division 23 - Heating, Ventilating and Air Conditioning: | |
| 1 | None/Excluded. |
| Division 25 - Integrated Automation: | |
| 1 | None/Excluded. |
| Division 26 - Electrical: | |
| 1 | Includes Light Fixtures W1, W2, S5, S6, S8, E1, E2, E3, E4, E5, E6. |
| 2 | Includes the necessary rough-in and wiring for each light fixture. |
| 3 | NECY System Controller per lighting specifications. |
| 4 | Testing and owner training included |
| Division 27 - Communications & Audio Visual: | |
| 1 | Audio Visual system and communications systems are specifically excluded. |
| Division 28 - Electronic Safety and Security: | |
| 1 | Security systems are specifically excluded. |
| 2 | Excludes fire alarm system. |
| Division 31 - Earthwork: | |
| 1 | Final grading at display garden is included. |
| 2 | Grading at area between display garden and Phase 1 Fence |
| 3 | Helical Piles at Site Fence @ every 3rd Post |
| 4 | Asphalt paving is not included |
| Division 32 - Exterior Improvements: | |
| 1 | Mesh Fence per L502: Fence & Gate Details |
| 2 | Dry Stack Retaining Wall per L203 Landscape Plans |
| 3 | Ledgestone Retaining Wall, Low Boulder Retaining Wall and Terraced Boulder Retaining Wall per L503 |
| 4 | Landscape Boulders per 5/L503 |
| 5 | Planting, Fertilizer and Mulch is excluded. |
| 6 | Temporary Stabilization allowance carried as plug for mulching of unstabilized areas/disrupted areas. |
| 7 | Irrigation per L806 and L803 Irrigation Plans at Phase 2 Limits of Construction |
| 8 | Check Dam Swale and Rip Rap Cobble Water Features per L503 |
| Division 33 - Utilities: | |
| 1 | French Drain at Display Garden to Drainage Swale per L501 |
| 2 | Rain Harvest Tank Utility Lines and Balancing Pipe per C910 Rain Harvesting Detail Sheet |
| 3 | Rain Harvest Cistern Tanks per C910 Rain Harvesting Detail Sheet |
| 4 | Allowance carried for Cistern Vaults, Pressure Tank Accessories, Utility Tie-in and any potential Sleeves/ Concrete Slab Adjustments |
| 5 | Perforated pipe along retaining walls included in Steel Retaining Wall scope. |
| Other | |
| 1 | None/Excluded. |

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Site Improvement GMP]
100% Construction Documents for GMP

Date:

| Sheet | Original Date | Sheet Name |
|-----------------------|---------------|---|
| SPECIFICATIONS | | |
| 00 0000 | 04/29/22 | Cover |
| 00 0100 | 04/29/22 | Table of Contents |
| 00 0107 | 04/29/22 | Engineer Stamps |
| 00 0110 | 08/05/22 | Table of Contents |
| 00 3119 | 04/29/22 | Existing Conditions Information |
| 00 3119.1 | | Asbestos Report |
| 00 3132 | 04/29/22 | Geotechnical Data |
| 00 3132.1 | | Geotechnical Report |
| 00 7200 | 04/29/22 | General Conditions |
| 00 7300 | 04/29/22 | Supplementary Conditions |
| 08 9119 | | Fixed Louvers |
| 01 1100 | 04/29/22 | Summary of Work |
| 01 2100 | 04/29/22 | Allowances |
| 01 2200 | 04/29/22 | Unit Prices |
| 01 2300 | 08/05/22 | Alternates |
| 01 2350 | 04/29/22 | Price Breakouts |
| 01 2500 | 04/29/22 | Substitution Procedures |
| 01 2519 | 04/29/22 | Substitution Request Form |
| 01 2600 | 04/29/22 | Contract Modification Procedures |
| 01 2613 | 04/29/22 | Requests for Information |
| 01 2900 | 04/29/22 | Payment Procedures |
| 01 3100 | 04/29/22 | Project Management and Coordination |
| 01 3216 | 04/29/22 | Construction Progress Schedules |
| 01 3233 | 04/29/22 | Photographic Documentation |
| 01 3300 | 04/29/22 | Submittals (Civil) |
| 01 3313 | 04/29/22 | Submittal Procedures |
| 01 3323 | 04/29/22 | Shop Drawings (Civil) |
| 01 3329 | 04/29/22 | Sustainable Design Reporting |
| 01 3516 | 04/29/22 | Alteration Project Procedures |
| 01 3546 | 04/29/22 | Indoor Air Quality Management |
| 01 4000 | 04/29/22 | Quality Requirements |
| 01 4516 | 04/29/22 | Field Observations |
| 01 4523 | 04/29/22 | Testing and Observation Services |
| 01 4529 | 04/29/22 | Laboratory Services |
| 01 5000 | 04/29/22 | Temporary Facilities and Controls |
| 01 5500 | 04/29/22 | Stabilized Construction Entrance/exit |
| 01 5713 | 04/29/22 | Temporary Erosion Controls |
| 01 5713-13 | 04/29/22 | Temporary Sediment Control Fence (Silt Fence) |
| 01 5713-16 | 04/29/22 | Erosion and Sedimentation Control Materials |
| 01 5713-19 | 04/29/22 | Temporary Truck Washout Pit |
| 01 5800 | 04/29/22 | Project Identification |
| 01 6000 | 04/29/22 | Product Requirements |
| 01 7123 | 04/29/22 | Field Engineering |
| 01 7326 | 04/29/22 | Cutting and Patching |
| 01 7329 | 04/29/22 | Cutting and Patching (Civil) |
| 01 7400 | 04/29/22 | Cleaning and Adjusting |

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Site Improvement GMP]
100% Construction Documents for GMP

Date:

| Sheet | Original | Sheet Name |
|---------|----------|--|
| 01 7419 | 04/29/22 | Waste Material Disposal |
| 01 7421 | 04/29/22 | Construction Waste Management |
| 01 7700 | 04/29/22 | Closeout Procedures |
| 01 7839 | 04/29/22 | Project Record Documents |
| 01 8113 | 04/29/22 | Sustainable Design Requirements |
| 01 9113 | 04/29/22 | General Commissioning Requirements |
| 015639 | 04/29/22 | Temporary Tree and Plant Protection |
| 02 4113 | 04/29/22 | Site Demolition |
| 02 4120 | 04/29/22 | Selective Building Demolition |
| 03 0330 | 04/29/22 | Concrete Restoration |
| 03 1100 | 04/29/22 | Concrete Formwork |
| 03 1500 | 04/29/22 | Concrete Joints and Embedded Items |
| 03 2000 | 04/29/22 | Concrete Reinforcement |
| 03 3000 | 04/29/22 | Cast-In-Place Concrete |
| 03 3053 | 04/29/22 | Miscellaneous Cast-In-Place Concrete |
| 04 4200 | 04/29/22 | Site Stone Masonry |
| 05 1200 | 04/29/22 | Structural Steel Framing |
| 05 1213 | 04/29/22 | Architecturally Exposed Structural Steel |
| 05 3000 | | Metal Decking |
| 05 4000 | 04/29/22 | Cold-Formed Metal Framing |
| 05 5000 | 04/29/22 | Metal Fabrications |
| 05 5001 | 04/29/22 | Miscellaneous Landscape Metals |
| 05 5213 | 04/29/22 | Metal Railings |
| 06 1000 | 04/29/22 | Rough Carpentry |
| 06 1523 | 04/29/22 | Laminated Wood Decking |
| 06 1600 | 04/29/22 | Sheathing |
| 06 1643 | 04/29/22 | Gypsum Sheathing |
| 06 4000 | 04/29/22 | Architectural Woodwork |
| 06 4100 | 04/29/22 | Architectural Wood Casework |
| 06 4200 | 04/29/22 | Wood Paneling |
| 06 4600 | 04/29/22 | Wood Trim |
| 06 6116 | 04/29/22 | Solid Surfacing Fabrications |
| 07 2113 | 04/29/22 | Board Insulation |
| 07 2119 | 04/29/22 | Foamed-In-Place Insulation |
| 07 2200 | 04/29/22 | Roof Insulation |
| 07 2600 | 04/29/22 | Vapor Retarders |
| 07 2800 | 04/29/22 | Moisture Barriers |
| 07 4113 | 08/05/22 | Metal Roof Panels |
| 07 4213 | 04/29/22 | Metal Wall Panels |
| 07 4623 | 04/29/22 | Wood Siding |
| 07 5200 | 04/29/22 | Modified Bituminous Membrane Roofing |
| 07 6500 | 04/29/22 | Flexible Flashings |
| 07 7255 | 04/29/22 | Roof Accessory Attachment System |
| 07 8400 | 04/29/22 | Firestopping |
| 07 9200 | 04/29/22 | Joint Sealers |
| 08 1113 | 04/29/22 | Hollow Metal Doors and Frames |
| 08 1416 | 04/29/22 | Flush Wood Doors |
| 08 1433 | 08/05/22 | Stile and Rail Wood Doors |

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Site Improvement GMP]
100% Construction Documents for GMP

Date:

| Sheet | Original | Sheet Name |
|---------|----------|--|
| 08 3100 | 04/29/22 | Access Doors and Panels |
| 08 3473 | 04/29/22 | Sound Control Doors Assemblies |
| 08 3613 | 04/29/22 | Sectional Doors |
| 08 4113 | 04/29/22 | Aluminum-Framed Entrances and Storefronts |
| 08 4513 | 04/29/22 | Fiberglass-Sandwich-Panel Assemblies |
| 08 5113 | 04/29/22 | Aluminum Windows |
| 08 7100 | 08/05/22 | Door Hardware |
| 08 8000 | 04/29/22 | Glazing |
| 08 9100 | 04/29/22 | Louvers |
| 09 2200 | 04/29/22 | Metal Support Assemblies |
| 09 2900 | 04/29/22 | Gypsum Board |
| 09 3000 | 04/29/22 | Tiling |
| 09 5100 | 04/29/22 | Acoustical Ceilings |
| 09 6116 | 04/29/22 | Floor Sealer |
| 09 6513 | 04/29/22 | Resilient Base |
| 09 6813 | 04/29/22 | Tile Carpeting |
| 09 7733 | 04/29/22 | Sanitary Wall Panels |
| 09 8100 | 08/05/22 | Acoustic Insulation |
| 09 8129 | 04/29/22 | Sprayed Acoustical Insulation |
| 09 9100 | 04/29/22 | Painting |
| 09 9600 | 04/29/22 | High-Performance Coatings |
| 10 1423 | 04/29/22 | Interior Panel Signs |
| 10 2115 | 04/29/22 | Plastic-Laminate-Clad Toilet Compartments |
| 10 2813 | 04/29/22 | Toilet Accessories |
| 10 4413 | 04/29/22 | Fire Extinguishers and Cabinets |
| 10 7313 | 04/29/22 | Fabric Canopies |
| 10 8900 | 04/29/22 | Ceiling Fans |
| 12 2413 | 04/29/22 | Roller Window Shades |
| 12 9300 | 04/29/22 | Site Furnishings |
| 12 9313 | 04/29/22 | Bicycle Racks |
| 21 0500 | 04/29/22 | Common Work Results for Fire Suppression |
| 21 0513 | 04/29/22 | Common Motor Requirements for Fire Suppression Equipment |
| 21 1000 | 04/29/22 | Water-Based Fire-Suppression Systems |
| 22 0500 | 04/29/22 | Common Work Results for Plumbing |
| 22 0519 | 04/29/22 | Meters and Gages for Plumbing Piping |
| 22 0523 | 04/29/22 | General Duty Valves for Plumbing Piping |
| 22 0553 | 04/29/22 | Identification for Plumbing Piping and Equipment |
| 22 0700 | 04/29/22 | Plumbing Insulation |
| 22 0800 | 04/29/22 | Commissioning of Plumbing |
| 22 1116 | 04/29/22 | Domestic Water Piping |
| 22 1119 | 04/29/22 | Domestic Water Piping Specialties |
| 22 1316 | 04/29/22 | Sanitary Waste and Vent Piping |
| 22 1319 | 04/29/22 | Sanitary Waste Piping Specialties |
| 22 3300 | 04/29/22 | Electric Water Heaters |
| 22 4000 | 04/29/22 | Plumbing Fixtures |
| 23 0010 | 04/29/22 | Basic Mechanical Requirements |
| 23 0500 | 04/29/22 | Common Work Results for HVAC |
| 23 0513 | 04/29/22 | Common Motor Requirements for HVAC |

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Site Improvement GMP]
100% Construction Documents for GMP

Date:

| Sheet | Original | Sheet Name |
|---------|----------|--|
| 23 0529 | 04/29/22 | Hangars and Supports |
| 23 0548 | 04/29/22 | Vibration and Seismic Controls |
| 23 0553 | 04/29/22 | Identification for HVAC Piping |
| 23 0593 | 04/29/22 | Testing, Adjusting and Balancing |
| 23 0713 | 04/29/22 | Duct Insulation |
| 23 0719 | 04/29/22 | HVAC Piping Insulation |
| 23 0800 | 04/29/22 | Commissioning of HVAC |
| 23 0900 | | Instrumentation and Control for HVAC |
| 23 2300 | 04/29/22 | Refrigerant Piping |
| 23 3116 | 04/29/22 | Nonmetal Ducts |
| 23 3300 | 04/29/22 | Air Duct Accessories |
| 23 3423 | 04/29/22 | HVAC Power Ventilators |
| 23 3713 | 04/29/22 | Diffusers, Registers and Grilles |
| 23 8126 | 04/29/22 | Split-System Air-Conditioners |
| 26 0010 | 04/29/22 | Basic Electrical Requirements |
| 26 0519 | 04/29/22 | Low-Voltage Electrical Power Conductors and Cables |
| 26 0523 | 04/29/22 | Control-Voltage Electrical Power Cables |
| 26 0526 | 04/29/22 | Grounding and Bonding for Electrical Systems |
| 26 0529 | 04/29/22 | Hangers and Supports for Electrical Systems |
| 26 0533 | | Raceway and Boxes for Electrical Systems |
| 26 0543 | | Underground Ducts and Raceways for Electrical Systems |
| 26 0544 | | SLEEVES AND SLEEVE SEALS FOR ELECTRICAL RACEWAYS AND CABLING |
| 26 0553 | 04/29/22 | Identification for Electrical Systems |
| 26 0573 | 04/29/22 | Overcurrent Protective Device Coordination Study |
| 26 0923 | 04/29/22 | Lighting Control Devices |
| 26 0943 | 04/29/22 | Network Lighting Controls |
| 26 1116 | 04/29/22 | Secondary Unit Substations with Switchboard |
| 26 2200 | | Low-Voltage Transformers |
| 26 2416 | | Panelboards |
| 26 2419 | 04/29/22 | Motor-Control Centers |
| 26 2600 | 04/29/22 | Power Distribution Units |
| 26 2726 | 04/29/22 | Wiring Devices |
| 26 2813 | 04/29/22 | Fuses |
| 26 2816 | 04/29/22 | Enclosed Switches and Circuit Breakers |
| 26 3353 | 08/05/22 | Static Uninterruptible Power Supply |
| 26 4313 | 04/29/22 | Transient-Voltage Suppression |
| 26 5100 | 04/29/22 | Interior Lighting |
| 26 5600 | 04/29/22 | Exterior Lighting |
| 27 2133 | 08/05/22 | Wireless Access Points (WAP) |
| 27 4100 | 08/05/22 | Audio-Video Systems |
| 28 3111 | 04/29/22 | Digital, Addressable Fire-Alarm System |
| 31 1000 | 04/29/22 | Site Clearing |
| 31 1100 | 04/29/22 | Clearing and Grubbing |
| 31 2200 | 04/29/22 | Grading |
| 31 2300 | 04/29/22 | Structural Excavation and Backfill |
| 31 2316 | 04/29/22 | Excavation |
| 31 2319 | 04/29/22 | Dewatering |
| 31 2323 | 04/29/22 | Subgrade Fill |

EXHIBIT C

Contract Documents List

**Headwaters at the Comal - Phase 2 [Site Improvement GMP]
100% Construction Documents for GMP**

Date:

| Sheet | Original | Sheet Name |
|-----------------|----------|--|
| 31 2333 | 04/29/22 | Trenching |
| 31 2400 | 04/29/22 | Embankment |
| 31 3116 | 08/05/22 | Termite Control |
| 31 3213 | 04/29/22 | Soil Mixing Stabilization |
| 31 3700 | 04/29/22 | Rip Rap |
| 31 4133 | 04/29/22 | Trench Shielding |
| 31 6600 | | Special Foundations |
| 32 0190 | 04/29/22 | Operation and Maintenance of Planting |
| 32 0523 | 04/29/22 | Cement-Sand Backfill |
| 32 1216 | 04/29/22 | Asphalt Paving |
| 32 1243 | 04/29/22 | Porous Flexible Paving |
| 32 1316 | 04/29/22 | Decorative Concrete Paving |
| 32 1373 | 04/29/22 | Concrete Paving Joint Sealants |
| 32 1516 | 04/29/22 | Stabilized DG |
| 32 3113 | 04/29/22 | Fencing and Gates |
| 32 3223 | 04/29/22 | Site Walls |
| 32 9113 | 04/29/22 | Soil Preparation |
| 32 9200 | 04/29/22 | Turf and Grasses |
| 32 9213 | 04/29/22 | Hydro Mulch Seeding |
| 32 9219 | 04/29/22 | Seeding |
| 32 9300 | 04/29/22 | Planting |
| 33 0130 | 04/29/22 | Operation and Maintenance of Sewer Utilities |
| 33 0513 | 04/29/22 | Manholes |
| 33 1100 | 04/29/22 | Water Utility Distribution Piping |
| 33 1116 | 04/29/22 | Site Utility Water Distribution Piping |
| 33 1613 | 04/29/22 | Aboveground Water Storage Tanks |
| 33 3113 | 04/29/22 | Sanitary Piping |
| | | |
| Drawings | | |
| 0 CVR | 04/22/22 | COVER SHEET |
| 0 IDX | 09/22/23 | INDEX |
| D100 | 10/07/22 | SITE PLAN DEMO |
| D201 | 10/07/22 | EXISTING DEMO PLAN - BLDG 'A' |
| C000 | 12/19/22 | COVER SHEET |
| C005 | 12/19/22 | CONSTRUCTION NOTES |
| C100 | 12/19/22 | EXISTING CONDITIONS PLAN & TREE SURVEY |
| C101 | 12/19/22 | DEMOLITION PLAN |
| C201 | 12/19/22 | SWPPP |
| C202 | 12/19/22 | SWPPP DETAILS |
| C301 | 01/05/24 | SITE PLAN |
| C400 | 01/05/24 | GRADING PLAN |
| C501 | 09/22/23 | UTILITY PLAN |
| C502 | 12/19/22 | SANITARY SEWER PLAN AND PROFILE |
| C600 | 12/19/22 | FIRE PROTECTION PLAN |
| C901 | 12/19/22 | SITE CONSTRUCTION DETAILS |
| C902 | 12/19/22 | CITY OF NEW BRAUNFELS DETAILS |
| C905 | 12/19/22 | WATER & WASTEWATER DETAILS |
| C910 | 12/19/22 | RAIN HARVESTING DETAIL |

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Site Improvement GMP]
100% Construction Documents for GMP

Date:

| Sheet | Original | Sheet Name |
|-------|----------|---------------------------------|
| L000 | 10/07/22 | Landscape Sheet Index & Notes |
| L010 | 10/07/22 | Overall Site Plan |
| L011 | 02/02/24 | Phase 2 Site Plan |
| L012 | 10/07/22 | Tree Protection Plan |
| L013 | 10/07/22 | Tree Protection Notes & Details |
| L014 | 10/07/22 | Demo Plan |
| L100 | 02/02/24 | Overall Grading Plan |
| L101 | 02/02/24 | Grading Plan |
| L102 | 02/02/24 | Grading Plan |
| L103 | 02/02/24 | Grading Plan |
| L200 | 02/02/24 | Overall Hardscape Plan |
| L201 | 02/02/24 | Hardscape Plan |
| L202 | 02/02/24 | Hardscape Plan |
| L203 | 02/02/24 | Hardscape Plan |
| L210 | 02/02/24 | Materials Schedule |
| L300 | 02/02/24 | Overall Layout Plan |
| L301 | 02/02/24 | Layout Plan |
| L302 | 02/02/24 | Layout Plan |
| L303 | 02/02/24 | Layout Plan |
| L401 | 10/07/22 | Sections |
| L501 | 10/07/22 | Paving Details |
| L502 | 10/07/22 | Fence & Gate Details |
| L503 | 10/07/22 | Wall Details |
| L600 | 10/07/22 | Overall Planting Plan |
| L601 | 10/07/22 | Planting Plan |
| L602 | 10/07/22 | Planting Plan |
| L603 | 10/07/22 | Planting Plan |
| L610 | 10/07/22 | Planting Details & Notes |
| L611 | 10/07/22 | Planting Schedules |
| L700 | 10/07/22 | Overall Alternates Plan |
| L800 | 10/07/22 | Irrigation Notes & Legend |
| L801A | 10/07/22 | Phasing Plan |
| L801B | 10/07/22 | Temporary Vs. Permanent Plan |
| L803 | 10/07/22 | Irrigation Plan |
| L806 | 10/07/22 | Irrigation Plan |
| L808 | 10/07/22 | Irrigation Details |
| L809 | 10/07/22 | Irrigation Details |
| A000 | 09/22/23 | ARCHITECTURAL INDEX SHEET |
| A001 | 10/07/22 | EXISTING CONDITIONS- BLDG A |
| A010 | 02/02/24 | SITE PLAN |
| A110 | 10/07/22 | LIFE SAFETY |
| A111 | 10/07/22 | Hoselay |
| A200 | 02/02/24 | FLOOR PLANS - BLDGS 'A' |
| A220 | 10/07/22 | ENLARGED PLANS BLDG 'A' |
| A240 | 09/22/23 | ROOF PLANS - BLDGS 'A' |
| A260 | 10/07/22 | ROOM SCHEDULE |
| A261 | 09/22/23 | DOOR SCHEDULE |
| A262 | 09/22/23 | WINDOW SCHEDULE |

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Site Improvement GMP]
100% Construction Documents for GMP

Date:

| Sheet | Original | Sheet Name |
|-------|----------|--|
| A300 | 02/02/24 | REFLECTED CEILING PLAN - BLDG 'A' |
| A400 | 09/22/23 | BUILDING ELEVATIONS- BLDG 'A' |
| A500 | 09/22/23 | BUILDING SECTIONS BLDG 'A' |
| A501 | 05/16/22 | BUILDING SECTIONS BLDG 'A' |
| A700 | 09/22/23 | INTERIOR ELEVATIONS - BLDG 'A' |
| A701 | 09/22/23 | INTERIOR ELEVATIONS - BLDG 'A' |
| A800 | 02/02/24 | EXTERIOR CIRCULATION |
| A801 | 09/22/23 | EXTERIOR CIRCULATION |
| A802 | 09/22/23 | MECHANICAL YARD & MISC DETAILS |
| A900 | 02/02/24 | DETAILS - BUILDING 'A' |
| A901 | 02/02/24 | DETAILS - BUILDING 'A' |
| A902 | 02/02/24 | DETAILS - BUILDING 'A' |
| A915 | 02/02/24 | INTERIOR DETAILS BLDG. 'A' |
| A950 | 09/22/23 | MILLWORK DETAILS |
| S001 | 05/16/22 | GENERAL NOTES |
| S002 | 05/16/22 | GENERAL NOTES |
| S101D | 09/22/23 | BUILDING A DEMO PLAN |
| S102D | 05/16/22 | BUILDING A DEMO PLAN |
| S201 | 09/22/23 | BUILDING A NEW CONSTRUCTION PLAN |
| S202 | 09/22/23 | BUILDING A NEW CONSTRUCTION PLAN |
| S210 | 05/16/22 | ENLARGED RAMP PLAN |
| S301 | 05/16/22 | CONCRETE TYPICAL DETAILS |
| S302 | 09/22/23 | CONCRETE TYPICAL DETAILS |
| S303 | 05/16/22 | CONCRETE DETAILS |
| S304 | 09/22/23 | CONCRETE DETAILS |
| S305 | 09/22/23 | CONCRETE DETAILS |
| S501 | 05/16/22 | STEEL TYPICAL DETAILS |
| S502 | 05/16/22 | STEEL TYPICAL DETAILS |
| S503 | 05/16/22 | STEEL DETAILS |
| S504 | 05/16/22 | STEEL DETAILS |
| S511 | 05/16/22 | BRIDGE DETAILS |
| S601 | 05/16/22 | WINDFRAMES |
| M001 | 05/16/22 | SYMBOL LEGEND - MECHANICAL |
| M200 | 05/16/22 | FLOOR PLANS - BLDG 'A' - DUCTWORK |
| M260 | 05/16/22 | SCHEDULES - MECHANICAL |
| M800 | 05/16/22 | CONTROLS - MECHANICAL |
| M900 | 05/16/22 | DETAILS - MECHANICAL |
| M901 | 05/16/22 | DETAILS - MECHANICAL |
| E001 | 05/16/22 | SYMBOL LEGEND - ELECTRICAL |
| E100 | 02/02/24 | SITE PLAN - ELECTRICAL - POWER |
| E101 | 02/02/24 | SITE PLAN ELECTRICAL DATA/SECURITY |
| E200 | 02/02/24 | FLOOR PLANS - BLDGS 'A' & 'C' - POWER |
| E300 | 09/22/23 | FLOOR PLANS - BLDGS 'A' & 'C' - LIGHTING |
| E400 | 09/22/23 | PANEL SCHEDULES |
| E401 | 05/16/22 | PANEL SCHEDULES |
| E500 | 09/22/23 | ELECTRICAL ONE-LINE DIAGRAM |
| E700 | 05/16/22 | DETAILS - ELECTRICAL |
| E701 | 05/16/22 | DETAILS - ELECTRICAL |

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Site Improvement GMP]
100% Construction Documents for GMP

Date:

| Sheet | Original | Sheet Name |
|--------|----------|---|
| EL001 | 05/16/22 | ELECTRICAL COVER SHEET |
| EL010 | 05/16/22 | ELECTRICAL SCHEDULES |
| EL011 | 05/16/22 | LIGHTING CONTROLS |
| EL100 | 05/16/22 | SITE LIGHTING PLAN |
| EL200 | 09/22/23 | LIGHTING PLAN - LEVEL 1 |
| EL300 | 05/16/22 | EXTERIOR LUMINAIRE CUTSHEETS |
| EL301 | 05/16/22 | EXTERIOR LUMINAIRE CUTSHEETS |
| EL302 | 05/16/22 | EXTERIOR LUMINAIRE CUTSHEETS |
| P001 | 05/16/22 | SYMBOL LEGEND - PLUMBING |
| P200 | 09/22/23 | FLOOR PLANS - BLDGS 'A' - PRESSURE |
| P210 | 09/22/23 | FLOOR PLANS - BLDGS 'A' - GRAVITY |
| P220 | 09/22/23 | FLOOR PLAN - BLDG 'A' - FIRE PROTECTION |
| P301 | 05/16/22 | RISERS - GRAVITY |
| P302 | 05/16/22 | RISERS - PRESSURE |
| P900 | 05/16/22 | DETAILS - PLUMBING |
| T001 | 05/16/22 | TECHNOLOGY - SYMBOL LEGEND |
| T200 | 05/16/22 | FLOOR PLAN - BLDG 'A' - TECHNOLOGY |
| T700 | 05/16/22 | DETAILS - TECHNOLOGY |
| NS0.02 | 05/16/22 | OVERALL SITE PLAN |
| G1.0 | 05/16/22 | SIGNAGE DRAWINGS |
| G2.0 | 05/16/22 | SIGN LOCATION PLAN |
| G3.0 | 05/16/22 | SIGN LOCATION PLAN |
| G4.0 | 05/16/22 | Sign Types Message Schedule |

Statement of Financial Position

| STATEMENT OF FINANCIAL POSITION (\$) | Apr 2024 | Mar 2024 |
|---|------------------|------------------|
| ASSETS | | |
| Cash & Equivalents | | |
| Frost Business Checking (7230) | 144,081 | 153,970 |
| Frost Capital Campaign Fund | 171,425 | 171,105 |
| Stripe Clearing | 135 | 73 |
| Undeposited Funds | 0 | 2,500 |
| Total Cash & Equivalents | 315,641 | 327,648 |
| Accounts Receivable | | |
| Accounts Receivable (A/R) | 137,550 | 142,595 |
| Other Current Assets | | |
| Frost Investment Account | 1,901,423 | 1,893,352 |
| Prepaid Expenses | 2,317 | 2,949 |
| Total Other Current Assets | 1,903,740 | 1,896,301 |
| Total Current Assets | 2,356,931 | 2,366,544 |
| Total Non-Current Assets | 0 | 0 |
| Total Assets | 2,356,931 | 2,366,544 |
| LIABILITIES | | |
| Other Current Liabilities | | |
| Commerce Credit Card | 1,035 | 1,597 |
| Deferred Revenue | 4,978 | 4,501 |
| Compensated Absences | 36,383 | 36,383 |
| Total Other Current Liabilities | 42,396 | 42,481 |
| Total Current Liabilities | 42,396 | 42,481 |
| Total Non-Current Liabilities | 0 | 0 |
| Total Liabilities | 42,396 | 42,481 |
| NET ASSETS | | |
| Retained Net Assets | | |
| Retained Earnings | (3,165) | (3,165) |
| Current Net Assets | | |
| Net Revenue | (41,853) | (32,325) |
| Other Net Assets | | |
| Net Assets With Donor Restriction | 1,701,294 | 1,696,563 |
| Net Assets Without Donor Restrictions | 608,259 | 612,990 |
| Net Assets Board Designated | 50,000 | 50,000 |
| Total Other Net Assets | 2,359,553 | 2,359,553 |
| Total Net Assets | 2,314,535 | 2,324,063 |
| Total Liabilities & Net Assets | 2,356,931 | 2,366,544 |



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

From: Jeff Morriss
Substations Manager **Reviewed by:** Gretchen Reuwer
Director of Electric Services

Submitted by: Gretchen Reuwer
Director of Electric Services **Approved by:** Ryan Kelso
Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Purchase Order Standard Terms and Conditions with Virginia Transformer Corp. for the Manufacture, Delivery, Assembly, and Testing of Three (3) Substation Power Transformers

BACKGROUND

New Braunfels Utilities ("NBU") issued a request for proposals ("RFP") for Kohlenberg and GPI Substation Power Transformers (the "Procurement").

The Procurement will be an agreement that includes the manufacture, delivery, assembly, and testing of three (3) substation power transformers (the "Goods"). NBU will issue a Purchase Order for the Goods.

NBU received five (5) proposals on February 22, 2024, for the Procurement during the public bidding process. The Procurement team evaluated the proposals and determined that Virginia Transformer Corp. ("Virginia Transformer") is the respondent whose proposal for the Procurement is the most advantageous to NBU, considering the relative importance of price and the evaluation criteria in the RFP.

NBU staff requests that the Board of Trustees approve a Professional Services Agreement with Virginia Transformer for the Procurement (an "Agreement").

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

FINANCIAL IMPACT

The total contract amount for the Agreement is \$5,879,138.00. The Procurement is budgeted within the Fiscal Year 2026 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

1. Purchase Order Agreement with Virginia Transformer Corp.
2. Recommendation Concurrence from Procurement Team

**PURCHASE ORDER
STANDARD TERMS AND CONDITIONS**

1. AGREEMENT: This set of Terms and Conditions is incorporated into the Purchase Order for RFP # 24-0035 in its entirety and, upon execution of the Purchase Order by New Braunfels Utilities, a Texas municipally owned utility (“Buyer”), and Virginia Transformer Corp., a Virginia corporation authorized to transact business in the State of Texas (“Seller”), constitutes a portion of the Parties’ Agreement. No change, modification or revision to the Agreement shall be binding unless made in writing and signed by the Parties. Buyer will not in any manner be responsible for goods delivered or work done for Buyer’s account without a written order.

2. ACCEPTANCE: Acceptance of this Purchase Order shall be deemed effective upon Buyer’s execution of this Purchase Order or upon shipment of the goods that are the subject of this Purchase Order, whichever occurs first. Any bid made by Seller for additional or different terms and conditions or any attempts by Seller to vary, in any degree, any of the terms and conditions of this Purchase Order is hereby rejected.

3. COMPLETION: Time is of material importance in the performance of this Purchase Order. If Seller fails to effect delivery or performance of the associated services required by Buyer in accordance with the Project Schedule, Delivery Schedule, or other time requirements as communicated to Seller in the Purchase Order or its attachments and fails to provide a mutually agreed upon plan to cure, in addition to its other rights and remedies hereunder, Buyer shall have the right to terminate this Purchase Order by written notice effective when received by Seller but after allowing Seller to provide a remediation plan within seven (7) business days of receipt of such notice of termination. Such termination shall be effective as to goods not yet received by Buyer or services not yet rendered, regardless of their transit status. Thereafter, Buyer shall have the right to purchase substitute goods or services elsewhere and to the extent the cost of such substitute goods or services exceeds the amount Buyer would have paid Seller for such goods and services under this Purchase Order, Buyer shall be entitled to reimbursement of such amount from Seller or a credit against any amount then owed to Seller by Buyer under this Agreement. In the event the Buyer needs to postpone delivery prior to factory acceptance testing for greater than 20 days, it is understood that Seller will continue with the manufacturing schedule and place the completed goods into storage until Buyer is ready to receive shipment. In the event the Buyer needs to postpone delivery after factory acceptance testing for greater than 30 days, it is understood that Seller will place the completed goods into storage until Buyer is ready to receive shipment.

4. PRICES: Seller warrants that the prices shown hereunder are the prices quoted to Buyer at the time of sale in Exhibit A and include all costs incurred by Seller for shipment of all goods included in this Purchase Order. In the event of any price reduction between execution of the purchase order and delivery of the goods, Buyer shall be entitled to such reduction.

5. SHIPMENT AND DELIVERY: All goods made the subject hereof are to be suitably prepared and packaged for shipment in accordance with good commercial practice so as to effect safe delivery and freedom from weather or other damage and to meet the carrier’s requirements. All damages to such goods occurring prior to delivery to Buyer will be charged to

Seller. No charges will be allowed for packing, crating or carriage unless stated in this Purchase Order. If, in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this Purchase Order, any such increased transportation costs shall be paid by Seller. Goods shall be shipped from Seller to Buyer F.O.B. destination to the location specified in writing by Buyer. Seller shall complete delivery and commissioning between November 4, 2025, and January 21, 2026, for both Item 1 units described in Exhibit B, and between February 27, 2026, and June 19, 2026, for the one Item 2 unit described in Exhibit B. Cost of all return shipments, for repair or replacement within the warranty period set forth herein, shall be borne by Seller with title and risk of loss passing to Seller at the Buyer's point of shipment.

6. INSPECTION: Buyer shall have a reasonable time after delivery or performance to inspect the items delivered or the services performed not to exceed thirty (30) business days from delivery. All such items or services must conform to the specifications, instructions, drawings and data set forth on the face hereof. Within the period set forth herein, Buyer may reject and refuse acceptance of any items or services which do not so conform. Buyer shall notify Seller of such rejection by either notice in writing and by the return to Seller of the rejected items at Seller's expense and risk.

7. REJECTION OF MATERIALS AND WORKMANSHIP: Buyer shall have the right to reject furnished materials and workmanship that are defective or otherwise fail to meet the terms and conditions of this Purchase Order, including but not limited to the technical specifications in Exhibit B (the "Contract Documents") and require their correction. Rejected goods shall be satisfactorily replaced with proper materials without charge to Buyer, and Seller shall promptly segregate and remove rejected materials from the Project site or point designated. If Seller does not correct defective workmanship or replace the rejected materials within the agreed upon time, Buyer may do so and the Parties will agree to a fair and equitable adjustment of price for the furnished materials and workmanship that are defective or otherwise fail to meet the terms of the Contract Documents.

8. SHOP DRAWINGS, SUBMITTALS, QUALITY OF GOODS: Seller shall confirm that all materials are in strict accordance with the Contract Documents or requirements published by Buyer. Where required, prior to shipment, Seller shall provide shop drawings or submittals sufficient to demonstrate compliance with this Purchase Order and the Contract Documents for Buyer's review and approval. All goods and work of Seller shall conform to all applicable express and implied warranties and be of a good and workmanlike manner. A failure of Buyer during the progress of the work to discover or reject materials not in accordance with the Contract Documents shall not be deemed an acceptance thereof or a waiver of defects therein. No payment, use of goods provided by Seller, or occupancy of the Project site by Buyer shall be construed as an acceptance of materials which are not strictly in accordance with the Contract Documents.

9. RESPONSIBILITY FOR COMPLETION: Seller represents that it has examined the job's specifications, construction schedule, plans, drawings, and other documentation in the Contract Documents which Seller acknowledges are full and complete and are sufficient to enable Seller to determine the cost of the materials and has fully acquainted itself with all conditions relevant to the work and materials on the Project site and assumes the risk of any variance between

the actual conditions and those set out in Contract Documents. Any failure by Buyer at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Purchase Order shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of Buyer at any time to avail itself of such remedies, as it may have for any breach or breaches of such terms or conditions.

10. **WARRANTIES / GUARANTEES:**

- (A) For the period set forth below in this section, Seller warrants that each newly manufactured item sold hereunder, and such portion of a repaired/refurbished item as has been repaired or replaced by Seller under this warranty, shall be free from defects in material, workmanship, or title and shall perform during the warranty period in accordance with the specifications incorporated herein. Should any failure to conform to these warranties be discovered, then (i) Seller shall correct such failure by, at Seller's exclusive option, repair or replacement of the nonconforming item or portion thereof at Buyer's place of business, with Buyer promptly making product available to be worked by Seller's personnel or agents, or (ii) Buyer making available F.O.B origin to a location specified by Seller, with Seller's written return authorization, at Seller's exclusive option, for repair or replacement of the nonconforming item or portion thereof. Buyer agrees that this remedy shall be its sole and exclusive remedy against Seller for defects in material, workmanship, title or non-performance of the goods and that no other remedy shall be available or pursued by Buyer against Seller for the same. In no event shall the Seller be liable for any costs or expenses in excess of those described in this paragraph for defects in material, workmanship, title or non-performance of the goods and expressly excluding any liability or damages for special, incidental, or consequential damages.
- (B) **SELLER'S INSTALLATION WARRANTY:** Seller warrants that all work hereunder shall be performed in accordance with the standards applicable to such industry in this country. Seller disclaims any and all other representations or warranties expressed or implied including without limitation any representation or warranty that a) any unauthorized entry, burglary, theft, embezzlement, or any other crimes will be prevented by the equipment and/or installation thereof or that b) any particular purpose or standard of care intended or desired or any particular results to be achieved by Buyer through the installation and operation of the items to be delivered hereunder. Seller's installation services and installation warranty does not include or imply any assistance for system field troubleshooting and no back charges for such services shall be accepted without prior written consent of Seller's authorized representative.
- (C) **EXTENDED WARRANTY PERIOD OPTION FOR CORE AND COIL:** The five (5) year warranty period shall include core and coils only against failure occurring with respect to normal operation and within the parameters for which the transformer was designed. For extended Warranty period, to ensure validity of Extended Warranty period coverage, Virginia Transformer requires Dissolved Gas Analysis (DGA) reports of the supplied unit to be collected and maintained every year for the period of extended warranty period coverage. The annual DGAs should be emailed to: FieldService@vatransformer.com upon the Seller's request. Failure to conduct annual DGAs may void the purchased extended

warranty. Except for the extended time period all other provisions, terms, conditions, and limitations set forth above shall apply to the extended warranty period. In case of any disturbance in the system that causes the transformer to trip off-line, the following information shall be forwarded to Virginia Transformer Corp within two (2) business days: Event summary with relevant data, Protection system data, Overvoltage conditions (If any), Fault data (if any) and offset timing with peak current value, Loading, Environmental and atmospheric conditions.

- (D) **EXTENDED BUMPER TO BUMPER WARRANTY PERIOD OPTION:** The five (5) year warranty will cover the entire transformer including core and coils and all associated transformer accessories against failure occurring with respect to normal operation and within the parameters for which the transformer was designed. Bumper to Bumper Warranty does not cover normal wear and tear including paint and gaskets beyond five years. For extended Warranty period, to ensure validity of Extended Warranty period coverage, Virginia Transformer requires Dissolved Gas Analysis (DGA) reports of the supplied unit to be collected and maintained every year for the period of extended warranty coverage. The annual DGAs should be emailed to: FieldService@vatransformer.com upon the Seller's request. Except for the extended time period all other provisions, terms, conditions, and limitations set forth above shall apply to the extended warranty period.
- (E) **IN/OUT COVERAGE OPTION:** Seller shall cover the expenses to transport the transformer to a repair facility and back to site for warranty failures occurring within a five (5) year period. Buyer will make the transformer ready for shipment in the condition it was originally received per the outline drawing contained in the owner's manual received by Buyer with the goods, with clear and free access by carrier. Craning, civil work, disconnection, and reconnection of the transformer is the responsibility of the Buyer.

11. INDEMNIFICATION: Neither party shall be liable to the other or for any incidental, indirect, special, punitive or consequential damages regardless of whether liability would arise under contract or tort (including negligence and strict liability), warranty, indemnity or otherwise. Neither party's liability on any claim for loss or damage arising out of this contract or from the performance or breach thereof shall exceed the price of such goods involved in the order. **TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL INDEMNIFY AND HOLD HARMLESS THE BUYER, ITS DIRECTORS, AGENTS, EMPLOYEES, AND REPRESENTATIVES, FROM AND AGAINST ALL CLAIMS, LOSSES, COSTS, AND DAMAGES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM SELLER'S WORK OR A BREACH OF THIS AGREEMENT, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OR TO INJURY TO OR DESTRUCTION OF PROPERTY, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF SELLER, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, EXCEPT THE CONTACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY THE BUYER, OR ANY OTHER INDEMNIFIED PARTY, IF THE CLAIM WAS CAUSED BY THEIR FAULT, NEGLIGENCE, OR THEIR RECKLESS OR INTENTIONAL ACT.**

12. NO DAMAGES FOR DELAY: Seller shall have no right to claim any damages against Buyer, including consequential or incidental damages, as a result of delay. Extension of time

for Seller's performance is conditioned upon Buyer's approval of an extension of time to the contract or delays claimed by Seller. Failure of Seller to make a claim promptly shall be deemed a waiver of the right to a claim for an extension of time for the particular cause.

13. TERMINATION: Buyer may terminate this Purchase Order or any part thereof for cause in the event of any default by Seller, or if Seller fails to comply with any of the terms and conditions of this offer but will first allow Seller to provide a remediation plan to cure any alleged default as set out in Section 3. The Uniform Commercial Code of the State of Texas shall apply to Buyer's rights and remedies under commercial transactions. Buyer reserves all rights, remedies, and warranties, express and implied, under the UCC. Seller may not terminate this Purchase Order unless Buyer fails to provide payment for goods and/or associated services expressly accepted by Buyer. If Buyer terminates this Purchase Order for convenience, Buyer will pay the cancellation costs according to the termination fee schedule below:

- (A) If the Buyer terminates this Purchase Order for convenience after the order is entered by Seller but before the completed outline drawings are submitted to Buyer, Buyer will pay to Seller 30% of the order amount, which represents the costs incurred by Seller to begin the design drawings utilizing Buyer's specifications and the costs incurred by Seller to order components with extended lead times.
- (B) If the Buyer terminates this Purchase Order for convenience after the completed outline drawings are submitted to Buyer but before manufacturing of the goods has begun, in addition to the sums set forth in Section 13(A), Buyer will pay to Seller 15% of the order amount, which represents the full amount of the costs incurred by Seller to complete the design drawings utilizing the Buyer's specifications and obtain components with extended lead times.
- (C) If Buyer terminates this Purchase Order for convenience after manufacturing of the goods has begun, in addition to the sums set out in Section 13(A) and (B), Buyer will pay costs incurred by Seller in connection with this Purchase Order after manufacturing has commenced, including the costs relating to commitments for materials through the date of termination and costs incurred for manufacturing based upon percent completion.

14. TAXES: Buyer is exempted from all city, state, and federal excise taxes. DO NOT include tax on your invoice. Buyer's Tax Exempt Number is 1-74-6001783-7.

15. INSURANCE: In the event that Seller's performance hereunder requires or contemplates the performance of services by Seller's employees, or other persons under contract to Seller, whether such services are to be performed at the place of delivery of such goods or services, or elsewhere, Seller agrees that any such performance of services shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Buyer.

In such event, Seller at its sole expense, shall obtain and maintain (a) WORKERS' COMPENSATION, including Occupational Disease insurance, meeting the statutory requirements of the State in which work is to be performed together with a Broad Form Other States Endorsement and containing Employers' Liability insurance in an amount of at least

\$1,000,000.00, each accident, policy limit, and each employee; (b) GENERAL LIABILITY insurance providing Premises-Operations, Elevators, Independent Contractors, Broad Form Property Damage, Contractual Liability, Products & Completed Operations coverages (which shall be maintained in force for a period of two years after substantial completion of the Project); and (c) AUTOMOBILE LIABILITY on occurrence basis covering all Owned or Non-Owned and Hired Vehicles, as applicable, with a limit of \$1,000,000 Bodily Injury & Property Damage Combined Single Limit.

Insurance shall be in at least the following minimum limits:

COMMERCIAL GENERAL LIABILITY:

Amounts of coverage shall be no less than:

- \$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

AUTOMOBILE LIABILITY:

Amount of coverage shall be no less than:

- \$1,000,000 Per Accident

WORKERS' COMPENSATION

Amounts of coverage shall be no less than:

- Statutory Limits
- \$1,000,000 Each Accident, Employee, and Disease

All insurance (except Workers' Compensation) must include Buyer, 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) to the fullest extent permitted by law for claims arising out of the performance of this Purchase Order. Any coverage afforded to the additional insured shall be primary and non-contributory. All policies shall contain a waiver of rights of recovery (subrogation) against Buyer, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the services performed under this Purchase Order.

Seller shall furnish Buyer with satisfactory evidence that all insurance required by this Purchase Order has been obtained and paid for and will continue in full force and effect until the completion of the work. Evidence of insurance includes, but is not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language, but acceptance and reliance on such information will not waive or alter any way the insurance requirements or obligation under this Purchase Order. The Seller shall provide a minimum of five (5) days' written notice to Buyer in the event of cancellation. If Seller should contract out any of the work to a third

party, Seller shall cause said third party to carry the insurance required by this Purchase Order and to furnish evidence of same.

16. BONDS: To the extent the services required of Seller pursuant to this Purchase Order have an agreed value in excess of \$100,000, Seller shall provide a performance bond pursuant to Chapter 2253 of the Texas Government Code on a form acceptable to Buyer. To the extent the services required of Seller pursuant to this Purchase Order have an agreed value in excess of \$50,000, Seller shall provide a payment bond pursuant to Chapter 2253 of the Texas Government Code on a form acceptable to Buyer. Said forms shall be provided as an exhibit to this Purchase Order or provided to Seller for presentment to a licensed corporate surety for provision of the required bond. Seller's provision of a required bond on a form other than that proscribed by Buyer shall be rejected and may be grounds for termination of this Purchase Order by Buyer.

17. PAYMENT: Invoices will be paid according to agreed payment terms as reflected in this Section. Payment for the goods delivered under this Purchase Order shall not be acceptance of such goods. Goods shall only be deemed accepted when they have actually been counted, inspected, and tested by Buyer and found to be in conformance with this Purchase Order. However, failure to inspect or test by Buyer shall not relieve Seller of any responsibility hereunder. Subject to Chapter 2251 of the Texas Government Code, final payment shall not exceed sixty (60) days from delivery. The payment terms are (i) 30% with the drawing submission net 30 days; (ii) 60% upon factory acceptance testing, net 30 days; and (iii) 10% at field acceptance or placement into storage, not to exceed 30 days from shipment date. Seller must submit a written invoice to Buyer in conjunction with the payment terms described in the preceding sentence. In addition to any other rights or remedies available to Seller, failure to pay the amount(s) due within the time specified will result in a late charge of one and one-half percent (1- 1/2%) per month to Buyer's account until final payment provided such charge complies with Chapter 2251 of the Texas Government Code.

18. REMEDIES: The rights and remedies reserved to Buyer herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other or further rights and remedies provided by law or equity. No waiver of any breach of these provisions shall be deemed to constitute a waiver of any other breach.

19. ASSIGNMENT: Neither this Purchase Order nor any right or obligations herein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without in either case Buyer's prior written consent.

20. FORCE MAJEURE: Either party to this Purchase Order shall be free from liability for failing to perform hereunder if such failure is caused due to acts of God, labor difficulties, pandemics, epidemics, fires, or other causes beyond the reasonable control of the affected party. In the event that Seller is unable to perform for such reasons beyond its reasonable control, Buyer shall have the right to either continue the delivery dates until Seller is able to perform or terminate this Purchase Order.

21. DISPUTE RESOLUTION: In the event of disputes over price, quantity or quality, Buyer shall have the right to audit Seller's records in order to resolve the dispute. Pending resolution of

the dispute, amicably or otherwise, Seller shall proceed diligently with the performance of this Purchase Order as directed by Buyer. The Purchase Order shall be governed by the laws of the State of Texas. In the event that a dispute arises between Buyer and Seller, the parties agree to submit said disputes to the State District Courts of Comal County, Texas for resolution.

22. STORAGE: Seller will store the goods at the request of Buyer at Buyer's expense. Seller will provide a quote for such storage service to Buyer upon request. In the event a unit is put into a storage facility provided or secured by Seller, it is agreed that title will be retained by the Seller and the Seller will bear the risk of loss or destruction of the goods until the goods are delivered to Buyer. Subject to Chapter 2251 of the Texas Government Code, Buyer will be invoiced for work completed as of the date the goods are placed in storage and will pay the invoice due the later of the requested delivery date or thirty (30) days of receipt of the invoice. The invoice will be accompanied by factory test reports and pictures sufficient to demonstrate that the subject goods are complete and working. The Buyer further agrees that any unit put into storage will be afforded a minimum of three weeks advance notice before requested delivery out of storage.

23. REPRESENTATIONS:

Prohibition on Contracts with Companies Boycotting Israel. Seller 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 Purchase Order is a contract for goods or services, will not boycott Israel during the term of this Purchase Order 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. Seller understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.

Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited. Seller 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 Seller 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. Seller understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.

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

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

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

Prohibition on Contracts with Companies Boycotting Energy Companies. Seller 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 Purchase Order is a contract for goods or services, will not boycott energy companies during the term of this Purchase Order as described in Chapter 2276 of the Texas Government Code, as amended.

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

Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Seller 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 Purchase Order is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Purchase Order 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. Seller understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.

24. TEXAS PUBLIC INFORMATION ACT: Seller recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Purchase Order, Seller 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.

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.

Seller 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 Seller 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 Seller; 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 Purchase Order and Seller agrees that the Agreement can be terminated if Seller knowingly or intentionally fails to comply with a requirement of that subchapter.

25. 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 Purchase Order, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Purchase Order.

BUYER:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: _____
Title: _____

SELLER:
VIRGINIA TRANSFORMER CORP.,
a _____

By: _____
Name: _____
Title: _____

EXHIBIT A

| | Item 1 (each) | Item 1 (2 units) | Item 2 (1 unit) | Total |
|--------------------|---------------|------------------|-----------------|--------------|
| Base Price | \$ 1,935,969 | \$ 3,871,938 | \$ 905,900 | \$ 4,777,838 |
| Freight | \$ 52,000 | \$ 104,000 | \$ 46,000 | \$ 150,000 |
| Offloading | \$ 30,459 | \$ 60,918 | \$ 30,459 | \$ 91,377 |
| Field Testing/Assy | \$ 64,725 | \$ 129,450 | \$ 64,725 | \$ 194,175 |
| SFRA | \$ 5,000 | \$ 10,000 | \$ 5,000 | \$ 15,000 |
| HV Bushing Spare | \$ 31,000 | \$ 62,000 | \$ 31,000 | \$ 93,000 |
| LV Bushing Spare | \$ 16,250 | \$ 32,500 | \$ 11,000 | \$ 43,500 |
| | \$ 2,135,403 | \$ 4,270,806 | \$ 1,094,084 | \$ 5,364,890 |

EXHIBIT B

ITEM #1**Transformer Ratings**

| ITEM :1 | | | QUANTITY #2 |
|---------------------|---|-------------------------|----------------------------------|
| kVA | 20,000 / 22,400 / 26,667 / 29,867 / 33,333 / 37,333 | Application | POWER DIST. |
| Cooling Class | ONAN/ONAF/ONAF | Winding Temp Rise (Avg) | 55/65 °C |
| # Phase | 3 | Dielectric Fluid | TYPE II MINERAL |
| Frequency (Hz) | 60 | Winding Mat | COPPER |
| HV Rating (V) | 138,000 DELTA | LV Rating (V) | 13,090 Y/7,558 |
| HV BIL (kV) | 550 | LV BIL (kV) | 150 |
| HV Tap Changer | DETC | LV Tap Changer | LTC |
| HV Taps | 2 FCAN,2 FCBN @2.5 % | LV Taps | 16 ABOVE,16 BELOW @0.625 % |
| Nom. Impedance | 9.50 % +/- 7.50 % @ 20,000 kVA | Noise (dBA) | Standard NEMA TR-1 |
| HV Bushing Mtng | Segment III, Cover Mounted | LV Bushing Mtng | Segment I, Cover Mounted |
| HV Terminal Chamber | Not Applicable | LV Terminal Chamber | Not Applicable |
| HV Coil Type | DISC CIRC. | LV Coil Type | DISC CIRC. |
| Paint Color - ANSI | 70 | Paint Type | IV URETHANE OVER ZINC RICH EPOXY |
| Losses | Guaranteed with IEEE Tolerance | | |
| No Load Losses | 14.00 kW at 100% volts | Load Losses | 77.50 kW @ 20,000 kVA |

Mechanical Features

| |
|---|
| De-energized Manual No Load Tap Changer |
| Diagrammatic Name Plate |
| Gasketed Manhole in Cover |
| NEMA 4 Junction Box |
| Nitrogen System with Regulator |
| Panel Type Radiators |
| Provision for Jacking, Skidding and Lifting |
| Two Stainless Steel Ground Pads welded to Base on Diagonally Opposite Corners |
| Welded Top Cover |
| Sloping Top |
| Stainless Steel Hardware |
| White Painted Inside of Tank |
| Coal Tar Epoxy Undercoat |
| No Corner Welds |

Radiators

| | | | |
|-------------------------------|-----------------------------------|----------------------|--------------|
| Environment Protection | Hot Dipped Galvanized & Unpainted | Radiator Type | Demount Type |
|-------------------------------|-----------------------------------|----------------------|--------------|

| Gauges Details | Make |
|--|--------------------|
| Liquid Level Gauge W/Contact | QUALITROL OR EQUAL |
| Liquid Temp Gauge W/Contact | QUALITROL OR EQUAL |
| Pressure Relief Device W/Contact | QUALITROL OR EQUAL |
| Pressure Vacuum Gauge W/Bleeder | QUALITROL OR EQUAL |
| Sudden Pressure Relay (GAS) With Seal in Relay | QUALITROL OR EQUAL |
| Simulated Winding Temp Gauge W/Contact | QUALITROL OR EQUAL |

Bushings

| Bushing | kV BIL | Location | Qty / Phase | Make |
|---------|--------|-------------|-------------|-------------------------|
| HV | 650 | Segment III | 1 | HITACHI /PCORE or EQUAL |
| LV | 150 | Segment I | 1 | HITACHI /PCORE or EQUAL |

Current Transformers

| Location | Qty / Phase | CT Ratio | Ratio | Class / Accuracy |
|------------|-------------|-------------|-------------|------------------|
| HV | 2 | 600:5 | Multi Ratio | C800 |
| HV | 2 | 2000:5 | Multi Ratio | C800 |
| LV | 2 | 2000:5 | Multi Ratio | C800 |
| LV | 1 | 1000/2000:5 | Multi Ratio | 0.3B1.8 |
| LV Neutral | 1 | 600:5 | Multi Ratio | C800 |

Lightning Arresters

| Location | Type | kV Class | MCOV | Manufacturer | Material |
|----------|---------------|----------|------|------------------|----------|
| HV | Station Class | 108 | 88 | HUBBELL or EQUAL | POLYMER |
| LV | Station Class | 10 | 8.4 | HUBBELL or EQUAL | POLYMER |

Load Tap Changer

| | |
|----------|---------------------|
| Location | On LV Winding |
| LTC Type | RMV II |
| Make | REINHAUSEN OR EQUAL |
| XMFR | VTC CHOICE |

Included Spare Parts

| Item | Remarks |
|--------------------|-----------|
| GASKET SET - Qty 1 | Included. |

Ambient Conditions

| | |
|-------------------------|-----------------------------|
| Ambient Temperature(°C) | Min. -20 / Av. 30 / Max. 40 |
| Seismic Zone | LOW |
| Altitude(Feet) | < 3,300 |

Unit shall be designed per the latest ANSI standards for Seismic per IEEE 693 – 2018

Dimensions and Weights

| Overall & Shipping Estimated Dimensions: | | |
|--|-----------------------------|------------------------------|
| Dimension | Overall Dimensions (Inches) | Shipping Dimensions (Inches) |
| Width | 248 | 204 |
| Depth | 193 | 137 |
| Height | 168 | 163 |
| Overall & Shipping Estimated Weights: | | |
| Weight of the Unit (Lbs) | Shipping Weight (Lbs) | |
| 143,000 | 123,815 | |
| Parts Shipped Separately: | | |
| Fans and Mounting | | |
| HV Arresters and Mounting | | |
| HV Bushings | | |
| LV Arresters and Mounting | | |
| LV Bushings | | |
| Radiator Oil | | |
| Radiators | | |

ITEM #2

Transformer Ratings

| ITEM :2 | | | QUANTITY #1 |
|---------------------|---|-------------------------|----------------------------------|
| kVA | 15,000 / 16,800 / 20,000 / 22,400 / 25,000 / 28,000 | Application | POWER DIST. |
| Cooling Class | ONAN/ONAF/ONAF | Winding Temp Rise (Avg) | 55/65 °C |
| # Phase | 3 | Dielectric Fluid | TYPE II MINERAL |
| Frequency (Hz) | 60 | Winding Mat | COPPER |
| HV Rating (V) | 138,000 DELTA | LV Rating (V) | 4,200 Y/2,425 |
| HV BIL (kV) | 550 | LV BIL (kV) | 150 |
| HV Tap Changer | DETC | LV Tap Changer | Not Applicable |
| HV Taps | 2 FCAN,2 FCBN @2.5 % | LV Taps | Not Applicable |
| Nom. Impedance | 9.00 % +/- 7.50 % @ 15,000 kVA | Noise (dBA) | Standard NEMA TR-1 |
| HV Bushing Mtng | Segment III, Cover Mounted | LV Bushing Mtng | Segment IV, Side Mounted |
| HV Terminal Chamber | Not Applicable | LV Terminal Chamber | FLANGE FOR NON SEG BUS |
| HV Coil Type | DISC CIRC. | LV Coil Type | DISC CIRC. |
| Paint Color - ANSI | 70 | Paint Type | IV URETHANE OVER ZINC RICH EPOXY |
| Losses | Guaranteed with IEEE Tolerance | | |
| No Load Losses | 11.00 kW at 100% volts | Load Losses | 62.00 kW @ 15,000 kVA |

Mechanical Features

| |
|---|
| De-energized Manual No Load Tap Changer |
| Diagrammatic Name Plate |
| Gasketed Manhole in Cover |
| NEMA 4 Junction Box |
| Nitrogen System with Regulator |
| Panel Type Radiators |
| Provision for Jacking, Skidding and Lifting |
| Two Stainless Steel Ground Pads welded to Base on Diagonally Opposite Corners |
| Welded Top Cover |
| Sloping Top |
| Stainless Steel Hardware |
| Non-Skid Finish |
| White Painted Inside of Tank |
| Coal Tar Epoxy Undercoat |
| No Corner Welds |

Radiators

| | | | |
|-------------------------------|-----------------------------------|----------------------|--------------|
| Environment Protection | Hot Dipped Galvanized & Unpainted | Radiator Type | Demount Type |
|-------------------------------|-----------------------------------|----------------------|--------------|

| Gauges Details | Make |
|--|--------------------|
| Liquid Level Gauge W/Contact | QUALITROL OR EQUAL |
| Liquid Temp Gauge W/Contact | QUALITROL CORP. |
| Pressure Relief Device W/Contact | QUALITROL OR EQUAL |
| Pressure Vacuum Gauge W/Bleeder | QUALITROL OR EQUAL |
| Sudden Pressure Relay (GAS) With Seal in Relay | QUALITROL OR EQUAL |
| Simulated Winding Temp Gauge W/Contact | QUALITROL OR EQUAL |

Bushings

| Bushing | kV BIL | Location | Qty / Phase | Make |
|---------|--------|-------------|-------------|-------------------------|
| HV | 650 | Segment III | 1 | HITACHI /PCORE or EQUAL |
| LV | 150 | Segment IV | 1 | HITACHI /PCORE or EQUAL |

Current Transformers

| Location | Qty / Phase | CT Ratio | Ratio | Class / Accuracy |
|------------|-------------|-------------|-------------|------------------|
| HV | 2 | 600:5 | Multi Ratio | C800 |
| HV | 1 | 1200:5 | Multi Ratio | C800 |
| LV | 1 | 4000:5 | Multi Ratio | C800 |
| LV | 1 | 2000/4000:5 | Multi Ratio | 0.3B1.8 |
| LV Neutral | 1 | 600:5 | Multi Ratio | C800 |

Lightning Arresters

| Location | Type | kV Class | MCOV | Manufacturer | Material |
|----------|---------------|----------|------|------------------|----------|
| HV | Station Class | 108 | 88 | HUBBELL or EQUAL | POLYMER |

Included Spare Parts

| Item | Remarks |
|--------------------|-----------|
| GASKET SET - Qty 1 | Included. |

Ambient Conditions

| | |
|-------------------------|-----------------------------|
| Ambient Temperature(°C) | Min. -20 / Av. 30 / Max. 40 |
| Seismic Zone | LOW |
| Altitude(Feet) | < 3,300 |

Dimensions and Weights

| Overall & Shipping Estimated Dimensions: | | |
|---|------------------------------------|-------------------------------------|
| Dimension | Overall Dimensions (Inches) | Shipping Dimensions (Inches) |
| Width | 242 | 200 |
| Depth | 185 | 132 |
| Height | 160 | 157 |
| Overall & Shipping Estimated Weights: | | |
| Weight of the Unit (Lbs) | | Shipping Weight (Lbs) |
| 142,700 | | 123,660 |
| Parts Shipped Separately: | | |
| Fans and Mounting | | |
| HV Arresters and Mounting | | |
| HV Bushings | | |
| LV Arresters and Mounting | | |
| LV Bushings | | |
| Radiator Oil | | |
| Radiators | | |



REQUEST FOR PROPOSAL

FOR

RFP 24-0035 – KOHLENBERG AND GPI SUBSTATION
POWER TRANSFORMERS

The following voting members of the Evaluation Committee (EC) concur with the contents and recommendations as detailed in the Evaluation Report dated April 18, 2024.

Voting Member

Jeffrey Morriss

Landon Buckner

Signature

Jeffrey Morriss Digitally signed by Jeffrey Morriss
Date: 2024.04.18 13:00:38 -05'00'

Landon Buckner Digitally signed by Landon Buckner
2024.04.18

Facilitated by:

Ray Valdez, NIGP Buyer

Ray Valdez Digitally signed by Ray Valdez
Date: 2024.04.18 07:07:50 -07'00'

Approved by:

NBU Purchasing Manager

Jesse D. Luna Digitally signed by Jesse Luna
Date: 2024.04.18 13:54:20 -05'00'



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

From: Jeff Morriss **Reviewed by:** Gretchen Reuwer
Substations Manager Director of Electric Services

Submitted by: Gretchen Reuwer **Approved by:** Ryan Kelso
Director of Electric Services Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Lambda Construction I, LTD for Construction of the Hueco Springs Substation and Henne Substation Breaker Additions Project

BACKGROUND

On January 19, 2024, New Braunfels Utilities (“NBU”) issued a request for proposals for the Hueco Springs Substation and Henne Substation Breaker Additions Project. The scope at Hueco Springs Substation includes green field construction of the substation site, fencing, one power transformer bank with associated distribution feeder bays, and an underground conduit system for six distribution feeder exits. The scope at Henne Substation consists of two new distribution feeder breaker additions. One breaker, HE14, will require extension of the existing structural steel and electrical bus. The other breaker, HE24, will be installed in an existing bay. The aggregate scope at both Hueco Springs and Henne Substations is collectively called the “Project”. The Project will include a new substation constructed on River Road at the intersection with Edwards Blvd. The project also includes work at Henne Substation. This Project is necessary because it will provide additional electric distribution capacity to serve existing customers and future growth.

NBU received one (1) proposal on March 14, 2023, for the Project during the public bidding process. The project team evaluated the proposal and recommends the selecting of Lambda Construction I, LTD (“Lambda”) for the Project. Lambda was the only responsible respondent with a base price of \$5,460,109.22.

NBU staff requests that the Board of Trustees approve the Construction Contract Agreement with Lambda 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 amount of the construction contract with Lambda for the Project is \$5,460,109.22. The Project is budgeted within the Fiscal Year 2024 through Fiscal Year 2025 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

- 1. Construction Contract Agreement with Lambda Construction I, LTD
- 2. Letter of Evaluation from Schneider Engineering, LLC
- 3. Letter of Recommendation from Jeff Morriss, NBU Substations Manager
- 4. 4. Bid Form (RFP 23-0019)

| Bid Tab (RFB 23-0019) | |
|-----------------------|--|
| 1 | Lambda Construction, Ltd. \$5,460,109.22 |

THIS AGREEMENT (the “Agreement” or the “Contract”) is between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **LAMBDA CONSTRUCTION I LTD.**, 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:

- A. Contract Agreement and the related Exhibits;**
- B. Standard General Conditions of the Contract;**
- C. Special Conditions;**
- D. Payment Bond;**
- E. Performance Bond;**
- F. Hueco Springs Substation – Electrical & Structural Specifications for New Braunfels Utilities, prepared by Schneider Engineering dated September 15, 2023;**
- G. Hueco Springs Substation – Control House & Relay Panels Specifications for New Braunfels Utilities, prepared by Schneider Engineering dated September 15, 2023;**
- H. Henne Substation Breaker Addition - Electrical & Structural Specifications Henne HE-14 & HE-24 Breaker Additions for New Braunfels Utilities, prepared by Schneider Engineering dated October 24, 2023;**
- I. Henne Substation Breaker Addition – Relay and Control Specifications HE-14 and HE-24 for New Braunfels Utilities, prepared by Schneider Engineering dated October 23, 2023;**
- J. Henne Substation Breaker Addition - Steel Specifications for New Braunfels Utilities, prepared by Schneider Engineering dated October 20, 2023; and**
- K. Hueco Springs Substation and Henne Breaker Addition (HE-14 and HE-24) – Construction Specifications for New Braunfels Utilities, prepared by Schneider Engineering dated December 13, 2023.**

1.02 The Work is generally described as follows:

The Work shall consist of the construction of the new Hueco Springs Substation. The Work at Henne consists of adding a feeder bay for a new HE-14 breaker and installing one feeder breaker to existing HE-24 feeder bay. The Work is anticipated to include some or all of the following items within its scope: raw land site work, concrete work, structural construction, grounding work, substation electrical construction, conduit, relay and control work; and 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:

Hueco Springs Substation and Henne Substation Breaker Additions

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

Schneider Engineering, LLC
191 Menger Springs Parkway
Boerne, TX 78006

(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 **300 calendar days from the Notice to Proceed date** and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

4.03 *Damages*

A. The Contractor shall achieve Substantial Completion of the entire Work within 300 calendar days from the Notice to Proceed date, subject to and adjustments of the Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between NBU and the Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a material breach of this Agreement.

B. Should the Contractor default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, NBU may withhold, deduct, or recover from the Contractor all costs and damages for compensable delay caused by the Contractor from the Contract Price. Such costs shall include any professional or consultant’s fees (including but not limited to fees for attorneys, architects, engineers, and construction managers), and all other costs, expenses, and damages actually incurred by NBU as a result of such delay. NBU’s delay damages may be incidental to and not directly associated with the Project.

C. Timely final completion is an essential condition of this Agreement. The Contractor agrees to achieve final completion of the Work within 30 days of the designated or extended Substantial Completion date. The date of Substantial Completion shall be fixed by this Agreement, unless

modified by Change Order, and memorialized by a Certificate of Substantial Completion as provided in the General Conditions.

4.04 *Special Damages*

- A. In addition to damages for delay addressed in Section 4.03, the Contractor shall reimburse NBU for (i) any fines or penalties imposed on NBU as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times and (ii) the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Section 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After the Contractor achieves Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, the Contractor shall reimburse NBU for the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Section 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The remedies contained in this Article 4 are not exclusive and shall be cumulative to other remedies provided to NBU in the event of default or breach by the Contractor.

ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

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

6.03 *Final Payment*

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

ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS

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

- A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. The Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site that may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- E. The Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. The Contractor is aware of the general nature of work to be performed by NBU and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. The Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

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

8.02 *Assignment of Contract*

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

8.03 *Successors and Assigns*

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

8.04 *Severability*

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

8.05 *Governing Law*

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

8.06 *Venue*

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

8.07 *Prohibition on Contracts with Companies Boycotting Israel*

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

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

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

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

- B. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Contractor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be

excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

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

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

8.10 *Prohibition on Contracts with Companies Boycotting Energy Companies*

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

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

- A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

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

8.12 *Texas Public Information Act*

A. The Contractor recognizes that this Project is publicly owned, and NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of NBU’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to NBU’s audit rights.

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

C. The Contractor must

1. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement;
2. promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of NBU; and
3. on completion of the Agreement, either:
 - a. provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
 - b. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

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

8.13 *Electronic Signatures*

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

ARTICLE 9 - INSURANCE

9.01 *Evidence of the Contractor’s Insurance*

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

Exhibit A – Insurance Rider

Exhibit B – Contractor’s Bid Form

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:

LAMBDA CONSTRUCTION I LTD.:

By: _____

By: _____

Printed Name: Ryan Kelso

Printed Name: _____

Title: Chief Executive Officer

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Title: _____

Title: _____

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 |

CONTRACT AGREEMENT

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| | | <p>exclusion applicable to the Work</p> <ul style="list-style-type: none"> ○ Any “Insured vs. Insured” exclusion except Named Insured vs. Named Insured ○ Any Punitive, Exemplary or Multiplied Damages exclusion ○ Any Subsidence exclusion |
| Business Auto Liability | <p>Amount of coverage shall be no less than:</p> <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 Employer’s Liability | <p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ Statutory Limits ▪ \$1,000,000 Each Accident and Disease ▪ Alternate Employer endorsement | <ul style="list-style-type: none"> ▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page ▪ 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 | <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: |

CONTRACT AGREEMENT

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| | <p>\$3,000,000 Each Claim.</p> <ul style="list-style-type: none"> ▪ 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"> ○ 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. |
| <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 |

CONTRACT AGREEMENT

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| | | <p>this Agreement or the commencement of contractor services relation to the Work.</p> <ul style="list-style-type: none"> ▪ 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 parties, with that other insurance being excess, secondary and non-contributing. ▪ The policy must provide coverage for: | <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 and wiring, excavations, grading, backfilling or filling; ○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) | | | | | | | | | | | | |
| | <table border="0"> <tr> <td>○ Agreed Value</td> <td>Included</td> </tr> <tr> <td>○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including</td> <td>Included</td> </tr> <tr> <td></td> <td>\$1,000,000</td> </tr> <tr> <td></td> <td>\$5,000,000</td> </tr> <tr> <td></td> <td>\$5,000,000</td> </tr> <tr> <td></td> <td>Included</td> </tr> </table> | ○ Agreed Value | Included | ○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including | Included | | \$1,000,000 | | \$5,000,000 | | \$5,000,000 | | Included | <p>located at the site;</p> <ul style="list-style-type: none"> ○ 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 |
| ○ Agreed Value | Included | | | | | | | | | | | | | |
| ○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including | Included | | | | | | | | | | | | | |
| | \$1,000,000 | | | | | | | | | | | | | |
| | \$5,000,000 | | | | | | | | | | | | | |
| | \$5,000,000 | | | | | | | | | | | | | |
| | Included | | | | | | | | | | | | | |

CONTRACT AGREEMENT

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| | collapse | Included | |
| | ○ Debris removal additional limit | \$1,000,000 \$—25,000 | ○ other Work at the site identified in the Agreement to which this Exhibit is attached. |
| | ○ Earthquake and Earthquake Sprinkler Leakage | Included Included | ● No protective safeguard warranty shall be permitted. |
| | ○ Flood | \$10,000 | ● 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: |
| | ○ Freezing | 2% subject to | ○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; |
| | ○ Mechanical breakdown including hot & cold testing | \$50,000 minimum \$100,000 | ○ occupancy, in whole or in part; |
| | ○ Ordinance or law | \$100,000 | ○ the date on which release of substantial completion is executed; or |
| | ○ Pollutant clean-up and removal | | ○ the date on which the insurable interests of Contractor in the Covered Property has ceased. |
| | ○ Preservation of property | | ● A waiver of subrogation provision shall be provided in favor of all insureds listed above. |
| | ○ Theft | | |
| | ● Deductible shall not exceed | | |
| | ○ All Risks of Direct Damage, Per Occurrence, except | | |
| | ○ Named Storm | | |
| | ○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence | | |
| | ○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V | | |

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.

CONTRACT AGREEMENT

- 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

CONTRACT AGREEMENT

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.**

New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

PROJECT: Hueco Springs Substation and Henne Substation Breaker Additions

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

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

Item 16.

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

NEW BRAUNFELS UTILITIES

Item 16.

PROPOSAL SUMMARY

| | | | |
|---------------|---------------------------|----|---------------------|
| HUECO SPRINGS | TOTAL CONTRACTOR LABOR | \$ | <u>2,890,930.78</u> |
| | TOTAL CONTRACTOR MATERIAL | \$ | <u>1,770,655.49</u> |
| | SUBTOTAL BASE BID | \$ | <u>4,661,586.26</u> |

| | | | |
|---------------|---------------------------|----|-------------------|
| HENNE BREAKER | TOTAL CONTRACTOR LABOR | \$ | <u>224,050.61</u> |
| | TOTAL CONTRACTOR MATERIAL | \$ | <u>78,098.79</u> |
| | SUBTOTAL BASE BID | \$ | <u>302,149.39</u> |

| | | |
|--------------------------|----|----------------------------|
| 10% CONTINGENCY SUBTOTAL | \$ | <u>496,373.57</u> |
| TOTAL CONTRACT | \$ | <u><u>5,460,109.22</u></u> |

LAMBDA CONSTRUCTION I, LTD

(BIDDER)

BY: ZANE SHULANBERGER, GENERAL PARTNER

DATE: March 14, 2024

NEW BRAUNFELS UTILITIES

Item 16.

PROPOSAL SUMMARY

**HUECO SPRINGS
PROPOSAL SUMMARY**

RECAPITULATION OF GROUPS:

| | CONTRACTOR LABOR PRICE | CONTRACTOR MATERIAL PRICE | TOTAL UNIT PRICE |
|-----------------------------|---------------------------|------------------------------|------------------|
| GROUP A | \$ 262,464.06 | \$ 186,907.00 | \$ 449,371.06 |
| GROUP B | \$ 14,706.36 | \$ 50.00 | \$ 14,756.36 |
| GROUP D | \$ 16,086.82 | \$ 44,540.00 | \$ 60,626.82 |
| GROUP E | \$ 18,307.27 | \$ 100.00 | \$ 18,407.27 |
| GROUP F | \$ 8,403.64 | \$ - | \$ 8,403.64 |
| GROUP G | \$ 16,377.00 | \$ 97,495.00 | \$ 113,872.00 |
| GROUP H | \$ 2,821.09 | \$ 100.00 | \$ 2,921.09 |
| GROUP J | \$ 4,301.82 | \$ 42,000.00 | \$ 46,301.82 |
| GROUP K | \$ 765,157.55 | \$ 542,733.00 | \$ 1,307,890.55 |
| GROUP L | \$ 451,203.19 | \$ 78,429.99 | \$ 529,633.17 |
| GROUP M | \$ 584,421.81 | \$ 190,000.00 | \$ 774,421.81 |
| GROUP N | \$ 236,504.77 | \$ 221,842.50 | \$ 458,347.27 |
| GROUP O | \$ 256,255.88 | \$ 70,650.00 | \$ 326,905.88 |
| GROUP P | \$ 178,750.00 | \$ 233,820.00 | \$ 412,570.00 |
| GROUP Q | \$ 38,866.81 | \$ 36,488.00 | \$ 75,354.81 |
| GROUP S | \$ 6,802.73 | \$ - | \$ 6,802.73 |
| GROUP Z | \$ 29,500.00 | \$ 25,500.00 | \$ 55,000.00 |
| SUBSTATION SUBTOTALS | \$ 2,890,930.78 | \$ 1,770,655.49 | \$ 4,661,586.26 |

**HENNE BREAKER
PROPOSAL SUMMARY**

RECAPITULATION OF GROUPS:

| | CONTRACTOR LABOR PRICE | CONTRACTOR MATERIAL PRICE | TOTAL UNIT PRICE |
|---------|---------------------------|------------------------------|------------------|
| GROUP A | \$ 54,920.77 | \$ 26,450.00 | \$ 81,370.77 |
| GROUP D | \$ 3,241.36 | \$ 7,230.00 | \$ 10,471.36 |
| GROUP F | \$ 4,201.82 | \$ - | \$ 4,201.82 |
| GROUP G | \$ 30,294.45 | \$ 17,495.00 | \$ 47,789.45 |
| GROUP K | \$ 50,110.54 | \$ 15,644.00 | \$ 65,754.54 |
| GROUP L | \$ 39,063.50 | \$ 2,104.39 | \$ 41,167.88 |
| GROUP M | \$ 2,836.23 | \$ 300.00 | \$ 3,136.23 |
| GROUP N | \$ 12,705.45 | \$ 2,865.00 | \$ 15,570.45 |
| GROUP O | \$ 16,807.27 | \$ 5,035.40 | \$ 21,842.67 |
| GROUP Q | \$ 5,567.41 | \$ 975.00 | \$ 6,542.41 |

NEW BRAUNFELS UTILITIES

Item 16.

PROPOSAL SUMMARY

| | | | |
|----------------------|---------------|--------------|---------------|
| GROUP S | \$ 4,301.82 | \$ - | \$ 4,301.82 |
| SUBSTATION SUBTOTALS | \$ 224,050.61 | \$ 78,098.79 | \$ 302,149.39 |

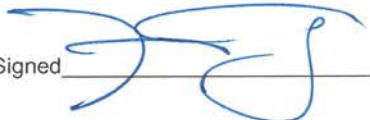
**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

Item 16.

UNIT PROPOSAL - HUECO - REVISED 3.6.2024

| GROUP A: STRUCTURES | | | | | | | |
|----------------------------|---|------|------|---------------------|------------------------|---------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| A3.1 | T-STRUCTURE; MEDIUM VOLTAGE | 4 | EA | \$ 4,652.00 | \$ 2,500.00 | \$ 7,152.00 | \$ 28,608.00 |
| A3.1a | MV T-STR-PIPE STATIC MAST ASSY | 3 | EA | \$ 1,268.05 | \$ 120.00 | \$ 1,388.05 | \$ 4,164.14 |
| A3.1b | MV T-STR-UPPER TRUSS MOUNT ASSY | 1 | EA | \$ 2,528.59 | \$ 400.00 | \$ 2,928.59 | \$ 2,928.59 |
| A3.2 | END FRAME T-STRUCTURE; MEDIUM VOLTAGE | 2 | EA | \$ 6,332.73 | \$ 4,500.00 | \$ 10,832.73 | \$ 21,665.45 |
| A3.2a | END FRAME MV T-STR-PIPE STATIC MAST ASSY | 1 | EA | \$ 1,268.05 | \$ 120.00 | \$ 1,388.05 | \$ 1,388.05 |
| A3.2b | END FRAME MV T-STR-UPPER TRUSS MOUNT ASSY | 1 | EA | \$ 2,528.59 | \$ 900.00 | \$ 3,428.59 | \$ 3,428.59 |
| A3.3 | UPPER TRUSS; T-STRUCTURE, MEDIUM VOLTAGE | 1 | EA | \$ 2,536.09 | \$ 600.00 | \$ 3,136.09 | \$ 3,136.09 |
| A3.4 | LOWER TRUSS; T-STRUCTURE, MEDIUM VOLTAGE | 5 | EA | \$ 3,691.59 | \$ 1,300.00 | \$ 4,991.59 | \$ 24,957.95 |
| A3.5 | END FRAME TRUSS; T/L-STRUCTURE, MEDIUM VOLTAGE | 2 | EA | \$ 2,115.91 | \$ 700.00 | \$ 2,815.91 | \$ 5,631.82 |
| A3.5a | MV T/L STR END FRAME TRUSS-PT TRUSS ASSY | 1 | EA | \$ 1,905.82 | \$ 700.00 | \$ 2,605.82 | \$ 2,605.82 |
| A6.1 | BUS, TUBULAR; THREE PHASE, DISTRIBUTION | 1 | LOT | \$ 73,690.17 | \$ 39,155.00 | \$ 112,845.17 | \$ 112,845.17 |
| A6.2 | BUS, STRAIN; THREE PHASE, DISTRIBUTION | 1 | LOT | \$ 43,698.90 | \$ 41,970.00 | \$ 85,668.90 | \$ 85,668.90 |
| A6.5 | BUS, STRAIN; THREE PHASE, HIGH VOLTAGE | 1 | LOT | \$ 6,302.73 | \$ 1,960.00 | \$ 8,262.73 | \$ 8,262.73 |
| A6.6 | SHIELD WIRE | 1 | LOT | \$ 21,009.09 | \$ 1,060.00 | \$ 22,069.09 | \$ 22,069.09 |
| A7.3 | SWITCH STAND; VEE, LOW PROFILE, HIGH VOLTAGE | 2 | EA | \$ 4,231.82 | \$ 5,500.00 | \$ 9,731.82 | \$ 19,463.64 |
| A8.1 | STRUCTURE; TRANSFORMER, TUBULAR | 1 | EA | \$ 10,534.54 | \$ 9,000.00 | \$ 19,534.54 | \$ 19,534.54 |
| A8.1b | TRANSFORMER STRUCTURE-TUBE STATIC MAST ASSY | 2 | EA | \$ 2,130.91 | \$ 1,000.00 | \$ 3,130.91 | \$ 6,261.82 |
| A8.1f | TRANSFORMER STRUCTURE-BUS SUPPORT PLATE ASSY | 3 | EA | \$ 217.59 | \$ 50.00 | \$ 267.59 | \$ 802.77 |
| A8.3 | STRUCTURE; STATIC MAST, STANDARD DUTY (53'-4") | 4 | EA | \$ 4,742.04 | \$ 11,158.00 | \$ 15,900.04 | \$ 63,600.18 |
| A9.1 | RISER; URD, T-STRUCTURE, MEDIUM VOLTAGE (LOW PROFILE) | 3 | EA | \$ 2,115.91 | \$ 2,000.00 | \$ 4,115.91 | \$ 12,347.73 |
| GROUP A TOTAL: | | | | | | | \$ 449,371.06 |

| GROUP B: THREE-POLE GROUP OPERATED AIR BREAK SWITCHES | | | | | | | |
|--|--|------|------|---------------------|------------------------|---------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| B2.1 | AIR BREAK VEE SWITCH; 138 KV, 1200 AMP | 2 | EA | \$ 7,353.18 | \$ 25.00 | \$ 7,378.18 | \$ 14,756.36 |
| GROUP B TOTAL: | | | | | | | \$ 14,756.36 |

Signed 

**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**


Item 16.

| GROUP D: SINGLE POLE DISCONNECT SWITCHES | | | | | | | |
|---|---|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| D1.8 | FUSE CUTOUT; 15 KV 15E WITH LINKS | 1 | EA | \$ 630.27 | \$ 335.00 | \$ 965.27 | \$ 965.27 |
| D1.8a | FUSE CUTOUT; 15 KV 1E WITH LINKS | 3 | EA | \$ 630.27 | \$ 335.00 | \$ 965.27 | \$ 2,895.82 |
| D2.2 | HOOKSTICK DISCONNECT SWITCH; 25 KV, 1200 AMP | 9 | EA | \$ 220.09 | \$ 800.00 | \$ 1,020.09 | \$ 9,180.82 |
| D2.3 | HOOKSTICK DISCONNECT SWITCH; 25 KV, 2000 AMP | 9 | EA | \$ 220.09 | \$ 1,100.00 | \$ 1,320.09 | \$ 11,880.82 |
| D2.6a | HOOKSTICK DISCONNECT SWITCH; 25 KV TANDEM, 1200 AMP | 9 | EA | \$ 640.27 | \$ 1,500.00 | \$ 2,140.27 | \$ 19,262.45 |
| D2.6b | HOOKSTICK DISCONNECT SWITCH; 25 KV TANDEM, 2000 AMP | 6 | EA | \$ 640.27 | \$ 2,100.00 | \$ 2,740.27 | \$ 16,441.64 |
| GROUP D TOTAL: | | | | | | | \$ 60,626.82 |

| GROUP E: OIL/VACUUM/POWER CIRCUIT BREAKERS AND/OR CIRCUIT SWITCHERS | | | | | | | |
|--|--------------------------------------|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| E2.1 | CIRCUIT SWITCHER; 138 KV WITH BYPASS | 1 | EA | \$ 18,307.27 | \$ 100.00 | \$ 18,407.27 | \$ 18,407.27 |
| GROUP E TOTAL: | | | | | | | \$ 18,407.27 |

| GROUP F: OIL/VACUUM CIRCUIT BREAKER/RECLOSER | | | | | | | |
|---|--------------------------------------|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| F2.1 | VACUUM CIRCUIT BREAKER; 27 KV; 2000A | 1 | EA | \$ 1,680.73 | \$ - | \$ 1,680.73 | \$ 1,680.73 |
| F2.2 | VACUUM CIRCUIT BREAKER; 27 KV; 1200A | 4 | EA | \$ 1,680.73 | \$ - | \$ 1,680.73 | \$ 6,722.91 |
| GROUP F TOTAL: | | | | | | | \$ 8,403.64 |

| GROUP G: METERS, RELAYS AND INSTRUMENT TRANSFORMERS | | | | | | | |
|--|---|------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| G1.4 | POTENTIAL TRANSFORMER; 7.2 KV, SINGLE PHASE | 3 | EA | \$ 490.21 | \$ 5,040.00 | \$ 5,530.21 | \$ 16,590.64 |
| G3.1b | DISTRIBUTION RELAY PANEL; SEL (TWO FEEDERS) | 2 | EA | \$ 2,150.91 | \$ 19,000.00 | \$ 21,150.91 | \$ 42,301.82 |
| G4.1 | TRANSFORMER DIFFERENTIAL RELAY PANEL | 1 | EA | \$ 2,150.91 | \$ 28,000.00 | \$ 30,150.91 | \$ 30,150.91 |
| G6.2 | BUS DIFFERENTIAL PANEL | 1 | EA | \$ 2,150.91 | \$ 15,000.00 | \$ 17,150.91 | \$ 17,150.91 |
| G7.1 | JUNCTION BOX; PT | 1 | EA | \$ 6,302.73 | \$ 1,375.00 | \$ 7,677.73 | \$ 7,677.73 |
| GROUP G TOTAL: | | | | | | | \$ 113,872.00 |

Signed 

**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

Item 16.

| GROUP H: TRANSFORMERS | | | | | | | |
|------------------------------|---|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| H2.3 | TRANSFORMER, POWER; 138-13.1 KV, 3 PHASE, 37.33 MVA WITH LTC | 1 | EA | \$ - | \$ - | \$ - | \$ - |
| H9.1 | TRANSFORMER, DISTRIBUTION; 1 PHASE, 7200-120/240 VOLT, 75 KVA | 1 | EA | \$ 2,821.09 | \$ 100.00 | \$ 2,921.09 | \$ 2,921.09 |
| GROUP H TOTAL: | | | | | | | \$ 2,921.09 |

| GROUP J: COMMUNICATIONS AND SUPERVISORY CONTROL EQUIPMENT | | | | | | | |
|--|------------------------------------|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| J3.1 | SCADA PANEL WITH FIBER PATCH PANEL | 1 | EA | \$ 2,150.91 | \$ 32,000.00 | \$ 34,150.91 | \$ 34,150.91 |
| J3.8 | COMMUNICATIONS PANEL | 1 | EA | \$ 2,150.91 | \$ 10,000.00 | \$ 12,150.91 | \$ 12,150.91 |
| GROUP J TOTAL: | | | | | | | \$ 46,301.82 |

| GROUP K: TRENCHING, CONDUIT, AND CABLE | | | | | | | |
|---|--|------|------|------------------|---------------------|------------------|------------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| K1.1 | CONDUIT; PVC | 1 | LOT | \$ 50,421.81 | \$ 11,575.00 | \$ 61,996.81 | \$ 61,996.81 |
| K1.2a | CONDUIT; ABOVE GRADE | 1 | LOT | \$ 33,614.54 | \$ 21,576.00 | \$ 55,190.54 | \$ 55,190.54 |
| K2.1 | TRENCHING AND BACKFILL FOR CONDUIT INSTALLATION | 1 | LOT | \$ 115,043.62 | \$ 5,610.00 | \$ 120,653.62 | \$ 120,653.62 |
| K2.5 | PREFABRICATED MODULAR STEEL CABLE TRENCH | 1 | LOT | \$ 93,471.49 | \$ 49,985.00 | \$ 143,456.49 | \$ 143,456.49 |
| K3.1 | CABLE; INSTRUMENT TRANSFORMER, CURRENT | 1 | LOT | \$ 18,575.38 | \$ 12,821.00 | \$ 31,396.38 | \$ 31,396.38 |
| K3.2 | CABLE; INSTRUMENT TRANSFORMER, POTENTIAL | 1 | LOT | \$ 3,671.27 | \$ 1,408.00 | \$ 5,079.27 | \$ 5,079.27 |
| K4.1 | CABLE; AC - EQUIPMENT | 1 | LOT | \$ 22,434.89 | \$ 15,677.50 | \$ 38,112.39 | \$ 38,112.39 |
| K4.2 | CABLE; AC/DC – STATION SERVICE | 1 | LOT | \$ 12,721.42 | \$ 19,525.00 | \$ 32,246.42 | \$ 32,246.42 |
| K4.4 | CABLE; DC - EQUIPMENT | 1 | LOT | \$ 8,973.40 | \$ 5,612.00 | \$ 14,585.40 | \$ 14,585.40 |
| K5.1 | CABLE; ALARM/CONTROL (UNSHIELDED) | 1 | LOT | \$ 17,613.99 | \$ 13,890.00 | \$ 31,503.99 | \$ 31,503.99 |
| K6.7 | CABLE; SCADA INDICATION (4C - #14 AWG) | 1 | LOT | \$ 2,070.65 | \$ 466.00 | \$ 2,536.65 | \$ 2,536.65 |
| K6.9 | CABLE; SCADA INDICATION (12C - #10 AWG) | 1 | LOT | \$ 6,961.56 | \$ 1,356.00 | \$ 8,317.56 | \$ 8,317.56 |
| K6.11 | CABLE; SCADA INDICATION (12C - #14 AWG) | 1 | LOT | \$ 3,240.43 | \$ 504.00 | \$ 3,744.43 | \$ 3,744.43 |
| K7.3 | CABLE; CATEGORY 6 (CAT 6) ETHERNET | 1 | LOT | \$ 33,210.91 | \$ 6,530.00 | \$ 39,740.91 | \$ 39,740.91 |
| K9.4a | CABLE VAULT; PRECAST, 3-WAY OCTAGONAL MANHOLE | 3 | LOT | \$ 26,977.78 | \$ 30,000.00 | \$ 56,977.78 | \$ 170,933.33 |
| K9.4b | CONDUIT ENCLOSURE PAD | 2 | LOT | \$ 5,099.43 | \$ 2,362.25 | \$ 7,461.68 | \$ 14,923.36 |
| K10.2a | UNDERGROUND DISTRIBUTION SINGLE CIRCUIT DUCT BANK; URD | 1 | LOT | \$ 27,550.00 | \$ 66,325.00 | \$ 93,875.00 | \$ 93,875.00 |
| K10.2b | UNDERGROUND DISTRIBUTION DOUBLE CIRCUIT DUCT BANK; URD | 1 | LOT | \$ 194,450.00 | \$ 212,680.00 | \$ 407,130.00 | \$ 407,130.00 |
| K10.5 | UNDERGROUND DISTRIBUTION CABLE RISER POLE ASSEMBLY INSTALLATION; FEEDERS | 1 | LOT | \$ 30,000.00 | \$ 2,468.00 | \$ 32,468.00 | \$ 32,468.00 |
| GROUP K TOTAL: | | | | | | | \$ 1,307,890.55 |


Signed

**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

Item 16.

| GROUP L: FOUNDATIONS | | | | | | | |
|-----------------------------|--|------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| L1.10 | FOUNDATION; CIRCUIT BREAKER, DISTRIBUTION (FEEDER) | 4 | EA | \$ 9,018.21 | \$ 767.24 | \$ 9,785.45 | \$ 39,141.78 |
| L1.10a | FOUNDATION; CIRCUIT BREAKER, DISTRIBUTION (TOTALIZING) | 1 | EA | \$ 9,018.21 | \$ 767.24 | \$ 9,785.45 | \$ 9,785.45 |
| L2.10 | FOUNDATION; CIRCUIT SWITCHER, HIGH VOLTAGE | 2 | EA | \$ 9,432.06 | \$ 832.72 | \$ 10,264.79 | \$ 20,529.57 |
| L4.10 | FOUNDATION; GENERAL SUBSTATION STRUCTURE, MEDIUM VOLTAGE | 11 | EA | \$ 3,440.99 | \$ 303.79 | \$ 3,744.78 | \$ 41,192.58 |
| L4.20 | FOUNDATION; GENERAL SUBSTATION STRUCTURE, HIGH VOLTAGE | 4 | EA | \$ 3,440.99 | \$ 303.79 | \$ 3,744.78 | \$ 14,979.12 |
| L5.10 | FOUNDATION; TRANSFORMER STRUCTURE | 2 | EA | \$ 5,214.73 | \$ 460.39 | \$ 5,675.12 | \$ 11,350.24 |
| L6.10 | FOUNDATION; STATIC MAST STRUCTURE | 4 | EA | \$ 9,432.06 | \$ 832.72 | \$ 10,264.79 | \$ 41,059.14 |
| L8.21 | FOUNDATION; POWER TRANSFORMER - OIL CONTAINMENT | 1 | EA | \$ 172,380.78 | \$ 26,633.76 | \$ 199,014.55 | \$ 199,014.55 |
| L9.98 | FOUNDATION; CONCRETE DRIVEWAY ENTRANCE | 2 | EA | \$ 13,582.53 | \$ 10,345.42 | \$ 23,927.95 | \$ 47,855.89 |
| L9.99 | FOUNDATION; PRECAST CONCRETE CONTROL HOUSE | 1 | EA | \$ 87,929.62 | \$ 16,795.22 | \$ 104,724.84 | \$ 104,724.84 |
| GROUP L TOTAL: | | | | | | | \$ 529,633.17 |

| GROUP M: SITE PREPARATION | | | | | | | |
|----------------------------------|--|-------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| M1.1 | SITE PREPARATION; CLEARING AND GRUBBING | 1 | LOT | \$ 100,000.00 | \$ - | \$ 100,000.00 | \$ 100,000.00 |
| M2.1 | SITE PREPARATION; SITE GRADING | 1 | LOT | \$ 240,000.00 | \$ - | \$ 240,000.00 | \$ 240,000.00 |
| M3.1 | SITE PREPARATION; FLEXIBLE BASE | 6,480 | CY | \$ 17.75 | \$ 17.75 | \$ 35.49 | \$ 230,000.00 |
| M4.1 | SITE PREPARATION; YARD FINISH ROCK | 400 | CY | \$ 126.05 | \$ 60.00 | \$ 186.05 | \$ 74,421.81 |
| M5.1 | SITE PREPARATION; ROCK RIP RAP | 600 | CY | \$ 62.50 | \$ 62.50 | \$ 125.00 | \$ 75,000.00 |
| M6.1 | SITE PREPARATION; CORRUGATED METAL PIPE CULVERT | 1 | EA | \$ 7,500.00 | \$ 7,500.00 | \$ 15,000.00 | \$ 15,000.00 |
| M9.1 | SITE PREPARATION; SEDIMENT CONTROL BERM | 400 | L.FT | \$ 15.00 | \$ 15.00 | \$ 30.00 | \$ 12,000.00 |
| M9.9 | SITE PREPARATION; SUBGRADE AND FILL MATERIAL DENSITY TESTING | 1 | LOT | \$ 22,000.00 | \$ - | \$ 22,000.00 | \$ 22,000.00 |
| M10.1 | SITE PREPARATION; STABILIZED CONSTRUCTION ENTRANCE | 1 | LOT | \$ 6,000.00 | \$ - | \$ 6,000.00 | \$ 6,000.00 |
| GROUP M TOTAL: | | | | | | | \$ 774,421.81 |

Signed 

**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

Item 16.

| GROUP N: FENCE | | | | | | | |
|-----------------------|---------------------------------|------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| N1.1 | PRECAST CONCRETE FENCE | 1 | LOT | \$ 146,587.50 | \$ 146,587.50 | \$ 293,175.00 | \$ 293,175.00 |
| N1.2 | 29' SLIDING GATE | 2 | EA | \$ 15,000.00 | \$ 15,000.00 | \$ 30,000.00 | \$ 60,000.00 |
| N1.3 | FENCE SIGNAGE | 1 | LOT | \$ 6,302.73 | \$ 4,185.00 | \$ 10,487.73 | \$ 10,487.73 |
| N2.1 | ANIMAL DETERRENT FENCING | 1 | LOT | \$ 34,114.54 | \$ 21,570.00 | \$ 55,684.54 | \$ 55,684.54 |
| N3.1 | VARMINT FENCE AT CONCRETE FENCE | 1 | LOT | \$ 19,500.00 | \$ 19,500.00 | \$ 39,000.00 | \$ 39,000.00 |
| GROUP N TOTAL: | | | | | | | \$ 458,347.27 |

| GROUP O: STATION GROUNDING | | | | | | | |
|-----------------------------------|--|------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| O1.1 | STATION GROUNDING | 1 | LOT | \$ 63,027.26 | \$ 37,450.00 | \$ 100,477.26 | \$ 100,477.26 |
| O2.2 | TRENCHING IN DIRT FOR GROUND GRID INSTALLATION | 1 | LOT | \$ 82,930.90 | \$ 3,750.00 | \$ 86,680.90 | \$ 86,680.90 |
| O2.3 | METAL GATE GROUNDING; CONCRETE WALL SUBSTATION ENCLOSURE | 1 | LOT | \$ 25,210.91 | \$ 9,250.00 | \$ 34,460.91 | \$ 34,460.91 |
| O3.1 | CIRCUIT BREAKER/RECLOSER/CIRCUIT SWITCHER GROUNDING | 6 | EA | \$ 1,400.61 | \$ 715.50 | \$ 2,116.11 | \$ 12,696.64 |
| O3.2 | POWER TRANSFORMER GROUNDING | 1 | EA | \$ 4,201.82 | \$ 867.00 | \$ 5,068.82 | \$ 5,068.82 |
| O3.6 | CONTROL HOUSE GROUNDING | 1 | LOT | \$ 12,605.45 | \$ 2,600.00 | \$ 15,205.45 | \$ 15,205.45 |
| O3.7 | AIR BREAK SWITCH GROUNDING | 2 | EA | \$ 2,100.91 | \$ 335.00 | \$ 2,435.91 | \$ 4,871.82 |
| O3.8 | SUBSTATION STRUCTURE GROUNDING | 10 | EA | \$ 1,575.68 | \$ 275.00 | \$ 1,850.68 | \$ 18,506.82 |
| O3.10a | LOW VOLTAGE T-STRUCTURE GROUNDING | 8 | EA | \$ 525.23 | \$ 106.25 | \$ 631.48 | \$ 5,051.82 |
| O3.10b | UNDERGROUND FEEDER RISER GROUNDING | 3 | EA | \$ 2,801.21 | \$ 373.33 | \$ 3,174.55 | \$ 9,523.64 |
| O3.11 | CABLE TRENCH GROUNDING | 1 | LOT | \$ 12,605.45 | \$ 3,400.00 | \$ 16,005.45 | \$ 16,005.45 |
| O5.2 | FENCE AND GATE GROUNDING | 1 | LOT | \$ 12,605.45 | \$ 3,150.00 | \$ 15,755.45 | \$ 15,755.45 |
| O12.1 | CABLE ENTRANCE WATERFALL GROUNDING | 1 | LOT | \$ 2,100.91 | \$ 500.00 | \$ 2,600.91 | \$ 2,600.91 |
| GROUP O TOTAL: | | | | | | | \$ 326,905.88 |

| GROUP P: CONTROL HOUSE | | | | | | | |
|-------------------------------|---|------|------|------------------|---------------------|------------------|----------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| P1.1r | CONTROL HOUSE EYE WASH STATION | 1 | EA | \$ - | \$ 125.00 | \$ 125.00 | \$ 125.00 |
| P2.3 | CONTROL HOUSE; 24' X 40' (PRECAST CONCRETE) | 1 | EA | \$ 133,750.00 | \$ 133,750.00 | \$ 267,500.00 | \$ 267,500.00 |
| P4.1 | CONTROL HOUSE; AC PANELBOARD - MCB | 1 | EA | \$ 2,000.00 | \$ 2,100.00 | \$ 4,100.00 | \$ 4,100.00 |
| P4.2 | CONTROL HOUSE; AC PANELBOARD - MLO | 2 | EA | \$ 1,500.00 | \$ 1,737.50 | \$ 3,237.50 | \$ 6,475.00 |
| P4.3 | CONTROL HOUSE; DC PANELBOARD - MCB | 1 | EA | \$ 2,000.00 | \$ 5,200.00 | \$ 7,200.00 | \$ 7,200.00 |
| P5.1 | CONTROL HOUSE; ELECTRICAL | 1 | LOT | \$ 20,000.00 | \$ 11,000.00 | \$ 31,000.00 | \$ 31,000.00 |

Signed 

**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

Item 16.

| | | | | | | | |
|-----------------------|---|---|-----|-------------|--------------|--------------|----------------------|
| P5.2 | CONTROL HOUSE; EXTERIOR LIGHTING | 1 | LOT | \$ 2,000.00 | \$ 750.00 | \$ 2,750.00 | \$ 2,750.00 |
| P5.3 | CONTROL HOUSE; LIGHTING CONTACTOR WITH HOA SWITCH | 1 | LOT | \$ 2,000.00 | \$ 3,800.00 | \$ 5,800.00 | \$ 5,800.00 |
| P6.1 | CONTROL HOUSE; HVAC | 1 | LOT | \$ 2,000.00 | \$ 14,820.00 | \$ 16,820.00 | \$ 16,820.00 |
| P7.1 | CONTROL HOUSE; CABLE TRAY | 1 | LOT | \$ 5,000.00 | \$ 9,000.00 | \$ 14,000.00 | \$ 14,000.00 |
| P7.2 | CONTROL HOUSE; CABLE ENTRANCE | 1 | LOT | \$ 1,500.00 | \$ 6,500.00 | \$ 8,000.00 | \$ 8,000.00 |
| P8.1 | CONTROL HOUSE; DC BATTERY BANK AND CHARGER | 1 | LOT | \$ 1,500.00 | \$ 30,200.00 | \$ 31,700.00 | \$ 31,700.00 |
| P9.1 | CONTROL HOUSE; DC LIGHTING | 1 | LOT | \$ 1,000.00 | \$ 1,100.00 | \$ 2,100.00 | \$ 2,100.00 |
| P10.1 | CONTROL HOUSE; BATTERY ROOM VENTILATION | 1 | LOT | \$ 1,000.00 | \$ 900.00 | \$ 1,900.00 | \$ 1,900.00 |
| P11.1 | CONTROL HOUSE; AUTOMATIC TRANSFER SWITCH | 1 | EA | \$ 1,000.00 | \$ 3,600.00 | \$ 4,600.00 | \$ 4,600.00 |
| P12.1 | CONTROL HOUSE; CABLE WATERFALL ENTRANCE | 2 | EA | \$ 500.00 | \$ 3,750.00 | \$ 4,250.00 | \$ 8,500.00 |
| GROUP P TOTAL: | | | | | | | \$ 412,570.00 |

| GROUP Q: AC SYSTEM | | | | | | | |
|---------------------------|--|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| Q1.1 | YARD LIGHTS | 10 | EA | \$ 2,100.91 | \$ 1,146.80 | \$ 3,247.71 | \$ 32,477.09 |
| Q1.2a | YARD LIGHTS; JUNCTION BOX (DOUBLE YARD LIGHTS) | 1 | LOT | \$ 1,050.45 | \$ 790.00 | \$ 1,840.45 | \$ 1,840.45 |
| Q1.2b | YARD LIGHTS; JUNCTION BOX (DOUBLE YARD LIGHTS DUAL AC) | 1 | LOT | \$ 1,050.45 | \$ 840.00 | \$ 1,890.45 | \$ 1,890.45 |
| Q1.2c | YARD LIGHTS; JUNCTION BOX (SINGLE YARD LIGHT) | 1 | LOT | \$ 3,151.36 | \$ 4,440.00 | \$ 7,591.36 | \$ 7,591.36 |
| Q2.1 | STATION SERVICE; MAIN AC DISCONNECT | 2 | EA | \$ 3,151.36 | \$ 6,700.00 | \$ 9,851.36 | \$ 19,702.73 |
| Q2.1a | STATION SERVICE; MAIN AC DISCONNECT (200 A) | 1 | EA | \$ 2,100.91 | \$ 4,750.00 | \$ 6,850.91 | \$ 6,850.91 |
| Q2.2 | STATION SERVICE/MAIN AC DISCONNECT WITH STAND | 1 | LOT | \$ 4,201.82 | \$ 800.00 | \$ 5,001.82 | \$ 5,001.82 |
| GROUP Q TOTAL: | | | | | | | \$ 75,354.81 |

| GROUP S: REMOVAL | | | | | | | |
|-------------------------|----------------------------|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| S14.1 | REMOVAL; BARBED WIRE FENCE | 1 | LOT | \$ 6,802.73 | \$ - | \$ 6,802.73 | \$ 6,802.73 |
| GROUP S TOTAL: | | | | | | | \$ 6,802.73 |

| GROUP Z: VIDEO SURVEILLANCE AND ACCESS CONTROL | | | | | | | |
|---|---------------------------------------|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| Z1.1 | VIDEO SURVEILLANCE AND ACCESS CONTROL | 1 | LOT | \$ 29,500.00 | \$ 25,500.00 | \$ 55,000.00 | \$ 55,000.00 |
| GROUP Z TOTAL: | | | | | | | \$ 55,000.00 |

| | | | | | | | |
|-------------------------------|--|--|--|--|--|--|------------------------|
| GRAND TOTAL ALL UNITS: | | | | | | | \$ 4,661,586.26 |
|-------------------------------|--|--|--|--|--|--|------------------------|

Signed 

**NEW BRAUNFELS UTILITIES
HENNE BREAKER ADDITION
UNIT PROPOSAL**

Item 16.

| GROUP A: STRUCTURES | | | | | | | |
|----------------------------|--|------|------|---------------------|------------------------|---------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| A1.1 | A-FRAME STRUCTURE; MEDIUM VOLTAGE | 1 | EA | \$ 8,433.64 | \$ 7,294.50 | \$ 15,728.14 | \$ 15,728.14 |
| A1.2 | UPPER TRUSS; A-FRAME, MEDIUM VOLTAGE | 1 | EA | \$ 4,216.82 | \$ 1,489.50 | \$ 5,706.32 | \$ 5,706.32 |
| A1.3 | LOWER TRUSS; A-FRAME, MEDIUM VOLTAGE | 2 | EA | \$ 2,115.91 | \$ 1,674.00 | \$ 3,789.91 | \$ 7,579.82 |
| A1.3a | INSULATOR MOUNT; LOWER TRUSS, MEDIUM VOLTAGE | 3 | EA | \$ 427.68 | \$ 63.00 | \$ 490.68 | \$ 1,472.05 |
| A6.1 | BUS, PIPE; SINGLE PHASE, MEDIUM VOLTAGE | 120 | L.FT | \$ 148.73 | \$ 40.91 | \$ 189.64 | \$ 22,756.27 |
| A6.2 | BUS, WIRE; SINGLE PHASE, MEDIUM VOLTAGE | 120 | L.FT | \$ 157.57 | \$ 76.83 | \$ 234.40 | \$ 28,128.18 |
| GROUP A TOTAL: | | | | | | | \$ 81,370.77 |

| GROUP D: SINGLE POLE DISCONNECT SWITCHES | | | | | | | |
|---|--|------|------|---------------------|------------------------|---------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| D1.1 | HOOKSTICK DISCONNECT SWITCH; MEDIUM VOLTAGE, SINGLE POLE | 9 | EA | \$ 220.09 | \$ 800.00 | \$ 1,020.09 | \$ 9,180.82 |
| D2.8r | FUSE CUTOUT; 25KV 300E WITH LINK; RELOECATED | 3 | EA | \$ 420.18 | \$ 10.00 | \$ 430.18 | \$ 1,290.55 |
| GROUP D TOTAL: | | | | | | | \$ 10,471.36 |

| GROUP F: VACUUM CIRCUIT BREAKER/RECLOSER | | | | | | | |
|---|------------------------------|------|------|---------------------|------------------------|---------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| F2.1 | VACUUM CIRCUIT BREAKER; 25KV | 2 | EA | \$ 2,100.91 | - | \$ 2,100.91 | \$ 4,201.82 |
| GROUP F TOTAL: | | | | | | | \$ 4,201.82 |

Contractor: LAMBDA CONSTRUCTION I, LTD

Signed 

**NEW BRAUNFELS UTILITIES
HENNE BREAKER ADDITION
UNIT PROPOSAL**

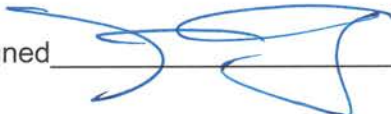
Item 16.

| GROUP G: METERS, RELAYS, AND INSTRUMENT TRANSFORMERS | | | | | | | |
|---|---|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| G1.3r | POTENTIAL TRANSFER; SINGLE PHASE; RELOCATED | 3 | EA | \$ 910.39 | \$ 40.00 | \$ 950.39 | \$ 2,851.18 |
| G4.12r | RELAY PANEL; TWO FEEDER; MODIFICATION | 2 | EA | \$ 10,000.00 | \$ 8,000.00 | \$ 18,000.00 | \$ 36,000.00 |
| G7.1 | JUNCTION BOX; PT | 1 | EA | \$ 7,563.27 | \$ 1,375.00 | \$ 8,938.27 | \$ 8,938.27 |
| GROUP G TOTAL: | | | | | | | \$ 47,789.45 |

| GROUP K: TRENCHING, CONDUIT, AND CABLE | | | | | | | |
|---|---|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| K1.1 | CONDUIT; BELOW GRADE (PVC) | 1 | LOT | \$ 9,454.09 | \$ 375.00 | \$ 9,829.09 | \$ 9,829.09 |
| K1.2g | CONDUIT; ABOVE GRADE (RIGID GALVANIZED) | 1 | LOT | \$ 4,201.82 | \$ 1,340.00 | \$ 5,541.82 | \$ 5,541.82 |
| K2.1 | TRENCHING AND BACKFILL FOR CONDUIT INSTALLATION | 1 | LOT | \$ 12,735.45 | \$ 106.00 | \$ 12,841.45 | \$ 12,841.45 |
| K3.1 | CABLE; INSTRUMENT TRANSFORMER, CURRENT | 4 | EA | \$ 2,215.05 | \$ 690.25 | \$ 2,905.30 | \$ 11,621.21 |
| K4.1 | CABLE; AC - EQUIPMENT | 2 | EA | \$ 2,267.58 | \$ 2,482.00 | \$ 4,749.58 | \$ 9,499.15 |
| K4.4 | CABLE; DC - EQUIPMENT | 2 | EA | \$ 2,184.24 | \$ 1,681.00 | \$ 3,865.24 | \$ 7,730.48 |
| K5.1 | CABLE; ALARM/CONTROL (UNSHIELDED) | 4 | EA | \$ 1,016.13 | \$ 631.50 | \$ 1,647.63 | \$ 6,590.51 |
| K6.19 | CABLE; RETERMINATION | 1 | EA | \$ 1,260.55 | \$ 20.00 | \$ 1,280.55 | \$ 1,280.55 |
| K7.3 | CABLE; CATEGORY (CAT 6E) ETHERNET | 2 | EA | \$ 315.14 | \$ 95.00 | \$ 410.14 | \$ 820.27 |
| GROUP K TOTAL: | | | | | | | \$ 65,754.54 |

| GROUP L: FOUNDATIONS | | | | | | | |
|-----------------------------|-------------------------------------|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| L3.1 | FOUNDATION; BREAKER, MEDIUM VOLTAGE | 1 | EA | \$ 21,584.57 | \$ 767.24 | \$ 22,351.81 | \$ 22,351.81 |
| L3.10a | FOUNDATION; 25KV A-FRAME STRUCTURE | 2 | EA | \$ 8,739.46 | \$ 668.57 | \$ 9,408.04 | \$ 18,816.07 |
| GROUP L TOTAL: | | | | | | | \$ 41,167.88 |

Contractor: LAMBDA CONSTRUCTION I, LTD

Signed 

**NEW BRAUNFELS UTILITIES
HENNE BREAKER ADDITION
UNIT PROPOSAL**

Item 16.

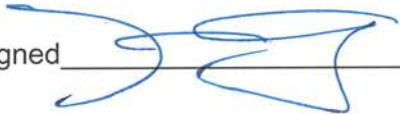
| GROUP M: SITE PREPARATION | | | | | | | |
|----------------------------------|------------------------------------|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| M2.3 | SITE PREPARATION; SITE RESTORATION | 1 | LOT | \$ 2,836.23 | \$ 300.00 | \$ 3,136.23 | \$ 3,136.23 |
| GROUP M TOTAL: | | | | | | | \$ 3,136.23 |

| GROUP N: FENCE | | | | | | | |
|-----------------------|------------------------|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| N2.1 | ANIMAL DETERRENT FENCE | 1 | LOT | \$ 12,705.45 | \$ 2,865.00 | \$ 15,570.45 | \$ 15,570.45 |
| GROUP N TOTAL: | | | | | | | \$ 15,570.45 |

| GROUP O: STATION GROUNDING | | | | | | | |
|-----------------------------------|---|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| O3.1 | CIRCUIT BREAKER/RECLOSER/CIRCUIT SWITCHER GROUNDING | 2 | EA | \$ 2,100.91 | \$ 1,655.20 | \$ 3,756.11 | \$ 7,512.22 |
| O3.10 | DISTRIBUTION A-FRAME/ T-STRUCTURE GROUNDING | 2 | EA | \$ 6,302.73 | \$ 862.50 | \$ 7,165.23 | \$ 14,330.45 |
| GROUP O TOTAL: | | | | | | | \$ 21,842.67 |

| GROUP Q: AC SYSTEM | | | | | | | |
|---------------------------|---------------------------|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| Q1.1r | YARD LIGHTS; RELOCATE | 1 | EA | \$ 5,042.18 | \$ 235.00 | \$ 5,277.18 | \$ 5,277.18 |
| Q1.2 | YARD LIGHTS, JUNCTION BOX | 1 | EA | \$ 525.23 | \$ 740.00 | \$ 1,265.23 | \$ 1,265.23 |
| GROUP Q TOTAL: | | | | | | | \$ 6,542.41 |

Contractor: LAMBDA CONSTRUCTION I, LTD

Signed 

**NEW BRAUNFELS UTILITIES
HENNE BREAKER ADDITION
UNIT PROPOSAL**

Item 16.

| GROUP 5: DEMOLITION AND/OR REMOVAL | | | | | | | |
|---|--|-------------|-------------|-----------------------------|--------------------------------|-----------------------------|---------------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| S8.2 | REMOVAL; JUNCTION BOX | 2 | EA | \$ 550.23 | \$ - | \$ 550.23 | \$ 1,100.45 |
| S11.1 | REMOVAL; ABOVE AND BELOW GRADE CONDUIT | 1 | LOT | \$ 3,201.36 | \$ - | \$ 3,201.36 | \$ 3,201.36 |
| GROUP 5 TOTAL: | | | | | | | \$ 4,301.82 |
| GRAND TOTAL ALL UNITS: | | | | | | | \$ 302,149.39 |

Contractor: LAMBDA CONSTRUCTION I, LTD

Signed  _____

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

- 5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to delay damages and special damages in the event of failure to complete the Work on time.
- 6. The following documents are attached to and made a condition of this Bid:
 - a) Required Bid security of five percent (5%) of the Bidder’s maximum base bid price and in the form of approved Bid Bond.
 - b) List of BIDDER’s primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
- 7. Communication concerning this Bid shall be addressed to:
 New Braunfels Utilities
 Purchasing Manager
 355 FM 306
 New Braunfels, TX 78130
 Phone: 830-608-8867
 Email: Purchasing@NBUTexas.com
- 8. The terms used in this Bid that are defined in the Standard General Conditions of the Contract included as part of the Contract Documents have the meanings assigned to them in the Standard General Conditions of the Contract.
- 9. The undersigned acknowledges receipt of the following addenda:

| | |
|----------------------------|----------------|
| Addendum No. 1 dated _____ | Received _____ |
| Addendum No. 2 dated _____ | Received _____ |
| Addendum No. 3 dated _____ | Received _____ |

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

Secretary, *if bidder is a corporation

LAMBDA CONSTRUCTION I LTD.
Company Name of Bidder

(Seal)


Authorized Signature

3-14-24
Date

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

ZANE SHULLANBERGER
Printed Name of Authorized Signature

211 JESSE'S CIRCLE

NEW BRAUNFELS TEXAS 78132
Address

830-629-5808
Telephone Number/Fax Number

END OF DOCUMENT

April 4, 2024

Mr. Jeffrey Morriss
New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

Re: **Hueco Springs Substation Project (R-1933) and Henne Breaker Addition Project (R-1900 Bid Proposal Evaluation**

Dear Jeffrey:

Bid requests for the Hueco Springs Substation and Henne Breaker Addition Projects were received on the submittal deadline of March 14, 2024. One bid was received. Below is the bid tabulation of the bid proposal amounts.

| Name of Bidder | Hueco Springs Bid Proposal Amount | Henne Bid Proposal Amount |
|----------------------------|-----------------------------------|---------------------------|
| Lambda Construction I, LLC | \$4,661,586.26 | \$302,149.39 |

A comparison of Lambda's bid to a similar greenfield substation project, "Project B", that was bid in February of this year was performed. Labor and material units were compared if similar equipment was used. Labor only units were compared if dissimilar equipment was used for a similar unit. Project B is located in an area with very little rock, while the Hueco Springs's site is very rocky.

The comparison found that almost all the units were very similar in price for the similar units that did not include excavation. For labor units that required excavation (foundations, ground grid, trenching conduit & cable), the labor units were two to three times more expensive for the Hueco Springs project. The increase in labor costs is aligned with the two different types of soil associated with the two sites.

Lambda provided a schedule for the Hueco Springs Substation project that included a start date of November 5, 2024, and a completion date of August 5, 2025. Lambda took one exception to the specification in regard to the control house roof. The specification states that the roof is to be "a single piece without joints". Lambda is proposing to use is a multipiece precast roof from Lonestar Prestress. This is the same roof installed by Lambda at the Welter Road Substation and the EC Mornhinweg Substation.

Based on NBU's experience with Lambda on similar projects and based on the comparison of units to a recently bid similar project, Lambda Construction I, LLC is an acceptable bid for the Hueco Springs Substation and Henne Breaker Addition projects.

We, at SEnergy, thank you for the opportunity to be of assistance to NBU. Please call if you have any questions or require anything further.

Sincerely,



Dotty DiSanto, PE
Project Manager

TX Fir, Reg. #: F-1594
DKD, RGG, JGG



April 8, 2024

Mr. Ray Valdez:

I have reviewed the submittal provided by Lambda Construction for construction of the Hueco Springs Substation and Henne Substation Breaker Additions project, and I have reviewed the evaluation of Lambda Construction's submittal provided by Schneider Engineering. I recommend awarding this contract to Lambda Construction based on their pricing which aligns with current market conditions, Schneider Engineering's recommendation, and NBU Substation's past experience with them.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Morriss', written in a cursive style.

Jeff Morriss

NBU Substation Manager



NEW BRAUNFELS UTILITIES

Item 16.

PROPOSAL SUMMARY

| | | | |
|---------------|---------------------------|----|---------------------|
| HUECO SPRINGS | TOTAL CONTRACTOR LABOR | \$ | <u>2,890,930.78</u> |
| | TOTAL CONTRACTOR MATERIAL | \$ | <u>1,770,655.49</u> |
| | SUBTOTAL BASE BID | \$ | <u>4,661,586.26</u> |

| | | | |
|---------------|---------------------------|----|-------------------|
| HENNE BREAKER | TOTAL CONTRACTOR LABOR | \$ | <u>224,050.61</u> |
| | TOTAL CONTRACTOR MATERIAL | \$ | <u>78,098.79</u> |
| | SUBTOTAL BASE BID | \$ | <u>302,149.39</u> |

| | | |
|--------------------------|----|----------------------------|
| 10% CONTINGENCY SUBTOTAL | \$ | <u>496,373.57</u> |
| TOTAL CONTRACT | \$ | <u><u>5,460,109.22</u></u> |

LAMBDA CONSTRUCTION I, LTD

(BIDDER)

BY: ZANE SHULANBERGER, GENERAL PARTNER

DATE: March 14, 2024

NEW BRAUNFELS UTILITIES

Item 16.

PROPOSAL SUMMARY

**HUECO SPRINGS
PROPOSAL SUMMARY**

RECAPITULATION OF GROUPS:

| | CONTRACTOR LABOR PRICE | CONTRACTOR MATERIAL PRICE | TOTAL UNIT PRICE |
|-----------------------------|---------------------------|------------------------------|------------------------|
| GROUP A | \$ 262,464.06 | \$ 186,907.00 | \$ 449,371.06 |
| GROUP B | \$ 14,706.36 | \$ 50.00 | \$ 14,756.36 |
| GROUP D | \$ 16,086.82 | \$ 44,540.00 | \$ 60,626.82 |
| GROUP E | \$ 18,307.27 | \$ 100.00 | \$ 18,407.27 |
| GROUP F | \$ 8,403.64 | \$ - | \$ 8,403.64 |
| GROUP G | \$ 16,377.00 | \$ 97,495.00 | \$ 113,872.00 |
| GROUP H | \$ 2,821.09 | \$ 100.00 | \$ 2,921.09 |
| GROUP J | \$ 4,301.82 | \$ 42,000.00 | \$ 46,301.82 |
| GROUP K | \$ 765,157.55 | \$ 542,733.00 | \$ 1,307,890.55 |
| GROUP L | \$ 451,203.19 | \$ 78,429.99 | \$ 529,633.17 |
| GROUP M | \$ 584,421.81 | \$ 190,000.00 | \$ 774,421.81 |
| GROUP N | \$ 236,504.77 | \$ 221,842.50 | \$ 458,347.27 |
| GROUP O | \$ 256,255.88 | \$ 70,650.00 | \$ 326,905.88 |
| GROUP P | \$ 178,750.00 | \$ 233,820.00 | \$ 412,570.00 |
| GROUP Q | \$ 38,866.81 | \$ 36,488.00 | \$ 75,354.81 |
| GROUP S | \$ 6,802.73 | \$ - | \$ 6,802.73 |
| GROUP Z | \$ 29,500.00 | \$ 25,500.00 | \$ 55,000.00 |
| SUBSTATION SUBTOTALS | \$ 2,890,930.78 | \$ 1,770,655.49 | \$ 4,661,586.26 |

**HENNE BREAKER
PROPOSAL SUMMARY**

RECAPITULATION OF GROUPS:

| | CONTRACTOR LABOR PRICE | CONTRACTOR MATERIAL PRICE | TOTAL UNIT PRICE |
|---------|---------------------------|------------------------------|------------------|
| GROUP A | \$ 54,920.77 | \$ 26,450.00 | \$ 81,370.77 |
| GROUP D | \$ 3,241.36 | \$ 7,230.00 | \$ 10,471.36 |
| GROUP F | \$ 4,201.82 | \$ - | \$ 4,201.82 |
| GROUP G | \$ 30,294.45 | \$ 17,495.00 | \$ 47,789.45 |
| GROUP K | \$ 50,110.54 | \$ 15,644.00 | \$ 65,754.54 |
| GROUP L | \$ 39,063.50 | \$ 2,104.39 | \$ 41,167.88 |
| GROUP M | \$ 2,836.23 | \$ 300.00 | \$ 3,136.23 |
| GROUP N | \$ 12,705.45 | \$ 2,865.00 | \$ 15,570.45 |
| GROUP O | \$ 16,807.27 | \$ 5,035.40 | \$ 21,842.67 |
| GROUP Q | \$ 5,567.41 | \$ 975.00 | \$ 6,542.41 |

NEW BRAUNFELS UTILITIES

Item 16.

PROPOSAL SUMMARY

| | | | |
|----------------------|---------------|--------------|---------------|
| GROUP S | \$ 4,301.82 | \$ - | \$ 4,301.82 |
| SUBSTATION SUBTOTALS | \$ 224,050.61 | \$ 78,098.79 | \$ 302,149.39 |

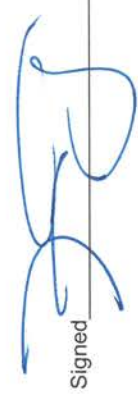
**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

UNIT PROPOSAL - HUECO - REVISED 3.6.2024

| GROUP A: STRUCTURES | | | | | | |
|----------------------------|---|------|------|------------------|---------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | EXTENDED PRICE |
| A3.1 | T-STRUCTURE; MEDIUM VOLTAGE | 4 | EA | \$ 4,652.00 | \$ 2,500.00 | \$ 7,152.00 |
| A3.1a | MV T-STR-PIPE STATIC MAST ASSY | 3 | EA | \$ 1,268.05 | \$ 120.00 | \$ 1,388.05 |
| A3.1b | MV T-STR-UPPER TRUSS MOUNT ASSY | 1 | EA | \$ 2,528.59 | \$ 400.00 | \$ 2,928.59 |
| A3.2 | END FRAME T-STRUCTURE; MEDIUM VOLTAGE | 2 | EA | \$ 6,332.73 | \$ 4,500.00 | \$ 10,832.73 |
| A3.2a | END FRAME MV T-STR-PIPE STATIC MAST ASSY | 1 | EA | \$ 1,268.05 | \$ 120.00 | \$ 1,388.05 |
| A3.2b | END FRAME MV T-STR-UPPER TRUSS MOUNT ASSY | 1 | EA | \$ 2,528.59 | \$ 900.00 | \$ 3,428.59 |
| A3.3 | UPPER TRUSS; T-STRUCTURE, MEDIUM VOLTAGE | 1 | EA | \$ 2,536.09 | \$ 600.00 | \$ 3,136.09 |
| A3.4 | LOWER TRUSS; T-STRUCTURE, MEDIUM VOLTAGE | 5 | EA | \$ 3,691.59 | \$ 1,300.00 | \$ 4,991.59 |
| A3.5 | END FRAME TRUSS; T/L-STRUCTURE, MEDIUM VOLTAGE | 2 | EA | \$ 2,115.91 | \$ 700.00 | \$ 2,815.91 |
| A3.5a | MV T/L-STR END FRAME TRUSS-PT TRUSS ASSY | 1 | EA | \$ 1,905.82 | \$ 700.00 | \$ 2,605.82 |
| A6.1 | BUS, TUBULAR; THREE PHASE, DISTRIBUTION | 1 | LOT | \$ 73,690.17 | \$ 39,155.00 | \$ 112,845.17 |
| A6.2 | BUS, STRAIN; THREE PHASE, DISTRIBUTION | 1 | LOT | \$ 43,698.90 | \$ 41,970.00 | \$ 85,668.90 |
| A6.5 | BUS, STRAIN; THREE PHASE, HIGH VOLTAGE | 1 | LOT | \$ 6,302.73 | \$ 1,960.00 | \$ 8,262.73 |
| A6.6 | SHIELD WIRE | 1 | LOT | \$ 21,009.09 | \$ 1,060.00 | \$ 22,069.09 |
| A7.3 | SWITCH STAND; VEE, LOW PROFILE, HIGH VOLTAGE | 2 | EA | \$ 4,231.82 | \$ 5,500.00 | \$ 9,731.82 |
| A8.1 | STRUCTURE; TRANSFORMER, TUBULAR | 1 | EA | \$ 10,534.54 | \$ 9,000.00 | \$ 19,534.54 |
| A8.1b | TRANSFORMER STRUCTURE-TUBE STATIC MAST ASSY | 2 | EA | \$ 2,130.91 | \$ 1,000.00 | \$ 3,130.91 |
| A8.1f | TRANSFORMER STRUCTURE-BUS SUPPORT PLATE ASSY | 3 | EA | \$ 217.59 | \$ 50.00 | \$ 267.59 |
| A8.3 | STRUCTURE; STATIC MAST, STANDARD DUTY (53'-4") | 4 | EA | \$ 4,742.04 | \$ 11,158.00 | \$ 15,900.04 |
| A9.1 | RISER; URD, T-STRUCTURE, MEDIUM VOLTAGE (LOW PROFILE) | 3 | EA | \$ 2,115.91 | \$ 2,000.00 | \$ 4,115.91 |
| GROUP A TOTAL: | | | | | | \$ 449,371.06 |

| GROUP B: THREE-POLE GROUP OPERATED AIR BREAK SWITCHES | | | | | | |
|--|--|------|------|------------------|---------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | EXTENDED PRICE |
| B2.1 | AIR BREAK VEE SWITCH; 138 KV, 1200 AMP | 2 | EA | \$ 7,353.18 | \$ 25.00 | \$ 7,378.18 |
| GROUP B TOTAL: | | | | | | \$ 14,756.36 |

Item 16.

Signed 

Contractor: LAMBDA CONSTRUCTION I, LTD


**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

| GROUP D: SINGLE POLE DISCONNECT SWITCHES | | | | | | | |
|---|---|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| D1.8 | FUSE CUTOFF; 15 KV 15E WITH LINKS | 1 | EA | \$ 630.27 | \$ 335.00 | \$ 965.27 | \$ 965.27 |
| D1.8a | FUSE CUTOFF; 15 KV 1E WITH LINKS | 3 | EA | \$ 630.27 | \$ 335.00 | \$ 965.27 | \$ 2,895.82 |
| D2.2 | HOOKSTICK DISCONNECT SWITCH; 25 KV, 1200 AMP | 9 | EA | \$ 220.09 | \$ 800.00 | \$ 1,020.09 | \$ 9,180.82 |
| D2.3 | HOOKSTICK DISCONNECT SWITCH; 25 KV, 2000 AMP | 9 | EA | \$ 220.09 | \$ 1,100.00 | \$ 1,320.09 | \$ 11,880.82 |
| D2.6a | HOOKSTICK DISCONNECT SWITCH; 25 KV TANDEM, 1200 AMP | 9 | EA | \$ 640.27 | \$ 1,500.00 | \$ 2,140.27 | \$ 19,262.45 |
| D2.6b | HOOKSTICK DISCONNECT SWITCH; 25 KV TANDEM, 2000 AMP | 6 | EA | \$ 640.27 | \$ 2,100.00 | \$ 2,740.27 | \$ 16,441.64 |
| GROUP D TOTAL: | | | | | | | \$ 60,626.82 |

| GROUP E: OIL/VACUUM/POWER CIRCUIT BREAKERS AND/OR CIRCUIT SWITCHERS | | | | | | | |
|--|--------------------------------------|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| E2.1 | CIRCUIT SWITCHER; 138 KV WITH BYPASS | 1 | EA | \$ 18,307.27 | \$ 100.00 | \$ 18,407.27 | \$ 18,407.27 |
| GROUP E TOTAL: | | | | | | | \$ 18,407.27 |

| GROUP F: OIL/VACUUM CIRCUIT BREAKER/RECLOSER | | | | | | | |
|---|--------------------------------------|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| F2.1 | VACUUM CIRCUIT BREAKER; 27 KV; 2000A | 1 | EA | \$ 1,680.73 | \$ - | \$ 1,680.73 | \$ 1,680.73 |
| F2.2 | VACUUM CIRCUIT BREAKER; 27 KV; 1200A | 4 | EA | \$ 1,680.73 | \$ - | \$ 1,680.73 | \$ 6,722.91 |
| GROUP F TOTAL: | | | | | | | \$ 8,403.64 |

| GROUP G: METERS, RELAYS AND INSTRUMENT TRANSFORMERS | | | | | | | |
|--|---|------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| G1.4 | POTENTIAL TRANSFORMER; 7.2 KV, SINGLE PHASE | 3 | EA | \$ 490.21 | \$ 5,040.00 | \$ 5,530.21 | \$ 16,590.64 |
| G3.1b | DISTRIBUTION RELAY PANEL; SEL (TWO FEEDERS) | 2 | EA | \$ 2,150.91 | \$ 19,000.00 | \$ 21,150.91 | \$ 42,301.82 |
| G4.1 | TRANSFORMER DIFFERENTIAL RELAY PANEL | 1 | EA | \$ 2,150.91 | \$ 28,000.00 | \$ 30,150.91 | \$ 30,150.91 |
| G6.2 | BUS DIFFERENTIAL PANEL | 1 | EA | \$ 2,150.91 | \$ 15,000.00 | \$ 17,150.91 | \$ 17,150.91 |
| G7.1 | JUNCTION BOX; PT | 1 | EA | \$ 6,302.73 | \$ 1,375.00 | \$ 7,677.73 | \$ 7,677.73 |
| GROUP G TOTAL: | | | | | | | \$ 113,872.00 |

Signed 


**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

| GROUP H: TRANSFORMERS | | | | | | | |
|------------------------------|---|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| H2.3 | TRANSFORMER, POWER; 138-13.1 KV, 3 PHASE, 37.33 MVA WITH LTC | 1 | EA | \$ - | \$ - | \$ - | \$ - |
| H9.1 | TRANSFORMER, DISTRIBUTION; 1 PHASE, 7200-120/240 VOLT, 75 KVA | 1 | EA | \$ 2,821.09 | \$ 100.00 | \$ 2,921.09 | \$ 2,921.09 |
| GROUP H TOTAL: | | | | | | | \$ 2,921.09 |

| GROUP J: COMMUNICATIONS AND SUPERVISORY CONTROL EQUIPMENT | | | | | | | |
|--|------------------------------------|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| J3.1 | SCADA PANEL WITH FIBER PATCH PANEL | 1 | EA | \$ 2,150.91 | \$ 32,000.00 | \$ 34,150.91 | \$ 34,150.91 |
| J3.8 | COMMUNICATIONS PANEL | 1 | EA | \$ 2,150.91 | \$ 10,000.00 | \$ 12,150.91 | \$ 12,150.91 |
| GROUP J TOTAL: | | | | | | | \$ 46,301.82 |

| GROUP K: TRENCHING, CONDUIT, AND CABLE | | | | | | | |
|---|--|------|------|------------------|---------------------|------------------|------------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| K1.1 | CONDUIT; PVC | 1 | LOT | \$ 50,421.81 | \$ 11,575.00 | \$ 61,996.81 | \$ 61,996.81 |
| K1.2a | CONDUIT; ABOVE GRADE | 1 | LOT | \$ 33,614.54 | \$ 21,576.00 | \$ 55,190.54 | \$ 55,190.54 |
| K2.1 | TRENCHING AND BACKFILL FOR CONDUIT INSTALLATION | 1 | LOT | \$ 115,043.62 | \$ 5,610.00 | \$ 120,653.62 | \$ 120,653.62 |
| K2.5 | PREFABRICATED MODULAR STEEL CABLE TRENCH | 1 | LOT | \$ 93,471.49 | \$ 49,985.00 | \$ 143,456.49 | \$ 143,456.49 |
| K3.1 | CABLE; INSTRUMENT TRANSFORMER, CURRENT | 1 | LOT | \$ 18,575.38 | \$ 12,821.00 | \$ 31,396.38 | \$ 31,396.38 |
| K3.2 | CABLE; INSTRUMENT TRANSFORMER, POTENTIAL | 1 | LOT | \$ 3,671.27 | \$ 1,408.00 | \$ 5,079.27 | \$ 5,079.27 |
| K4.1 | CABLE; AC - EQUIPMENT | 1 | LOT | \$ 22,434.89 | \$ 15,677.50 | \$ 38,112.39 | \$ 38,112.39 |
| K4.2 | CABLE; AC/DC - STATION SERVICE | 1 | LOT | \$ 12,721.42 | \$ 19,525.00 | \$ 32,246.42 | \$ 32,246.42 |
| K4.4 | CABLE; DC - EQUIPMENT | 1 | LOT | \$ 8,973.40 | \$ 5,612.00 | \$ 14,585.40 | \$ 14,585.40 |
| K5.1 | CABLE; ALARM/CONTROL (UNSHIELDED) | 1 | LOT | \$ 17,613.99 | \$ 13,890.00 | \$ 31,503.99 | \$ 31,503.99 |
| K6.7 | CABLE; SCADA INDICATION (4C - #14 AWG) | 1 | LOT | \$ 2,070.65 | \$ 466.00 | \$ 2,536.65 | \$ 2,536.65 |
| K6.9 | CABLE; SCADA INDICATION (12C - #10 AWG) | 1 | LOT | \$ 6,961.56 | \$ 1,356.00 | \$ 8,317.56 | \$ 8,317.56 |
| K6.11 | CABLE; SCADA INDICATION (12C - #14 AWG) | 1 | LOT | \$ 3,240.43 | \$ 504.00 | \$ 3,744.43 | \$ 3,744.43 |
| K7.3 | CABLE; CATEGORY 6 (CAT 6) ETHERNET | 1 | LOT | \$ 33,210.91 | \$ 6,530.00 | \$ 39,740.91 | \$ 39,740.91 |
| K9.4a | CABLE VAULT; PRECAST, 3-WAY OCTAGONAL MANHOLE | 3 | LOT | \$ 26,977.78 | \$ 30,000.00 | \$ 56,977.78 | \$ 170,933.33 |
| K9.4b | CONDUIT ENCLOSURE PAD | 2 | LOT | \$ 5,099.43 | \$ 2,362.25 | \$ 7,461.68 | \$ 14,923.36 |
| K10.2a | UNDERGROUND DISTRIBUTION SINGLE CIRCUIT DUCT BANK; URD | 1 | LOT | \$ 27,550.00 | \$ 66,325.00 | \$ 93,875.00 | \$ 93,875.00 |
| K10.2b | UNDERGROUND DISTRIBUTION DOUBLE CIRCUIT DUCT BANK; URD | 1 | LOT | \$ 194,450.00 | \$ 212,680.00 | \$ 407,130.00 | \$ 407,130.00 |
| K10.5 | UNDERGROUND DISTRIBUTION CABLE RISER POLE ASSEMBLY INSTALLATION; FEEDERS | 1 | LOT | \$ 30,000.00 | \$ 2,468.00 | \$ 32,468.00 | \$ 32,468.00 |
| GROUP K TOTAL: | | | | | | | \$ 1,307,890.55 |

Item 16.

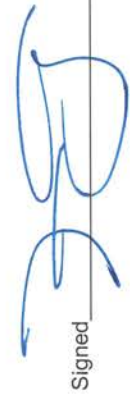
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**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

| GROUP L: FOUNDATIONS | | | | | | | |
|-----------------------------|--|------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| L1.10 | FOUNDATION; CIRCUIT BREAKER, DISTRIBUTION (FEEDER) | 4 | EA | \$ 9,018.21 | \$ 767.24 | \$ 9,785.45 | \$ 39,141.78 |
| L1.10a | FOUNDATION; CIRCUIT BREAKER, DISTRIBUTION (TOTALIZING) | 1 | EA | \$ 9,018.21 | \$ 767.24 | \$ 9,785.45 | \$ 9,785.45 |
| L2.10 | FOUNDATION; CIRCUIT SWITCHER, HIGH VOLTAGE | 2 | EA | \$ 9,432.06 | \$ 832.72 | \$ 10,264.79 | \$ 20,529.57 |
| L4.10 | FOUNDATION; GENERAL SUBSTATION STRUCTURE, MEDIUM VOLTAGE | 11 | EA | \$ 3,440.99 | \$ 303.79 | \$ 3,744.78 | \$ 41,192.58 |
| L4.20 | FOUNDATION; GENERAL SUBSTATION STRUCTURE, HIGH VOLTAGE | 4 | EA | \$ 3,440.99 | \$ 303.79 | \$ 3,744.78 | \$ 14,979.12 |
| L5.10 | FOUNDATION; TRANSFORMER STRUCTURE | 2 | EA | \$ 5,214.73 | \$ 460.39 | \$ 5,675.12 | \$ 11,350.24 |
| L6.10 | FOUNDATION; STATIC MAST STRUCTURE | 4 | EA | \$ 9,432.06 | \$ 832.72 | \$ 10,264.79 | \$ 41,059.14 |
| L8.21 | FOUNDATION; POWER TRANSFORMER - OIL CONTAINMENT | 1 | EA | \$ 172,380.78 | \$ 26,633.76 | \$ 199,014.55 | \$ 199,014.55 |
| L9.98 | FOUNDATION; CONCRETE DRIVEWAY ENTRANCE | 2 | EA | \$ 13,582.53 | \$ 10,345.42 | \$ 23,927.95 | \$ 47,855.89 |
| L9.99 | FOUNDATION; PRECAST CONCRETE CONTROL HOUSE | 1 | EA | \$ 87,929.62 | \$ 16,795.22 | \$ 104,724.84 | \$ 104,724.84 |
| GROUP L TOTAL: | | | | | | | \$ 529,633.17 |

| GROUP M: SITE PREPARATION | | | | | | | |
|----------------------------------|--|-------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| M1.1 | SITE PREPARATION; CLEARING AND GRUBBING | 1 | LOT | \$ 100,000.00 | \$ - | \$ 100,000.00 | \$ 100,000.00 |
| M2.1 | SITE PREPARATION; SITE GRADING | 1 | LOT | \$ 240,000.00 | \$ - | \$ 240,000.00 | \$ 240,000.00 |
| M3.1 | SITE PREPARATION; FLEXIBLE BASE | 6,480 | CY | \$ 17.75 | \$ 17.75 | \$ 35.49 | \$ 230,000.00 |
| M4.1 | SITE PREPARATION; YARD FINISH ROCK | 400 | CY | \$ 126.05 | \$ 60.00 | \$ 186.05 | \$ 74,421.81 |
| M5.1 | SITE PREPARATION; ROCK RIP RAP | 600 | CY | \$ 62.50 | \$ 62.50 | \$ 125.00 | \$ 75,000.00 |
| M6.1 | SITE PREPARATION; CORRUGATED METAL PIPE CULVERT | 1 | EA | \$ 7,500.00 | \$ 7,500.00 | \$ 15,000.00 | \$ 15,000.00 |
| M9.1 | SITE PREPARATION; SEDIMENT CONTROL BERM | 400 | L.FT | \$ 15.00 | \$ 15.00 | \$ 30.00 | \$ 12,000.00 |
| M9.9 | SITE PREPARATION; SUBGRADE AND FILL MATERIAL DENSITY TESTING | 1 | LOT | \$ 22,000.00 | \$ - | \$ 22,000.00 | \$ 22,000.00 |
| M10.1 | SITE PREPARATION; STABILIZED CONSTRUCTION ENTRANCE | 1 | LOT | \$ 6,000.00 | \$ - | \$ 6,000.00 | \$ 6,000.00 |
| GROUP M TOTAL: | | | | | | | \$ 774,421.81 |

Item 16.


 Signed

**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

| GROUP N: FENCE | | | | | | | |
|-----------------------|---------------------------------|------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| N1.1 | PRECAST CONCRETE FENCE | 1 | LOT | \$ 146,587.50 | \$ 146,587.50 | \$ 293,175.00 | \$ 293,175.00 |
| N1.2 | 29' SLIDING GATE | 2 | EA | \$ 15,000.00 | \$ 15,000.00 | \$ 30,000.00 | \$ 60,000.00 |
| N1.3 | FENCE SIGNAGE | 1 | LOT | \$ 6,302.73 | \$ 4,185.00 | \$ 10,487.73 | \$ 10,487.73 |
| N2.1 | ANIMAL DETERRENT FENCING | 1 | LOT | \$ 34,114.54 | \$ 21,570.00 | \$ 55,684.54 | \$ 55,684.54 |
| N3.1 | VARMINT FENCE AT CONCRETE FENCE | 1 | LOT | \$ 19,500.00 | \$ 19,500.00 | \$ 39,000.00 | \$ 39,000.00 |
| GROUP N TOTAL: | | | | | | | \$ 458,347.27 |

| GROUP O: STATION GROUNDING | | | | | | | |
|-----------------------------------|--|------|------|------------------|---------------------|------------------|----------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| O1.1 | STATION GROUNDING | 1 | LOT | \$ 63,027.26 | \$ 37,450.00 | \$ 100,477.26 | \$ 100,477.26 |
| O2.2 | TRENCHING IN DIRT FOR GROUND GRID INSTALLATION | 1 | LOT | \$ 82,930.90 | \$ 3,750.00 | \$ 86,680.90 | \$ 86,680.90 |
| O2.3 | METAL GATE GROUNDING; CONCRETE WALL-SUBSTATION ENCLOSURE | 1 | LOT | \$ 25,210.91 | \$ 9,250.00 | \$ 34,460.91 | \$ 34,460.91 |
| O3.1 | CIRCUIT BREAKER/RECLOSER/CIRCUIT SWITCHER GROUNDING | 6 | EA | \$ 1,400.61 | \$ 715.50 | \$ 2,116.11 | \$ 12,696.64 |
| O3.2 | POWER TRANSFORMER GROUNDING | 1 | EA | \$ 4,201.82 | \$ 867.00 | \$ 5,068.82 | \$ 5,068.82 |
| O3.6 | CONTROL HOUSE GROUNDING | 1 | LOT | \$ 12,605.45 | \$ 2,600.00 | \$ 15,205.45 | \$ 15,205.45 |
| O3.7 | AIR BREAK SWITCH GROUNDING | 2 | EA | \$ 2,100.91 | \$ 335.00 | \$ 2,435.91 | \$ 4,871.82 |
| O3.8 | SUBSTATION STRUCTURE GROUNDING | 10 | EA | \$ 1,575.68 | \$ 275.00 | \$ 1,850.68 | \$ 18,506.82 |
| O3.10a | LOW VOLTAGE T-STRUCTURE GROUNDING | 8 | EA | \$ 525.23 | \$ 106.25 | \$ 631.48 | \$ 5,051.82 |
| O3.10b | UNDERGROUND FEEDER RISER GROUNDING | 3 | EA | \$ 2,801.21 | \$ 373.33 | \$ 3,174.55 | \$ 9,523.64 |
| O3.11 | CABLE TRENCH GROUNDING | 1 | LOT | \$ 12,605.45 | \$ 3,400.00 | \$ 16,005.45 | \$ 16,005.45 |
| O5.2 | FENCE AND GATE GROUNDING | 1 | LOT | \$ 12,605.45 | \$ 3,150.00 | \$ 15,755.45 | \$ 15,755.45 |
| O12.1 | CABLE ENTRANCE WATERFALL GROUNDING | 1 | LOT | \$ 2,100.91 | \$ 500.00 | \$ 2,600.91 | \$ 2,600.91 |
| GROUP O TOTAL: | | | | | | | \$ 326,905.88 |

| GROUP P: CONTROL HOUSE | | | | | | | |
|-------------------------------|---|------|------|------------------|---------------------|------------------|----------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| P1.1r | CONTROL HOUSE EYE WASH STATION | 1 | EA | \$ - | \$ 125.00 | \$ 125.00 | \$ 125.00 |
| P2.3 | CONTROL HOUSE; 24' X 40' (PRECAST CONCRETE) | 1 | EA | \$ 133,750.00 | \$ 133,750.00 | \$ 267,500.00 | \$ 267,500.00 |
| P4.1 | CONTROL HOUSE; AC PANELBOARD - MCB | 1 | EA | \$ 2,000.00 | \$ 2,100.00 | \$ 4,100.00 | \$ 4,100.00 |
| P4.2 | CONTROL HOUSE; AC PANELBOARD - MLO | 2 | EA | \$ 1,500.00 | \$ 1,737.50 | \$ 3,237.50 | \$ 6,475.00 |
| P4.3 | CONTROL HOUSE; DC PANELBOARD - MCB | 1 | EA | \$ 2,000.00 | \$ 5,200.00 | \$ 7,200.00 | \$ 7,200.00 |
| P5.1 | CONTROL HOUSE; ELECTRICAL | 1 | LOT | \$ 20,000.00 | \$ 11,000.00 | \$ 31,000.00 | \$ 31,000.00 |

Item 16.

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**NEW BRAUNFELS UTILITIES
HUECO SPRINGS SUBSTATION
UNIT PROPOSAL**

| | | | | | | | |
|-----------------------|---|---|-----|-------------|--------------|--------------|----------------------|
| P5.2 | CONTROL HOUSE; EXTERIOR LIGHTING | 1 | LOT | \$ 2,000.00 | \$ 750.00 | \$ 2,750.00 | \$ 2,750.00 |
| P5.3 | CONTROL HOUSE; LIGHTING CONTACTOR WITH HOA SWITCH | 1 | LOT | \$ 2,000.00 | \$ 3,800.00 | \$ 5,800.00 | \$ 5,800.00 |
| P6.1 | CONTROL HOUSE; HVAC | 1 | LOT | \$ 2,000.00 | \$ 14,820.00 | \$ 16,820.00 | \$ 16,820.00 |
| P7.1 | CONTROL HOUSE; CABLE TRAY | 1 | LOT | \$ 5,000.00 | \$ 9,000.00 | \$ 14,000.00 | \$ 14,000.00 |
| P7.2 | CONTROL HOUSE; CABLE ENTRANCE | 1 | LOT | \$ 1,500.00 | \$ 6,500.00 | \$ 8,000.00 | \$ 8,000.00 |
| P8.1 | CONTROL HOUSE; DC BATTERY BANK AND CHARGER | 1 | LOT | \$ 1,500.00 | \$ 30,200.00 | \$ 31,700.00 | \$ 31,700.00 |
| P9.1 | CONTROL HOUSE; DC LIGHTING | 1 | LOT | \$ 1,000.00 | \$ 1,100.00 | \$ 2,100.00 | \$ 2,100.00 |
| P10.1 | CONTROL HOUSE; BATTERY ROOM VENTILATION | 1 | LOT | \$ 1,000.00 | \$ 900.00 | \$ 1,900.00 | \$ 1,900.00 |
| P11.1 | CONTROL HOUSE; AUTOMATIC TRANSFER SWITCH | 1 | EA | \$ 1,000.00 | \$ 3,600.00 | \$ 4,600.00 | \$ 4,600.00 |
| P12.1 | CONTROL HOUSE; CABLE WATERFALL ENTRANCE | 2 | EA | \$ 500.00 | \$ 3,750.00 | \$ 4,250.00 | \$ 8,500.00 |
| GROUP P TOTAL: | | | | | | | \$ 412,570.00 |

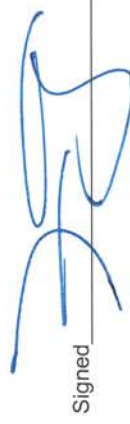
| GROUP Q: AC SYSTEM | | | | | | | |
|---------------------------|--|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| Q1.1 | YARD LIGHTS | 10 | EA | \$ 2,100.91 | \$ 1,146.80 | \$ 3,247.71 | \$ 32,477.09 |
| Q1.2a | YARD LIGHTS; JUNCTION BOX (DOUBLE YARD LIGHTS) | 1 | LOT | \$ 1,050.45 | \$ 790.00 | \$ 1,840.45 | \$ 1,840.45 |
| Q1.2b | YARD LIGHTS; JUNCTION BOX (DOUBLE YARD LIGHTS DUAL AC) | 1 | LOT | \$ 1,050.45 | \$ 840.00 | \$ 1,890.45 | \$ 1,890.45 |
| Q1.2c | YARD LIGHTS; JUNCTION BOX (SINGLE YARD LIGHT) | 1 | LOT | \$ 3,151.36 | \$ 4,440.00 | \$ 7,591.36 | \$ 7,591.36 |
| Q2.1 | STATION SERVICE; MAIN AC DISCONNECT | 2 | EA | \$ 3,151.36 | \$ 6,700.00 | \$ 9,851.36 | \$ 19,702.73 |
| Q2.1a | STATION SERVICE; MAIN AC DISCONNECT (200 A) | 1 | EA | \$ 2,100.91 | \$ 4,750.00 | \$ 6,850.91 | \$ 6,850.91 |
| Q2.2 | STATION SERVICE/MAIN AC DISCONNECT WITH STAND | 1 | LOT | \$ 4,201.82 | \$ 800.00 | \$ 5,001.82 | \$ 5,001.82 |
| GROUP Q TOTAL: | | | | | | | \$ 75,354.81 |

| GROUP S: REMOVAL | | | | | | | |
|-------------------------|----------------------------|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| S14.1 | REMOVAL; BARBED WIRE FENCE | 1 | LOT | \$ 6,802.73 | \$ - | \$ 6,802.73 | \$ 6,802.73 |
| GROUP S TOTAL: | | | | | | | \$ 6,802.73 |

| GROUP Z: VIDEO SURVEILLANCE AND ACCESS CONTROL | | | | | | | |
|---|---------------------------------------|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| Z1.1 | VIDEO SURVEILLANCE AND ACCESS CONTROL | 1 | LOT | \$ 29,500.00 | \$ 25,500.00 | \$ 55,000.00 | \$ 55,000.00 |
| GROUP Z TOTAL: | | | | | | | \$ 55,000.00 |

| | | | | | | | |
|-------------------------------|--|--|--|--|--|--|------------------------|
| GRAND TOTAL ALL UNITS: | | | | | | | \$ 4,661,586.26 |
|-------------------------------|--|--|--|--|--|--|------------------------|

Item 16.

Signed 

**NEW BRAUNFELS UTILITIES
HENNE BREAKER ADDITION
UNIT PROPOSAL**

| GROUP A: STRUCTURES | | | | | | | |
|----------------------------|--|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| A1.1 | A-FRAME STRUCTURE; MEDIUM VOLTAGE | 1 | EA | \$ 8,433.64 | \$ 7,294.50 | \$ 15,728.14 | \$ 15,728.14 |
| A1.2 | UPPER TRUSS; A-FRAME, MEDIUM VOLTAGE | 1 | EA | \$ 4,216.82 | \$ 1,489.50 | \$ 5,706.32 | \$ 5,706.32 |
| A1.3 | LOWER TRUSS; A-FRAME, MEDIUM VOLTAGE | 2 | EA | \$ 2,115.91 | \$ 1,674.00 | \$ 3,789.91 | \$ 7,579.82 |
| A1.3a | INSULATOR MOUNT; LOWER TRUSS, MEDIUM VOLTAGE | 3 | EA | \$ 427.68 | \$ 63.00 | \$ 490.68 | \$ 1,472.05 |
| A6.1 | BUS, PIPE; SINGLE PHASE, MEDIUM VOLTAGE | 120 | L.FT | \$ 148.73 | \$ 40.91 | \$ 189.64 | \$ 22,756.27 |
| A6.2 | BUS, WIRE; SINGLE PHASE, MEDIUM VOLTAGE | 120 | L.FT | \$ 157.57 | \$ 76.83 | \$ 234.40 | \$ 28,128.18 |
| GROUP A TOTAL: | | | | | | | \$ 81,370.77 |

| GROUP D: SINGLE POLE DISCONNECT SWITCHES | | | | | | | |
|---|--|------|------|------------------|---------------------|------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| D1.1 | HOOKSTICK DISCONNECT SWITCH; MEDIUM VOLTAGE, SINGLE POLE | 9 | EA | \$ 220.09 | \$ 800.00 | \$ 1,020.09 | \$ 9,180.82 |
| D2.8r | FUSE CUTOUT; 25KV 300E WITH LINK; RELOECATED | 3 | EA | \$ 420.18 | \$ 10.00 | \$ 430.18 | \$ 1,290.55 |
| GROUP D TOTAL: | | | | | | | \$ 10,471.36 |

| GROUP F: VACUUM CIRCUIT BREAKER/RECLOSER | | | | | | | |
|---|------------------------------|------|------|------------------|---------------------|------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
| F2.1 | VACUUM CIRCUIT BREAKER; 25KV | 2 | EA | \$ 2,100.91 | \$ - | \$ 2,100.91 | \$ 4,201.82 |
| GROUP F TOTAL: | | | | | | | \$ 4,201.82 |



**NEW BRAUNFELS UTILITIES
HENNE BREAKER ADDITION
UNIT PROPOSAL**

GROUP G: METERS, RELAYS, AND INSTRUMENT TRANSFORMERS

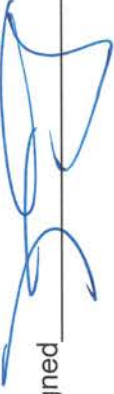
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
|-----------------------|---|------|------|------------------|---------------------|------------------|---------------------|
| G1.3r | POTENTIAL TRANSFER; SINGLE PHASE; RELOCATED | 3 | EA | \$ 910.39 | \$ 40.00 | \$ 950.39 | \$ 2,851.18 |
| G4.12r | RELAY PANEL; TWO FEEDER; MODIFICATION | 2 | EA | \$ 10,000.00 | \$ 8,000.00 | \$ 18,000.00 | \$ 36,000.00 |
| G7.1 | JUNCTION BOX; PT | 1 | EA | \$ 7,563.27 | \$ 1,375.00 | \$ 8,938.27 | \$ 8,938.27 |
| GROUP G TOTAL: | | | | | | | \$ 47,789.45 |

GROUP K: TRENCHING, CONDUIT, AND CABLE

| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
|-----------------------|---|------|------|------------------|---------------------|------------------|---------------------|
| K1.1 | CONDUIT; BELOW GRADE (PVC) | 1 | LOT | \$ 9,454.09 | \$ 375.00 | \$ 9,829.09 | \$ 9,829.09 |
| K1.2g | CONDUIT; ABOVE GRADE (RIGID GALVANIZED) | 1 | LOT | \$ 4,201.82 | \$ 1,340.00 | \$ 5,541.82 | \$ 5,541.82 |
| K2.1 | TRENCHING AND BACKFILL FOR CONDUIT INSTALLATION | 1 | LOT | \$ 12,735.45 | \$ 106.00 | \$ 12,841.45 | \$ 12,841.45 |
| K3.1 | CABLE; INSTRUMENT TRANSFORMER, CURRENT | 4 | EA | \$ 2,215.05 | \$ 690.25 | \$ 2,905.30 | \$ 11,621.21 |
| K4.1 | CABLE; AC - EQUIPMENT | 2 | EA | \$ 2,267.58 | \$ 2,482.00 | \$ 4,749.58 | \$ 9,499.15 |
| K4.4 | CABLE; DC - EQUIPMENT | 2 | EA | \$ 2,184.24 | \$ 1,681.00 | \$ 3,865.24 | \$ 7,730.48 |
| K5.1 | CABLE; ALARM/CONTROL (UNSHIELDED) | 4 | EA | \$ 1,016.13 | \$ 631.50 | \$ 1,647.63 | \$ 6,590.51 |
| K6.19 | CABLE; RETERMINATION | 1 | EA | \$ 1,260.55 | \$ 20.00 | \$ 1,280.55 | \$ 1,280.55 |
| K7.3 | CABLE; CATEGORY (CAT 6E) ETHERNET | 2 | EA | \$ 315.14 | \$ 95.00 | \$ 410.14 | \$ 820.27 |
| GROUP K TOTAL: | | | | | | | \$ 65,754.54 |

GROUP L: FOUNDATIONS

| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE |
|-----------------------|-------------------------------------|------|------|------------------|---------------------|------------------|---------------------|
| L3.1 | FOUNDATION; BREAKER, MEDIUM VOLTAGE | 1 | EA | \$ 21,584.57 | \$ 767.24 | \$ 22,351.81 | \$ 22,351.81 |
| L3.10a | FOUNDATION; 25KV A-FRAME STRUCTURE | 2 | EA | \$ 8,739.46 | \$ 668.57 | \$ 9,408.04 | \$ 18,816.07 |
| GROUP L TOTAL: | | | | | | | \$ 41,167.88 |



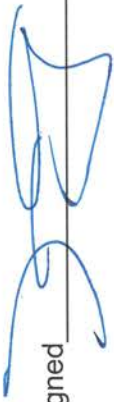
**NEW BRAUNFELS UTILITIES
HENNE BREAKER ADDITION
UNIT PROPOSAL**

| GROUP M: SITE PREPARATION | | | | | | |
|----------------------------------|------------------------------------|------|------|------------------|---------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | EXTENDED PRICE |
| M2.3 | SITE PREPARATION; SITE RESTORATION | 1 | LOT | \$ 2,836.23 | \$ 300.00 | \$ 3,136.23 |
| GROUP M TOTAL: | | | | | | \$ 3,136.23 |

| GROUP N: FENCE | | | | | | |
|-----------------------|------------------------|------|------|------------------|---------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | EXTENDED PRICE |
| N2.1 | ANIMAL DETERRENT FENCE | 1 | LOT | \$ 12,705.45 | \$ 2,865.00 | \$ 15,570.45 |
| GROUP N TOTAL: | | | | | | \$ 15,570.45 |


| GROUP O: STATION GROUNDING | | | | | | |
|-----------------------------------|---|------|------|------------------|---------------------|---------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | EXTENDED PRICE |
| O3.1 | CIRCUIT BREAKER/RECLOSER/CIRCUIT SWITCHER GROUNDING | 2 | EA | \$ 2,100.91 | \$ 1,655.20 | \$ 7,512.22 |
| O3.10 | DISTRIBUTION A-FRAME/ T-STRUCTURE GROUNDING | 2 | EA | \$ 6,302.73 | \$ 862.50 | \$ 14,330.45 |
| GROUP O TOTAL: | | | | | | \$ 21,842.67 |

| GROUP Q: AC SYSTEM | | | | | | |
|---------------------------|---------------------------|------|------|------------------|---------------------|--------------------|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | EXTENDED PRICE |
| Q1.1f | YARD LIGHTS; RELOCATE | 1 | EA | \$ 5,042.18 | \$ 235.00 | \$ 5,277.18 |
| Q1.2 | YARD LIGHTS, JUNCTION BOX | 1 | EA | \$ 525.23 | \$ 740.00 | \$ 1,265.23 |
| GROUP Q TOTAL: | | | | | | \$ 6,542.41 |

Signed 

**NEW BRAUNFELS UTILITIES
HENNE BREAKER ADDITION
UNIT PROPOSAL**

| GROUP S: DEMOLITION AND/OR REMOVAL | | | | | | | | | |
|------------------------------------|--|------|------|---------------------|------------------------|---------------------|----------------------|--|--|
| UNIT | DESCRIPTION | QTY. | UNIT | LABOR UNIT PRICE | MATERIAL UNIT PRICE | TOTAL UNIT PRICE | EXTENDED PRICE | | |
| S8.2 | REMOVAL; JUNCTION BOX | 2 | EA | \$ 550.23 | \$ - | \$ 550.23 | \$ 1,100.45 | | |
| S11.1 | REMOVAL; ABOVE AND BELOW GRADE CONDUIT | 1 | LOT | \$ 3,201.36 | \$ - | \$ 3,201.36 | \$ 3,201.36 | | |
| GROUP S TOTAL: | | | | | | | \$ 4,301.82 | | |
| GRAND TOTAL ALL UNITS: | | | | | | | \$ 302,149.39 | | |

Signed 



A handwritten signature in blue ink, consisting of stylized, overlapping loops and lines.

ADDENDUM 1

Subject: Request for Proposal (RFP) 23-0019 HUECO SPRINGS SUBSTATION AND
HENNE SUBSTATION BREAKER ADDITIONS

Date: February 23, 2024

**THIS ADDENDUM WILL NOT CHANGE THE SUBMISSION DUE DATE AND TIME.
THE RESPONSES MUST BE RECEIVED NO LATER THAN DATE:
1:00 PM CST March 14, 2024**

The following is a list of questions that presented at the pre-proposal meeting along with responses from NBU.

1. Question: What responsibility does the contractor have for transformer?

Response: Contractor will build foundation and connect it, transformer will be delivered and installed by someone else. Relaying is part of contractor's responsibility.

2. Question: Whose Responsibility is the Control House?

Response: It will be the responsibility of the contractor to procure, deliver, and construct the entire control house.

3. Question: Control House Access, mechanical, alarm, etc, is that contractor responsibility?

Response: Yes, that is all included in the project.

4. Question: When is project supposed to be mobilized? And ISD date?

Response: ISD is August 20th, 2025, and expect construction to begin Fall of 2024, approximately the end of October, possibly later.

The following is a list of questions that have been submitted on Public Purchase.

1. **Question:** Will NBU procure the control building/relay panels as a separate package from the construction of the substation itself?

Response: The control building/relay panels must be supplied by the contractor. Please see the updated bid unit supplied by SEnergy.

2. **Question:** The specs call out for a new enclosure for Hueco but on the enclosure layout drawing, only things in pink are new and black is existing. Can you please clarify on this?

Response: The contractor will be responsible for supplying the enclosure at Hueco Springs. Please disregard the color coding on the layout drawing, as everything shown will be contractor furnished.

If you have any questions regarding this information, do not hesitate to contact NBU Purchasing at: purchasing@nbutexas.com.

February 22, 2024

Re: Hueco Springs Substation: ADDENDUM 1 (R-1933)

To Whom It May Concern:

Please find the enclosed documents for the NBU Hueco Springs Substation project:

- 1) Additional/Revised Construction Units
- 2) Additional Drawings
- 3) Updated Contractor's Unit Proposal

Please acknowledge receipt of this addendum to Riley Grunberg via email to rgrunberg@poweredbysenergy.com.

Please call if you have any questions or require anything further.

Sincerely,



Greg Grusendorf, P.E.

Texas Firm Reg. #: F-1594

JGG/rgg

**NBU Hueco Springs Substation
ADDENDUM 1 – February 21, 2024**

1) Additional/Revised Construction Units

The following construction units have been added.

Revised Construction Units:

Group P. Control House

A. General

The Contractor shall provide all labor and material necessary to install a Contractor furnished a pre-cast concrete exposed aggregate building at the substation site.

Unit P2.3 Control House 24' x 40' (Precast Concrete) (Contractor Labor and Material)

This unit shall consist of installation and finish out of a Contractor furnished 24' x 40' (nominal dimensions) pre-cast concrete control building in place at the substation site. **All Contractor provided hardware external to the Control House shall be stainless steel.** The Contractor shall provide all labor and material necessary to complete this unit.

Additional Construction Units:

Unit S14.1 Removal; Barbed Wire Fence (Contractor Labor and Material)

This unit consists of removing approximately 500 linear feet of barbed wire fence and a double drive gate as indicated on the E & S grading layout drawing. The Contractor shall transport the fence elements to the Owner's store yard or shall dispose of all or part of the fence elements as directed by the Owner's representative. The Contractor shall provide all necessary labor, material and transportation necessary to complete this unit.

2) Additional Drawings

See attached PDF files for updated drawings. The drawings are also posted to the Info Exchange server. All changes to existing drawings have been clouded.

ELECTRICAL AND STRUCTURAL DRAWINGS:

- NBU-HS-049 Existing Fence Removal

3) Updated Contractor's Unit Proposal

Please refer to the attached updated Unit Proposal form. Use this updated form for bid submittal.



A handwritten signature in blue ink, consisting of a stylized, cursive script.

ADDENDUM 2

Subject: Request for Proposal (RFP) 23-0019 HUECO SPRINGS SUBSTATION AND HENNE SUBSTATION BREAKER ADDITIONS

Date: March 7, 2024

**THIS ADDENDUM WILL NOT CHANGE THE SUBMISSION DUE DATE AND TIME.
THE RESPONSES MUST BE RECEIVED NO LATER THAN DATE:
*1:00 PM CST March 14, 2024***

The following is a list of questions that have been submitted on Public Purchase.

1. **Question:** Is there a geotech report available for the Hueco Springs project?

Response: Yes, the Geotechnical Engineering Report has been added as an attachment in Public Purchase

2. **Question:** Will bids be reviewed if only new relay panels and control enclosure are bid?

Response: Any deviation from the specifications should be proposed as an alternate option, and will be evaluated as such.

3. **Question:** Can we get the bid form in Excel format?

Response: Yes, revised Bid Forms are attached in Public Purchase with this Addendum 2. Please use the revised Hueco, Henne, and Summary Bid Forms dated 3.6.2024 when submitting your proposal. Please **DO NOT USE** the Hueco Unit and Summary Bid Forms dated 2.23.2024 when submitting your proposal.

If you have any questions regarding this information, do not hesitate to contact NBU Purchasing at: purchasing@nbutexas.com.

March 6, 2024

Re: Hueco Springs Substation: ADDENDUM 2 (R-1933)

To Whom It May Concern:

Please find the enclosed documents for the NBU Hueco Springs Substation project:

- 1) Revised Construction Units
- 2) Revised Drawings
- 3) Updated Contractor's Unit Proposal

Please acknowledge receipt of this addendum to Riley Grunberg via email to rgrunberg@poweredbysenergy.com.

Please call if you have any questions or require anything further.

Sincerely,



Greg Grusendorf, P.E.

Texas Firm Reg. #: F-1594

JGG/rgg

**NBU Hueco Springs Substation
ADDENDUM 2 – March 6, 2024**

1) Revised Construction Units

The following construction units have been revised.

- After recent coordination with LCRA, we have made some slight changes to the cable and conduit which are reflected on the provided drawings. This will require additional conduit and a change in cable type. Please reference the drawings to update bids accordingly.
- LCRA has requested to provide the gate for the entrance to their side of the substation. This eliminates one sliding gate unit (Unit N1.2) from the bid. The updated material quantity is two (2) sliding gates, which is reflected in the updated unit proposal. Please reference the provided drawing and update the bids accordingly.
- We have found two errors regarding civil units:
 - o The first being the Corrugated Metal Pipe Culvert sizing. The updated unit is below:

Unit M6.1 Site Preparation; Corrugated Metal Pipe Culvert (Contractor Labor and Material)

This unit consists of hauling, installing, and compacting around one 55 foot long, 24" diameter, Corrugated Metal Pipe Culvert as shown on the construction drawings, and as specified above under Group M. This includes all material, safety end treatment, hauling, placement, compaction, grading, and finishing operations. The Contractor shall provide all material and labor to complete this unit.

- o The second is the duplication of driveway entrance units. In the original unit proposal, Unit L9.98 is for Concrete Driveway Entrances and Unit M4.4 is for Asphalt Driveway Entrances. Please use Unit L9.98 for bidding purposes and disregard Unit M4.4. This change is reflected in the updated unit proposal form.

2) Revised Drawings

See attached PDF files for updated drawings. The drawings are also posted to the Info Exchange server. All changes to existing drawings have been clouded.

ELECTRICAL AND STRUCTURAL DRAWINGS:

- NBU-HS-495a Fence Layout

RELAY AND CONTROL DRAWINGS:

- NBU-HS-500d Conduit Layout
- NBU-HS-500e Conduit Schedule
- NBU-HS-500h Cable Schedule (1 of 2)

3) Updated Contractor's Unit Proposal

Please refer to the attached updated Unit Proposal form. Use this updated form for bid submittal.



Questions for Bid RFP #23-0019 - HUECO SPRINGS SUBSTATION AND HENNE SUBSTATION BREAKER ADDITIONS

Question #1

What is the estimated cost range?

Jan 30, 2024 4:42:36 PM CST

Answers

Please see RFP 23-0019, page 2, for the estimated maximum construction budget.

Mar 11, 2024 1:13:12 PM CDT

Question #2

Will NBU procure the control building/relay panels as a separate package from the construction of the substation itself?

Jan 31, 2024 10:13:51 AM CST

Answers

Response posted in Addendum 1.

Mar 11, 2024 1:13:46 PM CDT

Question #3

The specs call out for a new enclosure for Hueco but on the enclosure layout drawing, only things in pink are new and black is existing. Can you please clarify on this? Thanks.

Jan 31, 2024 11:37:11 AM CST

Answers

Response Posted in Addendum 1.

Mar 11, 2024 1:14:09 PM CDT

Question #4

Would you please post the pre-bid meeting attendees list?

Feb 13, 2024 9:38:28 AM CST

Answers

The pre-proposal attendance sheet is posted in Public Purchase.

Mar 11, 2024 1:15:10 PM CDT

Question #5

Could the list of pre-bid attendees be posted?

Feb 14, 2024 9:38:39 AM CST

Answers

The pre-proposal attendance sheet is posted in Public Purchase.

Mar 11, 2024 1:15:23 PM CDT

Question #6

1.) Is there a geotech report available for the Hueco Springs project?

Feb 15, 2024 8:06:04 AM CST

Answers

This report is available in Public Purchase.

Mar 11, 2024 1:15:56 PM

Item 16.

Question #7

Will bids be reviewed if only new relay panels and control enclosure are bid?

Feb 15, 2024 11:46:26 AM CST

Answers

Response posted in Addendum 2.

Mar 11, 2024 1:16:30 PM CDT

Question #8

Can we get the bid form in Excel format?

Feb 15, 2024 3:54:43 PM CST

Answers

Revised Bid Forms in excel format have been posted in Public Purchase.

Mar 11, 2024 1:17:08 PM CDT

Question #9

Is there a geotech report available for this site?

Mar 1, 2024 1:30:39 PM CST

Answers

The report is available in Public Purchase.

Mar 11, 2024 1:18:35 PM CDT

[Ask a Question](#)

[View Bid](#)

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BID BOND

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF COMAL §

That we, Lambda Construction I, Ltd, as Principal herein, and Hartford Fire Insurance Company, a corporation organized and existing under the laws of the State of Connecticut, and who is authorized and admitted to issue surety bonds in the State of Texas, as Surety herein, are held and firmly bound unto New Braunfels Utilities, located in Comal County, Texas, as Obligee herein, in the penal sum of five percent greatest amount bid by principal Dollars (\$ **5% GAB**) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying Bid, dated the 4th day of March, 2024 which is attached hereto and made a part hereof for all purposes, for the construction of the Hueco Springs Substation and Henne Substation Breaker Additions

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH:

- (a) If said Bid shall be rejected; or
- (b) If said Bid shall be accepted and the Principal shall within ten (10) days after the prescribed forms are presented to him for signature, execute and deliver a written contract in the form of the Contract in accordance with the Bid as accepted, and shall furnish a performance bond ensuring faithful performance of said Contract, and a payment bond ensuring the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects enter into the Contract under the terms of said Bid proposal, then this obligation shall be void; otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

In the event of the withdrawal of said Bid within the period specified, or the failure to enter into such Contract and give such bonds within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Bid and the amount for which the

Obligee may procure the required work or supplies or both, if the latter be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this 7th day of March, 2024

ATTEST:



(Principal) Secretary

(S E A L)



Witness as to Principal

ATTEST:

Secretary

(S E A L)

Lambda Construction I, Ltd
PRINCIPAL

By: 

Name: _____

Title: GENERAL PARTNER

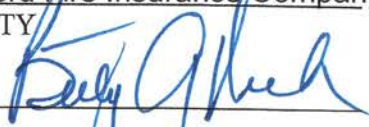
Address: _____

233 Jesse's Circle

New Braunfels, TX 78132

Telephone Number: 830.629.5808


Hartford Fire Insurance Company
SURETY

By: 

Name: Betty J. Reeh
Attorney in Fact

Address: One Hartford Plaza

Hartford, CT 06115



Witness as to Surety Drew Riddle

Telephone Number: 210.697.2230

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

Approved as to Form:
New Braunfels Utilities
Purchasing Manager
355 FM 306
New Braunfels, Texas 78130
830.608.8860

By: _____

Title: _____

Date: _____

POWER OF ATTORNEY

Direct Inquiries/Claims to Item 16.

THE HARTFORD
 BOND, T-11
 One Hartford Plaza
 Hartford, Connecticut 06155
Bond.Claims@thehartford.com

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: IBTX RISK SERVICES
 Agency Code: 46-504858

- Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of Unlimited** :

Andrew Addison, Patrick Coyle, Elizabeth Ortiz, Ana Tomes of Addison TX, Bryan K. Moore, Betty J. Reeh of BULVERDE, Texas

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 23, 2016 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Shelby Wiggins

Shelby Wiggins, Assistant Secretary

Joelle L. LaPierre

Joelle L. LaPierre, Assistant Vice President

STATE OF FLORIDA }
 COUNTY OF SEMINOLE } ss. Lake Mary

On this 20th day of May, 2021, before me personally came Joelle LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that (s)he signed his/her name thereto by like authority.



Jessica Ciccone

Jessica Ciccone
 My Commission HH 122280
 Expires June 20, 2025

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of March 7, 2024

Signed and sealed in Lake Mary, Florida.



Keith Dozois

Keith D. Dozois, Assistant Vice President

IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your agent.

You may call Hartford Insurance Group at the toll free telephone number for information or to make a complaint at:

1-800-392-7805

You may also write to The Hartford:

**The Hartford
Hartford Financial Products
2 Park Avenue, 5th Floor
New York, New York 10016
1-212-277-0400**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance

P.O. Box 149104
Austin, TX 78714-9104
Fax Number (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for your information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja.

Puede comunicarse con su agente.

Usted puede llamar al numero de telefono gratis de The Hartford Insurance Group para indormacion o para someter una queja al

1-800-392-7805

Usted tambien puede escribir a The Hartford.

**The Hartford
Hartford Financial Products
2 Park Avenue, 5th Floor
New York, New York 10016
1-212-277-0400**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de compañías, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
Austin, TX 78714-9104
Fax Number (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con su agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

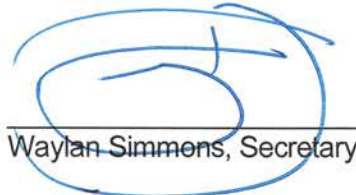
UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

CONTRACTOR'S ACT OF ASSURANCE RESOLUTION

I hereby certify that it was RESOLVED by a quorum of the directors of Lambda Construction I, Ltd. meeting on the day of March 13th, 2024 that Zane Shullanberger, be, and hereby is, authorized to act on behalf of Lambda Construction I, Ltd. as its representative, in all business transactions with the City of New Braunfels associated with the Hueco Springs Substation and Henne Substation Breaker Additions project, and

That all above resolution was unanimously ratified by the Board of Directors at said meeting and that the resolution has not been rescinded or amended and is now in full force and effect; and;

In authentication of the adoption of this resolution, I subscribe by name and affix the seal of the Partnership this 13th day of March, 2024.



Waylan Simmons, Secretary



Franchise Tax Account Status

As of : 03/14/2024 09:05:36

This page is valid for most business transactions but is not sufficient for filings with the Secretary of State

LAMBDA CONSTRUCTION I, LTD.

Texas Taxpayer Number 17429872520

Mailing Address 211 JESSES CIR NEW BRAUNFELS, TX 78132-4857

Right to Transact Business in Texas ACTIVE

State of Formation TX

Effective SOS Registration Date 02/20/2001

Texas SOS File Number 0014687610

Registered Agent Name ZANE SHULLANBERGER

Registered Office Street Address 211 JESSE'S CIRCLE NEW BRAUNFELS, TX 78132



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD) Item 16.
3/13/2024

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

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

| | | | | | | | | | | | | | |
|--|---|---|---------------|--|-------|---|-------|---|-------|--------------------|-------|--------------------|--|
| PRODUCER Acrisure Texas Risk Advisors & Insurance Services, LLC 5057 Keller Springs Rd. Suite 200 Addison TX 75001 | CONTACT NAME: Sarah Ncube PHONE (A/C, No, Ext): 800-880-6689 FAX (A/C, No): 210-696-8144 E-MAIL ADDRESS: service@acrisure.com | | | | | | | | | | | | |
| INSURER(S) AFFORDING COVERAGE | | | | | | | | | | | | | |
| INSURED Lambda Construction I, Ltd. 211 Jesse's Circle New Braunfels TX 78132 | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A : Texas Mutual Insurance Company</td> <td style="width: 20%; text-align: center;">NAIC #</td> </tr> <tr> <td>INSURER B : The Continental Insurance Company</td> <td style="text-align: center;">22945</td> </tr> <tr> <td>INSURER C : Continental Casualty Company</td> <td style="text-align: center;">35289</td> </tr> <tr> <td>INSURER D : Evanston Insurance Company</td> <td style="text-align: center;">20443</td> </tr> <tr> <td>INSURER E :</td> <td style="text-align: center;">35378</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table> | INSURER A : Texas Mutual Insurance Company | NAIC # | INSURER B : The Continental Insurance Company | 22945 | INSURER C : Continental Casualty Company | 35289 | INSURER D : Evanston Insurance Company | 20443 | INSURER E : | 35378 | INSURER F : | |
| INSURER A : Texas Mutual Insurance Company | NAIC # | | | | | | | | | | | | |
| INSURER B : The Continental Insurance Company | 22945 | | | | | | | | | | | | |
| INSURER C : Continental Casualty Company | 35289 | | | | | | | | | | | | |
| INSURER D : Evanston Insurance Company | 20443 | | | | | | | | | | | | |
| INSURER E : | 35378 | | | | | | | | | | | | |
| INSURER F : | | | | | | | | | | | | | |

COVERAGES **CERTIFICATE NUMBER:** 904764351 **REVISION NUMBER:**

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

| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSD WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|--------------------|---------------|-------------------------|-------------------------|---|
| B | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: | | 6079559473 | 11/1/2023 | 11/1/2024 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$ |
| C | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | 6079559456 | 11/1/2023 | 11/1/2024 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| B | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | 6079559490 | 11/1/2023 | 11/1/2024 | EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ |
| A | <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | 0002069404 | 11/1/2023 | 11/1/2024 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| D | <input checked="" type="checkbox"/> Pollution/ Professional incl Transportation & Mold | | CPLMOL119800 | 11/1/2023 | 11/1/2024 | Aggregate Limit 2,000,000 Per Occurrence Limit 2,000,000 Deductible 10,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 The General Liability, Auto, and Pollution policies include blanket additional insured endorsements (CNA75079XX 03/22, CA2048 10/13, MEEI0007 0122) as required in a written contract with the Named Insured. The General Liability, Auto, Work Comp & Pollution policies include a blanket waiver of subrogation endorsement (CNA74705XX 1/15, CA0444 10/13 & WC420304B, MEEI0007 0122) as required in a written contract with the Named Insured. Primary Non-Contributory wording per attached endorsements (CNA75079XX 10/16, CNA63359XX, MEEI0007 0122). Cancellation provisions-see attached (CNA74702XX, CNA68021XX 02/13, WC420601, MEIL1233 11/13). Umbrella is follow form of the General Liability, Auto and Work Compensation policies subject to policy terms and conditions.

| | |
|---|--|
| CERTIFICATE HOLDER For Bid Purposes | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE |
|---|--|

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

N/A

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

N/A

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

N/A

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

N/A

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 
Signature of vendor doing business with the governmental entity

3-14-24
Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2024-1134332

Date Filed:
03/13/2024

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
LAMBDA CONSTRUCTION I, LTD.
NEW BRAUNFELS, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
NEW BRAUNFELS UTILITIES

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
RFP #23-0019
HUECO SPRINGS SUBSTATION & HENNE SUBSTATION BREAKER ADDITIONS

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) | |
|---|--------------------------|--|---------------------------------------|--------------|
| | | | Controlling | Intermediary |
| | | | | |
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5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is RYAN MECHLER, and my date of birth is 6-8-82.

My address is 211 JESSE'S CIRCLE, NEW BRAUNFELS, TX, 78132, U.S.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in COMAL County, State of TEXAS, on the 13 day of MARCH, 2024.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

ISRAEL VERIFICATION FORM

COMPLETE EITHER OPTION 1 OR OPTION 2

OPTION 1

I, ZANE SHULLANBERGER, the undersigned representative of LAMBDA CONSTRUCTION (the "Company") do hereby declare, represent, and verify that the Company, under the provisions of Chapter 2271 of the Texas Government Code, as amended:

- 1. does not boycott Israel currently; and
2. will not boycott Israel during the term of the contract.

Pursuant to Section 2271.001 of the Texas Government Code:

- 1. "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; and
2. "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exist to make a profit.

Date 3-14-24

Signature [Handwritten Signature]

EXCLUSION FROM CHAPTER 2271 OF THE TEXAS GOVERNMENT CODE

OPTION 2

I, _____, the undersigned representative of _____ (the "Company") do hereby declare, represent, and verify that the Company is excluded from Chapter 2271 because the contract in question:

- [] will be between a governmental entity and a company with fewer than 10 full-time employees;
[] will have a value of less than \$100,000 that is to be paid wholly or partly from public funds of the governmental entity;
[] will be between two governmental entities; or
[] will be between a governmental entity and a sole proprietor.

Please check exceptions, if any, that apply to the potential contract between New Braunfels Utilities and the Company.

Date

Signature

FIREARM VERIFICATION FORM

COMPLETE EITHER OPTION 1 OR OPTION 2

OPTION 1

I, ZANE SHULLANBERGER, the undersigned representative of LAMBDA CONSTRUCTION (the "Company") do hereby declare, represent, and verify that the Company, under the provisions of Chapter 2274 of the Texas Government Code, as amended:

- 1. does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
2. will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Pursuant to Chapter 2274 and Section 809.001 of the Texas Government Code:

- 1. "Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.
2. "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exist to make a profit.

Date 3-14-24

Signature [Handwritten Signature]

EXCLUSION FROM CHAPTER 2274 OF THE TEXAS GOVERNMENT CODE

OPTION 2

I, _____, the undersigned representative of _____ (the "Company") do hereby declare, represent, and verify that the Company is excluded from Chapter 2274 because the contract in question:

- [] will be between a governmental entity and a company with fewer than 10 full-time employees;
[] will have a value of less than \$100,000 that is to be paid wholly or partly from public funds of the governmental entity;
[] will be between two governmental entities; or
[] will be between a governmental entity and a sole proprietor.

Please check exceptions, if any, that apply to the potential contract between New Braunfels Utilities and the Company.

Date

Signature

PROHIBITION OF ENERGY COMPANY BOYCOTT
VERIFICATION FORM

****COMPLETE EITHER OPTION 1 OR OPTION 2****

OPTION 1

I, ZANE SHULLANBERGER, the undersigned representative of LAMBDA CONSTRUCTION (the "Company") do hereby declare, represent, and verify that the Company, under the provisions of Chapter 2276 of the Texas Government Code, as amended:

- 1. does not boycott energy companies currently; and
- 2. will not boycott energy companies during the term of the contract.

Pursuant to Chapter 2276 and Section 809.001 of the Texas Government Code:

- 1. "Boycott energy company" means, without an ordinary business purpose, 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 with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A).
- 2. "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exist to make a profit.

_____ 3-14-24 _____
 Date Signature

EXCLUSION FROM CHAPTER 2276 OF THE TEXAS GOVERNMENT CODE

OPTION 2

I, _____, the undersigned representative of _____ (the "Company") do hereby declare, represent, and verify that the Company is excluded from Chapter 2276 because the contract in question:

- will be between a governmental entity and a company with fewer than 10 full-time employees;
- will have a value of less than \$100,000 that is to be paid wholly or partly from public funds of the governmental entity;
- will be between two governmental entities; or
- will be between a governmental entity and a sole proprietor.

Please check exceptions, if any, that apply to the potential contract between New Braunfels Utilities and the Company.

_____ _____
 Date Signature



Meeting Date: June 27, 2024 **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: Michael Short, P.E. **Approved by:** Ryan Kelso
 Director of Water Services Chief Executive Officer
 and Compliance

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Environmental Improvements, Inc. for Water and Wastewater Systems Chlorine and Sulfur Dioxide Repair, Maintenance, and Replacement Services

BACKGROUND

On January 16, 2024, New Braunfels Utilities (“NBU”) issued a request for competitive sealed proposals for chlorine and sulfur dioxide equipment repair, maintenance, and replacement services at various facilities throughout the NBU water and wastewater system (the “Services”).

On February 12, 2024, NBU received one (1) proposal for the Services during the public solicitation process. NBU staff evaluated the proposal and determined the proposal 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 Environmental Improvement, Inc. for the Services.

NBU staff requests that the Board of Trustees approve the services and goods agreement with Environmental Improvements, Inc.

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

FINANCIAL IMPACT

The total contract amount for the Agreement with Environmental Improvements, Inc. is \$600,000.00 with a not to exceed amount of \$120,000.00 for the initial contract term and \$120,000.00 for each of the additional one-year terms. The Agreement is budgeted within the Water Treatment & Compliance Operations and Maintenance budget (“O&M Budget”) for Fiscal Year 2024 and will be budgeted in the O&M Budgets of Fiscal Year 2025 through Fiscal Year 2029.

LINK TO STRATEGIC PLAN

Customer and Community

Infrastructure and Technology

EXHIBITS

1. Contract with Environmental Improvements, Inc.
2. Summary of Recommendation

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 **ENVIRONMENTAL IMPROVEMENTS, INC.**, a Texas corporation (the “Vendor”).

For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, and intending to be legally bound hereby, the parties agree as follows.

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below (the “Effective Date”), and will remain in full force and effect for a period of one (1) year from July 1, 2024, to June 30, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 30, 2029.

2. **Scope of Services, Purchases.**
 - 2.1. **Scope of Services.** The Vendor shall perform the Services described in Exhibit A (the “Services”) within the timeframe specified therein.

 - 2.2. **Purchase of Goods.** Unless otherwise directed in writing by NBU, the Vendor shall purchase, as needed, goods related to the Services described in Exhibit A, which shall be reimbursed in accordance with Section 3.

3. **Payment.**
 - 3.1. **Amount.** NBU shall pay the Vendor in accordance with the terms and conditions herein the amount set forth in Exhibit B for the Services. Exhibit B shall contain the Total Compensation for the Vendor, which is the maximum dollar amount that the Vendor can be paid under this Agreement for Services and goods.

 - 3.2. **Billing Period.** NBU shall pay the Vendor within thirty (30) days after receipt and approval of invoices to the extent the Services have been satisfactorily performed under the terms of this Agreement. NBU shall pay the Vendor for any goods purchased in accordance with the terms stated therein. All invoices provided by the Vendor to NBU shall include documentation and itemization that is satisfactory to NBU of all work completed to date. In the event NBU fails to timely pay any uncontested portion of any invoice within thirty (30) days of receipt and approval of the Vendor’s invoice, the Vendor shall have the right to suspend work.

- 3.3. Reimbursable Expenses and Goods. In order for a Vendor expense, including the purchase of a good related to the Services hereunder, to be reimbursable under this Agreement, each such expense must first have been described in detail and/or contemplated in Exhibit A and shall be specifically described in detail in an invoice provided by the Vendor to NBU after such expense has been incurred. All reimbursable expenses, including goods purchased in connection with performing the Services under this Agreement, shall be included in the calculation of the elements of the Total Compensation listed in Exhibit B. An expense not complying with these requirements shall not be reimbursable by NBU in NBU's sole discretion.

4. Obligations and Representations of Vendor.

- 4.1. Performance and Compliance with Laws. The Vendor shall perform the Services in compliance with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested in writing by NBU, the Vendor shall promptly furnish satisfactory proof of compliance to NBU.
- 4.2. Warranties.
- a. Performance Warranty. The Vendor warrants that the Services provided under this Agreement shall be of the highest quality and standards in accordance with such industry in this country. This warranty shall be in addition to and not in lieu of all other warranties or guaranties offered or provided by the Vendor for the Services and goods.
- b. Warranties for Goods. All manufacturer warranties and guaranties of goods provided pursuant to this Agreement shall inure to the benefit of NBU. The Vendor shall warrant all work free of defects in materials and workmanship for a period of one (1) year from the date of final acceptance of all work. The Vendor shall, within 30 calendar days after receipt of written notice, repair defects in materials and workmanship that may develop during said one (1) year period, and any damage to other work caused by such defects or the repairing of same, at the Vendor's expense, in a manner acceptable to NBU. The Vendor shall provide NBU the full original equipment manufacturer ("OEM") warranties and guaranties provided by the OEM for all Services and goods under this Agreement free of all liens, claims, and encumbrances. For example, if an OEM offers full replacement of a warranted product at no charge to the Vendor, then the Vendor shall replace such item and shall not charge NBU for such replacement.
- 4.3. Personnel. The Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Vendor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Vendor shall immediately notify NBU of same

and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

- 4.4. Licenses; Materials. The Vendor shall maintain in current status all federal, state, and local licenses and permits required for the Vendor to perform the Services and operate its business. NBU has no obligation to provide the Vendor, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Vendor.
- 4.5. Indemnity. TO THE FULLEST EXTENT PERMITTED BY LAW, THE VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE OR AGENT THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY"), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER ("CLAIMS"), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE GOODS OR SERVICES PROVIDED BY THE VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS FOR THE VENDOR SET FORTH HEREIN SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.
- 4.6. Insurance. The Vendor shall continuously during the Term comply with the following requirements regarding insurance:
- a. Insurer Qualifications. Without limiting any obligations or liabilities of the Vendor, the Vendor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A-VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
 - b. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Vendor. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Vendor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
 - c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives,

officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.

- d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- e. Primary Insurance. The Vendor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- g. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Vendor. The Vendor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- i. Use of Subcontractors. The Vendor shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Vendor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Vendor. The Vendor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- j. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Vendor shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will

rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Vendor's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

- k. Required Insurance Coverage. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.
- i. Commercial General Liability. The Vendor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
 - ii. Auto Liability. The Vendor shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Vendor's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Vendor under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
 - iii. Workers' Compensation and Employer's Liability Insurance. The Vendor shall maintain Workers' Compensation insurance to cover the Vendor's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- 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. The Vendor represents and warrants that the Vendor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. Violation of this Section shall subject this Agreement to termination under the Termination provisions of this Agreement. The Vendor further agrees that the Vendor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Vendor, the Vendor shall immediately report that fact to NBU and, NBU, in its sole discretion, may terminate this Agreement.
- b. Prohibition on Contracts with Companies Boycotting Israel. The Vendor hereby verifies that it and its parent company, wholly- or majority owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.
- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. The Vendor represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

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

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Vendor and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions

regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.

- d. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. If the Vendor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Vendor represents the following:
- i. it is not owned by or the majority of stock or other ownership interest in the Vendor is not held or controlled by:
 1. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
 2. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
 - ii. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

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

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

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code,

as amended. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.

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

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

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

5. Obligations and Representations of NBU.

- 5.1. Authority to Enter into Agreement. To the fullest extent authorized by law, NBU warrants that it has authority to execute and enter into this legally binding Agreement.
- 5.2. Binding Obligation. This Agreement constitutes a legal, valid, and binding obligation of NBU enforceable against it in accordance with the terms herein.

6. Termination.

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

- 6.2. For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the non-defaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Vendor for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.
- 6.3. Non-Collusion. If NBU determines that the Vendor gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, or if the Vendor otherwise violated its obligations under Section 4.7(a), NBU may, in its sole discretion, terminate this Agreement.
- 6.4. Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Vendor fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Vendor shall be relieved of any subsequent obligation under this Agreement.

7. Confidentiality; Texas Public Information Act.

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

other than to employees or officers of the Vendor as needed for the performance of duties under this Agreement.

- 7.2. Confidential Information. To the extent that confidential and proprietary information of each party (“Confidential Information”) is exchanged and received in connection with the Services or goods, each party agrees not to use the other party’s Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties. Use by third party contractors may be permitted so long as such contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section. “Confidential Information” includes (but is not limited to) the Vendor’s Confidential Information (as defined below), and does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information previously known by or developed by the receiving party independent of the Confidential Information or (iii) information that the receiving party rightfully obtains without restrictions on use and disclosure.
- 7.3. Vendor Confidential Information. “Vendor Confidential Information” means any pre-existing proprietary or Confidential Information of the Vendor created by the Vendor and used to perform the Services, or included in any goods provided, including but not limited to software, appliances, methodologies, code, templates, tools, records, data or other intellectual property shall remain the exclusive property of the Vendor.
- 7.4. Conflict with Applicable Statute or Law. Nothing in this Section is intended to reduce or conflict with any duty, obligation or provision contained in the Texas Public Information Act, the Texas Open Meetings Act, or any other applicable statute or rule.
- 7.5. Texas Public Information Act. The Vendor recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Vendor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU’s audit rights in Section 9.13.

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

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

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

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

8. Information Technology and Intellectual Property Infringement.

- 8.1. Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the Vendor with non-exclusive, limited access to NBU's information technology infrastructure. The Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all the Vendor's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Vendor's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Vendor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- 8.2. Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Vendor shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.
- 8.3. Data Security. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Vendor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- 8.4. Compromised Security. In the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Vendor shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **THE VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD NBU**

HARMLESS FROM ANY CLAIMS RESULTING FROM VENDOR'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.

- 8.5. Intellectual Property Infringement. THE VENDOR SHALL DEFEND AND INDEMNIFY NBU AGAINST ANY COSTS, LIABILITIES OR DAMAGES (INCLUDING ATTORNEY'S FEES) ARISING FROM A CLAIM THAT NBU'S AUTHORIZED USE OF ANY SERVICE OR GOODS PURCHASED PURSUANT TO THIS AGREEMENT INFRINGES ANY PATENT, COPYRIGHT, TRADEMARK OR TRADE SECRET. NBU agrees to notify the Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify the Vendor of such claim or suit, NBU's failure to so notify the Vendor shall not diminish the Vendor's indemnity obligations hereunder. The Vendor shall have control of any such suit and NBU shall cooperate with the Vendor in connection with its defense at the expense of the Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if the Vendor believes that such Service or good is likely to become the subject of an infringement claim, the Vendor shall (i) obtain the right for NBU to continue to use such Service or good or (ii) replace or modify the Service or good so as to make it non-infringing and equal to the functionality of such Service or good described in this Agreement.

9. Miscellaneous.

- 9.1. Independent Contractor. The Vendor acknowledges that the Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Vendor shall not represent, either expressly or through implication, that the Vendor is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Vendor.
- 9.2. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- 9.3. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Vendor.
- 9.4. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- 9.5. Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and

this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- 9.6. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.
- 9.7. Subcontractors. The Vendor shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Vendor of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Vendor.
- 9.8. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 9.9. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.
- 9.10. Liens. All goods or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.
- 9.11. Offset for Damages, Delinquent Fees or Taxes. In addition to all other remedies at law or equity, NBU may offset from any money due to the Vendor any amount the Vendor owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, goods, equipment rental, travel expenses and associated costs. NBU may offset from any money due to the Vendor any amount the Vendor owes to NBU for delinquent fees, including any interest or penalties.
- 9.12. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

To NBU:

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

With a copy to:

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

To the Vendor:

Environmental Improvements, Inc.
 235 Trademark Drive
 Buda, TX 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 the Vendor with regard to the Services and/or goods obtained pursuant to this Agreement, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- 9.14. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

- 9.15. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- 9.16. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- 9.17. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 9.18. Exhibits. All Exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- 9.19. Conflicting Terms. In the case of any conflicts between the terms of this Agreement and an Exhibit to this Agreement, the statements in the body of this Agreement shall govern.
- 9.20. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
- 9.21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 9.22. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.
- 9.23. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, pandemics, epidemics, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement

of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

- 9.24. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give written notice within five (5) business days to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.
- 9.25. Survival. The sections of this Agreement that by their terms are intended to survive the termination of this Agreement shall so survive.
- 9.26. Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.
- 9.27. Electronic Signatures. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

VENDOR:

ENVIRONMENTAL IMPROVEMENTS, INC.,
a Texas corporation


By: 
Name: CURTIS KELLEY
Title: VP

Exhibit A – Scope of Services

The Vendor shall perform annual diagnostic inspections and preventive maintenance, and as-needed equipment replacement and repair services, for the maintenance of existing chlorine and sulfur dioxide equipment located at NBU’s water and wastewater facilities as described in this Agreement (the “Services”).

1) General requirements

- a) The Vendor shall supply all material, labor, and equipment necessary to perform the Services. All work performed shall be in accordance with the Occupational Safety and Health Administration and the Texas Commission on Environmental Quality standards. The Vendor shall follow the manufacturer’s suggested method for installation, maintenance, and repair of equipment.
- b) NBU must accept work prior to paying the Vendor. Acceptance shall be based on meeting all of NBU’s requirements, which include without limitation the following: (i) no leaks; (ii) the chlorine system working as specified; and (iii) passing inspection by NBU personnel.

2) Existing chlorine facilities within the NBU system

The following NBU chlorine and sulfur dioxide equipment is covered by this Agreement:

- a) Existing equipment by location
 1. Surface water treatment plant, located at 2356 Gruene Road, New Braunfels, Texas
 - (a) Chlorine
 1. Three (3) Wallace and Tiernan V10k chlorinators
 2. Six (6) Wallace and Tiernan S10s regulators
 3. Three (3) 1-inch Wallace and Tiernan injectors
 2. Wells Two and Three, located at 7701 Lakeview Boulevard, New Braunfels, Texas
 - (a) Chlorine
 1. Three (3) Wallace and Tiernan V10k chlorinators
 2. Two (2) Wallace and Tiernan S10k regulators
 3. Two (2) 1-inch Wallace and Tiernan injectors
 4. Two (2) Evoqua gas detection systems
 5. One (1) Wallace & Tiernan SFC analyzer and controller
 6. Two (2) booster pumps
 3. Well Four, located at 500 Beverly Lane, New Braunfels, Texas
 - (a) Chlorine
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k chlorinator (manual)
 3. Two (2) Wallace and Tiernan S10k regulators
 4. Two (2) 1-inch Wallace and Tiernan injector

5. Two (2) Evoqua gas detection systems
 6. One (1) Wallace & Tiernan SFC analyzer and controller
 7. Two (2) booster pumps
4. Well Five, located at Landa Park Golf Course, 100 Elizabeth Avenue, New Braunfels, Texas
- (a) Chlorine
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k chlorinator (manual)
 3. Two (2) Wallace and Tiernan S10 regulators
 4. Two (2) 1-inch Wallace and Tiernan injectors
 5. One (1) Evoqua gas detection system
 6. Two (2) booster pumps
5. Well Six, located at 12 Moss Rock Drive, New Braunfels, Texas
- (a) Chlorine
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k Chlorinator (manual)
 3. Two (2) Wallace and Tiernan S10k regulators
 4. Two (2) 1-inch Wallace and Tiernan injectors
 5. One (1) Evoqua gas detection system
 6. One (1) Wallace & Tiernan SFC analyzer and controller
 7. One (1) booster pump
6. Well 13, located at 6125 Keller Ridge, New Braunfels, Texas
- (a) Chlorine
 1. Two (2) Wallace and Tiernan S10k chlorinators
 2. Two (2) Wallace and Tiernan 510s regulators
 3. Two (2) 3/4-inch Wallace and Tiernan injectors
7. Trinity Plant, located at 3295 Westpointe, New Braunfels, Texas
- (a) Chlorine
 1. Three (3) Wallace and Tiernan V10k chlorinators
 2. Three (3) Wallace and Tiernan 510s regulators
 3. Two (2) 1-inch Wallace and Tiernan injectors
 4. One (1) booster pump
8. Weltner Road Pump Station, located at 1645 Weltner Road, New Braunfels, Texas
- (a) Chlorine
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k chlorinator (manual)
 3. Two (2) Wallace and Tiernan S10k regulators
 4. Two (2) 1-inch Wallace and Tiernan injectors

5. Two (2) Evoqua gas detection systems
 6. One (1) Wallace & Tiernan SFC analyzer and controller
 7. One (1) emergency chlorine scrubber system
 8. Two (2) booster pumps
9. Green Valley Pump Station, located at 1002 W. Klein Road, New Braunfels, Texas
- (a) Chlorine
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k chlorinator (manual)
 3. Two (2) Wallace and Tiernan S10 regulators
 4. Two (2) 3/4-inch Wallace and Tiernan injectors
 5. One (1) Evoqua gas detection system
10. Aquifer Storage Recovery, located at 1439 Saur Lane, New Braunfels, Texas
- (a) Chlorine
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k chlorinator (manual)
 3. Two (2) Wallace and Tiernan S10 regulators
 4. Two (2) 3/4-inch Wallace and Tiernan injectors
 5. One (1) Evoqua gas detection systems
 6. Two (2) booster pumps
11. North Kuehler Wastewater Treatment Facility, located at 1922 Kuehler Road, New Braunfels, Texas
- (a) Chlorine
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k chlorinator (manual)
 3. Two (2) Wallace and Tiernan 510s regulators
 4. Two (2) 1-inch Wallace and Tiernan injectors
 5. Two (2) submersible chlorine injector pumps and eductors
 6. One (1) RKI Instruments, Inc. Beacon 110 sensor
 - (b) Sulfur Dioxide
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k chlorinator (manual)
 3. Two (2) Wallace and Tiernan 510s regulators
 4. Two (2) 1-inch Wallace and Tiernan injectors
 5. One (1) submersible chlorine injector pump and eductor
 6. One (1) RKI Instruments, Inc. Beacon 110 sensor
12. South Kuehler Wastewater Treatment Facility, located at 2055 Coco Lane, New Braunfels, Texas
- (a) Chlorine
 1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
 2. One (1) Wallace and Tiernan V10k chlorinator (manual)

3. Two (2) Wallace and Tiernan 510s regulators
4. Two (2) 1-inch Wallace and Tiernan injectors
5. Two (2) submersible chlorine injector pumps and eductors

(b) Sulfur Dioxide

1. One (1) Wallace and Tiernan V10k chlorinator (automatic)
2. One (1) Wallace and Tiernan V10k chlorinator (manual)
3. Two (2) Wallace and Tiernan 510s regulators
4. Two (2) 1-inch Wallace and Tiernan injectors
5. One (1) submersible chlorine injector pumps and eductors

- (c) One (1) RKI Instruments, Inc. Beacon 200 sensor with two (2) sensors, one (1) for sulfur dioxide and one (1) for chlorine.

b) Manufacturers of Existing Equipment

1. chlorinator, regulators, and injectors: Wallace and Tiernan or equivalent
2. submersible chlorine injection pumps: Webtrol SS series stainless steel sewage pumps
3. gas detectors: RKI Instruments, Inc.

3) Anticipated services

Services shall fall into the following two categories:

a) Planned annual diagnostic inspections and preventative maintenance services

The Vendor shall perform annual diagnostic inspections and preventative maintenance of the chlorine and sulfur dioxide equipment. This includes inspection of the chlorine and sulfur dioxide equipment, repair or replacement of items with normal wear (e.g., rubber seals, diaphragm, etc.), and testing of the gas detectors.

b) Repairs and replacements as needed

The Vendor shall perform repairs and replacement of chlorine and sulfur dioxide equipment on an as-needed basis as reasonably requested by NBU in writing. For repairs or equipment replacement in excess of \$3,000, the Vendor shall provide NBU with a written repair work scope and estimate, which must be accepted by NBU in writing before the repair or replacement is performed. The Vendor shall provide projected completion and delivery dates with each repair estimate.

4) Annual diagnostic inspection and preventive maintenance

a) The Vendor shall, upon request from NBU, deploy to the specified sites and perform a working inspection and repairs of the existing chlorine and sulfur dioxide equipment in accordance with the system manufacturer's requirements.

b) The Vendor shall service both manual and automatic chlorine and sulfur dioxide equipment. All maintenance shall conform to manufacturer specifications.

c) Generally, the Services are anticipated to be as follows:

1. Assessment/inspection

The inspection shall verify the working condition of the system and gas detectors and that the surrounding piping is properly functioning.

2. Maintenance visit

The Vendor shall provide manufacturer recommended maintenance in accordance with manufacturer specifications, service manuals, and manufacturer's parts manuals. At a minimum, the services performed during a maintenance visit shall include:

- (a) disassembly, inspection, cleaning, and replacement of recommended parts including hoses and preventative maintenance kits. Preventative maintenance kits shall be the original equipment manufacturer kits;
- (b) testing and preventive maintenance services on gas leak detectors; and
- (c) all other preventive maintenance services and parts replacements as needed.

3. During the process of performing the annual preventive maintenance, should the Vendor's service technicians find any parts/equipment damaged or unsuitable for normal operations, the service technician will inform the proper NBU facility personnel of the issue and discuss proper corrective measures. Any parts/equipment damaged due to wear or deemed unsuitable by NBU and not listed in the work order will be replaced at an additional cost to NBU; provided, however, the cost shall not increase the total not to exceed amount in Exhibit B.

d) Maintenance and repair reports

1. For each instance of maintenance or repair, the Vendor shall provide NBU with a written report describing the summary of work, date work was started and completed, repair personnel, equipment identification information, photos, and any other information required by NBU for documenting work.

2. The Vendor shall submit all written reports to NBU within one week of the maintenance or repair completion date.

e) System operation testing

The Vendor shall be responsible for testing and operating the system to ensure it is ready for automatic operation upon completion of maintenance or repair work.

5) NBU's contribution to the project

a) Field Assistance

An NBU representative shall be present with the Vendor while the work is being performed.

b) Site Access

NBU shall provide access to each site and assist the Vendor with accessing the equipment, if necessary, as determined by NBU.

c) Inspection

As determined by NBU, NBU shall provide inspection services, including review and inspection of the Vendor's initial inspection recommendations and completed maintenance services.

Exhibit B

Price List/ Payment Terms

NBU shall pay the Vendor for the Services and goods under this Agreement Total Compensation not to exceed \$120,000 annually and \$600,000 for the duration of the Agreement.

| Services/Items | Unit | Unit Price or Mark-up |
|--|-------------|------------------------------|
| Standard Labor Rate | Hour | \$125.00 |
| Overtime Labor Rate | Hour | \$187.50 |
| Drive Time from Buda to Site and Return* | Hour | \$100.00 |
| Parts and Material Cost Mark-up from Manufacturer's Listed Price | % | 0% |

*If the Vendor completes Services at multiple sites in one day, drive time will further include the drive time between sites.



February 13, 2024

Brent Lundmark
 Water Treatment & Compliance Manager
 New Braunfels Utilities
 1922 Kuehler
 New Braunfels, Texas 78130

Re: Water and Wastewater Chlorine and Sulfur Dioxide System Equipment Maintenance RFP # 24-0031

Dear Mr. Lundmark:

Listed below is the summary of scoring for Water and Wastewater Chlorine and Sulfur Dioxide System Equipment Maintenance request for proposal (RFP). One (1) respondent provided proposals:

| Respondent(s) | Proposal Pricing Structure (40 pts) | Experience with Similar Projects and Personnel (30 pts) | Approach (30 pts) | Total Score (100 pts) |
|----------------------------------|--|--|--------------------------|------------------------------|
| Environmental Improvements, Inc. | 38 | 28 | 28 | 94 |

The proposal was reviewed and based on that evaluation it was recommended that the project be awarded to Environmental Improvements, Inc. as the highest scoring respondent.

If you have any questions or comments, please call me at (512) 646-2238.
 Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.
 TBPE No. F-928

Sean Mason, P.E.



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

From: Bruce Haby **Reviewed by:** Rachel Leier
 Manager Real Estate Director of Legal Services
 Services

Submitted by: Connie Lock **Approved by:** Ryan Kelso
 General Counsel and Chief Chief Executive Officer
 Ethics Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute Professional Services Agreements with (i) Allen, Williford, and Seale, Inc.; (ii) Lowery Property Advisors, LLC; (iii) Titan Commercial Valuation, LLC; and (iv) Dugger Grafe Swanson, Inc., DBA Valbridge Property Advisors/San Antonio, Inc. for Real Property and Easement Appraisal Services for New Braunfels Utilities Capital Improvement Projects

BACKGROUND

On March 6, 2024, New Braunfels Utilities (“NBU”) solicited Statements of Qualification (“SOQs”) from qualified respondents to provide real property and easement appraisal services for NBU capital improvement projects (“Projects”).

On April 4, 2024, NBU received six (6) SOQs for appraisal services. The evaluation team reviewed the statements and recommends selecting the following four (4) qualified respondents: (i) Allen, Williford, and Seale, Inc. (“AWS”), (ii) Lowery Property Advisors, LLC (“LPA”), (iii) Titan Commercial Valuation, LLC (“Titan”), and (iv) Dugger Grafe Swanson, Inc., dba Valbridge Property Advisors/San Antonio, Inc. (“Valbridge”).

The Professional Services Agreements with AWS, LPA, Titan, and Valbridge each have a term of (1) year, with four (4) successive one-year renewal periods (the “Agreements”). Each Agreement has a not-to-exceed amount of \$100,000.00 per year with a total not to exceed amount of \$500,000.00 for the duration of each Agreement.

NBU staff requests that the Board of Trustees approve the Agreements with AWS, LPA, Titan, and Valbridge to provide real property and easement appraisal services for the Projects.

This item is being presented to the Board because the Agreements with AWS, LPA, Titan, and Valbridge will each exceed \$250,000.

FINANCIAL IMPACT

The financial impact of each Agreement is \$100,000 annually and \$500,000 for the duration of each Agreement. The contracts will be funded from the Board-approved budgets for the Projects within fiscal year 2025 through fiscal year 2029.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

Stewardship

EXHIBITS

1. Professional Services Agreement with AWS
2. Professional Services Agreement with LPA
3. Professional Services Agreement with Titan
4. Professional Services Agreement with Valbridge

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 **ALLEN, WILLIFORD, AND SEALE, INC.**, a Texas corporation (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Term of Agreement.

This Agreement will be effective on the latest date subscribed below (the “Effective Date”) and will remain in full force and effect for a period of one (1) year from July 1, 2024 to June 30, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 30, 2029.

Section 2. Scope of Services.

(A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The 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. Standard of Care. As required by Section 271.9041 of the Texas Local Government Code, as amended, all services provided under this Agreement will be performed with the professional skill and care ordinarily provided by competent appraisers under the same or similar circumstances and professional license. The Professional shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent appraiser.

Section 9. Indemnification.

(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.9041 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:

- i. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY THE PROFESSIONAL, ITS AGENT, EMPLOYEE, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;**
- ii. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF PROFESSIONAL'S STANDARD OF CARE, BY THE**

PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;

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

(B) REIMBURSEMENT OF NBU'S FEES IN DEFENSE OF CLAIMS. TO THE EXTENT NBU INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST NBU THAT ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF THE PROFESSIONAL DESCRIBED IN THIS SECTION, THE PROFESSIONAL SHALL REIMBURSE NBU ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE PROFESSIONAL'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

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

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be

applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers' Compensation and Employer's Liability Insurance. The Professional shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

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

Section 11. Termination.

(A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The

Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

(C) Non-Collusion. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

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

Section 12. Miscellaneous.

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

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

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

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

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

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

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

(H) No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.

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

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

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

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

(M) Offset.

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

(N) Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the

party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities
 Attn: Real Estate Manager
 355 FM 306
 New Braunfels, TX 78130

With copy to:

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

If to the Professional:

Allen, Williford, and Seale, Inc.
 11999 Katy Freeway
 Suite 400
 Houston, TX 77079

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

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

(P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

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

Section 16. Information Technology

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

(B) Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **TO THE EXTENT PERMITTED BY SECTION 271.9041 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, ANY TIER OF SUBCONTRACTOR, OR ANY ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.**

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

PROFESSIONAL:

ALLEN, WILLIFORD, AND SEALE, INC.
a Texas corporation

By: _____
Name: _____
Title: _____

Exhibit A

Services

The Professional shall (i) perform real estate appraisal services for properties that NBU identifies and (ii) provide appraisal reports to document the findings in a format acceptable to NBU (the “Services”). The Professional shall perform the Services as described in the Appraiser’s Task Matrix attached in this Exhibit.

In addition to the Services, the Professional shall comply with the procedures described herein.

1. An NBU real estate services department representative shall send an email request to the Professional for the Services. The following information shall be contained in the body of the email or in an attachment(s) to the email request:
 - a. the legal description of the property to be appraised;
 - b. any surveys in NBU’s possession of any subset or component of the property relevant to NBU’s request (example: a proposed easement);
 - c. a brief synopsis of the basis for the request;
 - d. details about specific items NBU shall consider in connection with its request for the Services (examples: damages to trees, crops, property improvements, etc.); and
 - e. required completion dates, when a specific or expedited schedule is required.
2. Within twenty-four (24) hours of the Professional’s receipt of an NBU email order, the Professional shall contact NBU to confirm all requirements of the order and to communicate any inability to meet the required completion date. If the Professional is not able to meet the required completion date, NBU reserves the right to cancel the order and place it with an alternative professional or negotiate a new completion date.
3. The Professional shall be responsible for (i) notifying the property owner regarding the Services and (ii) securing any necessary access to the property in question prior to the performance of an appraisal. NBU shall provide property owner contact information if available and not identified as confidential. In cases where NBU cannot provide this information, the Professional shall identify the owner and secure permission to access the property for the purposes of conducting the Services. If the Professional is unable to identify a property owner, the Professional shall contact NBU for direction regarding further action for the order.
4. Within five (5) business days of receiving a request for the Services, the Professional shall compile a cost estimate for the Services requested (“Quote”) and submit the Quote to the NBU real estate services department by email. The Quote shall include a cost breakdown that utilizes the rates contained in the Agreement and the date by which the Professional shall complete the subject Services for NBU.
5. The Professional shall proceed with the Services described in the Quote upon NBU’s written acceptance of the Quote, which shall be communicated to the Professional by NBU in writing or by email.

6. Upon completion of all required appraisal tasks, the Professional shall complete an appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice and submit the preliminary report to the NBU real estate services department by email.
7. The report shall be subject to NBU's reasonable acceptance. NBU shall review the preliminary report. If the report is acceptable, NBU shall request finalization of the report within five (5) working days from the date of NBU acceptance.
8. The Professional's delivery of the finalized report shall be submitted via email. The receipt of the finalized report by NBU shall constitute completion of the Services for a specific order.

If no other deadline is specified in the Quote, the Professional shall submit completed reports no later than forty-five (45) calendar days from the date the Quote for the subject Services is accepted by NBU. The Professional shall communicate in writing any perceived conflicts with deadlines prior to accepting and performing the Services.

Unless otherwise specified by NBU, the Professional shall keep a record copy of each final appraisal report for ten (10) years.

Appraiser's Task Matrix

| Task No. | Task Description | Task Purpose |
|----------|--|---|
| 1 | Receive Acceptance of Quote from NBU | Authorizes the work to begin an appraisal |
| 2 | Review plat maps, parcel sketches, and other data associated with the subject property or parcel | Identify the relevant characteristics and attributes of the property being appraised |
| 3 | Contact property owner and view subject property | Gives the property owner the opportunity to accompany the appraiser when the property is viewed. If a property owner does not respond, then the property shall be valued using aerial imagery and viewing the property through public thoroughfares |
| 4 | Determine the Scope of Work | Determines the type and extent of research and analysis required for the appraisal |
| 5 | Gather the appropriate market data including comparable sales, | Collect all necessary market data for credible assignment results |

| | | |
|---|--|---|
| | construction costs, depreciation, comparable rentals, operating expenses, and capitalization rates | |
| 6 | Confirm the comparable data with Multiple Listing Service (“MLS”), local real estate agents, buyers, sellers, other appraisers, and public records, and through field viewings | Verify all information necessary for credible assignment results |
| 7 | Apply the Cost, Sales Comparison, and Income Capitalization approaches, as applicable, to arrive at an opinion of the market for the subject property. For a partial acquisition, appraiser shall value the whole property, the part to be acquired, and the remainder before and after the acquisition in order to arrive at an opinion of the total compensation due to the property owner | Analyze all appropriate approaches necessary to indicate a value conclusion. The steps for a partial acquisition are necessary to comply with the laws of Texas |
| 8 | In the case of a partial acquisition, the property shall be thoroughly investigated in order to determine whether there are improvements within the acquisition, whether there are any costs to cure due to the owner as a result of the acquisition, and to determine whether there are any damages to the remainder property resulting from the acquisition | To determine any special benefits and/or damages to the remainder property in accordance with the laws of Texas |
| 9 | The appraisal shall be prepared in Accordance | To meet the requirements of the appraisal development process in order to produce a credible appraisal |

| | | |
|----|--|--|
| | with Standard of the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by the Appraisal Standards Board of the Appraisal Foundation, the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and all applicable federal, state, and local laws | |
| 10 | The appraisal shall be conveyed in an appraisal report that conforms with Standard Rule 2-2(a) of USPAP | To communicate the analysis, opinion and conclusion in a manner that is not misleading |
| 11 | Transmit Final Report to NBU | Completes NBU order for an appraisal |

Exhibit B

Compensation

The Professional shall provide pricing for each appraisal order. In the case of an order for multiple appraisals, the Professional shall provide a breakdown for each parcel that needs an appraisal. NBU has allocated a not to exceed amount of \$100,000 per year for the Services under this Agreement and a total not to exceed amount of \$500,000 for the duration of the Agreement.

| APPRAISAL SERVICES | |
|--------------------------------------|--------------------|
| TITLE | HOURLY RATE |
| Principal Appraiser | \$300 |
| Appraiser Associate | \$200 |
| Review Appraiser | \$250 |
| Research/Mapping | \$150 |
| Administrative Assistant | \$100 |
| | |
| CONDEMNATION SUPPORT SERVICES | |
| TITLE | HOURLY RATE |
| Principal Appraiser | \$350 |
| Appraiser Associate | \$200 |
| Review Appraiser | \$250 |
| Research/Mapping | \$150 |
| Administrative Assistant | \$100 |
| | |
| EXPERT WITNESS | |
| TITLE | HOURLY RATE |
| Principal Appraiser | \$350 |
| Appraiser Associate | \$200 |
| Review Appraiser | \$250 |
| Research/Mapping | \$150 |
| Administrative Assistant | \$100 |

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 **LOWERY PROPERTY ADVISORS, LLC**, a Texas limited liability company (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Term of Agreement.

This Agreement will be effective on the latest date subscribed below (the “Effective Date”) and will remain in full force and effect for a period of one (1) year July 1, 2024 to June 30, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 30, 2029.

Section 2. Scope of Services.

(A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The 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. Standard of Care. As required by Section 271.9041 of the Texas Local Government Code, as amended, all services provided under this Agreement will be performed with the professional skill and care ordinarily provided by competent appraisers under the same or similar circumstances and professional license. The Professional shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent appraiser.

Section 9. Indemnification.

(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.9041 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:

- i. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY THE PROFESSIONAL, ITS AGENT, EMPLOYEE, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;**
- ii. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF PROFESSIONAL'S STANDARD OF CARE, BY THE**

PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;

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

(B) REIMBURSEMENT OF NBU'S FEES IN DEFENSE OF CLAIMS. TO THE EXTENT NBU INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST NBU THAT ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF THE PROFESSIONAL DESCRIBED IN THIS SECTION, THE PROFESSIONAL SHALL REIMBURSE NBU ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE PROFESSIONAL'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

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

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be

applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers' Compensation and Employer's Liability Insurance. The Professional shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

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

Section 11. Termination.

(A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The

Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

(C) Non-Collusion. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

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

Section 12. Miscellaneous.

- (A) Independent Contractor. The Professional acknowledges that the Professional is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Professional shall not represent, either expressly or through implication, that the Professional is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Professional.
- (B) Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- (C) Compliance with Laws. The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish satisfactory proof of compliance to NBU.
- (D) Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.
- (E) Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- (F) Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- (G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

(H) No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.

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

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

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

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

(M) Offset.

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

(N) Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the

party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities
 Attn: Real Estate Manager
 355 FM 306
 New Braunfels, TX 78130

With copy to:

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

If to the Professional:

Lowery Property Advisors, LLC
 105 Decker Ct.
 Suite 1000
 Irving, TX 75062

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

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

(P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

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

Section 16. Information Technology

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

(B) Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **TO THE EXTENT PERMITTED BY SECTION 271.9041 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, ANY TIER OF SUBCONTRACTOR, OR ANY ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.**

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

PROFESSIONAL:

LOWERY PROPERTY ADVISORS, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Services

The Professional shall (i) perform real estate appraisal services for properties that NBU identifies and (ii) provide appraisal reports to document the findings in a format acceptable to NBU (the “Services”). The Professional shall perform the Services as described in the Appraiser’s Task Matrix attached in this Exhibit.

In addition to the Services, the Professional shall comply with the procedures described herein.

1. An NBU real estate services department representative shall send an email request to the Professional for the Services. The following information shall be contained in the body of the email or in an attachment(s) to the email request:
 - a. the legal description of the property to be appraised;
 - b. any surveys in NBU’s possession of any subset or component of the property relevant to NBU’s request (example: a proposed easement);
 - c. a brief synopsis of the basis for the request;
 - d. details about specific items NBU shall consider in connection with its request for the Services (examples: damages to trees, crops, property improvements, etc.); and
 - e. required completion dates, when a specific or expedited schedule is required.
2. Within twenty-four (24) hours of the Professional’s receipt of an NBU email order, the Professional shall contact NBU to confirm all requirements of the order and to communicate any inability to meet the required completion date. If the Professional is not able to meet the required completion date, NBU reserves the right to cancel the order and place it with an alternative professional or negotiate a new completion date.
3. The Professional shall be responsible for (i) notifying the property owner regarding the Services and (ii) securing any necessary access to the property in question prior to the performance of an appraisal. NBU shall provide property owner contact information if available and not identified as confidential. In cases where NBU cannot provide this information, the Professional shall identify the owner and secure permission to access the property for the purposes of conducting the Services. If the Professional is unable to identify a property owner, the Professional shall contact NBU for direction regarding further action for the order.
4. Within five (5) business days of receiving a request for the Services, the Professional shall compile a cost estimate for the Services requested (“Quote”) and submit the Quote to the NBU real estate services department by email. The Quote shall include a cost breakdown that utilizes the rates contained in the Agreement and the date by which the Professional shall complete the subject Services for NBU.
5. The Professional shall proceed with the Services described in the Quote upon NBU’s written acceptance of the Quote, which shall be communicated to the Professional by NBU in writing or by email.

6. Upon completion of all required appraisal tasks, the Professional shall complete an appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice and submit the preliminary report to the NBU real estate services department by email.
7. The report shall be subject to NBU's reasonable acceptance. NBU shall review the preliminary report. If the report is acceptable, NBU shall request finalization of the report within five (5) working days from the date of NBU acceptance.
8. The Professional's delivery of the finalized report shall be submitted via email. The receipt of the finalized report by NBU shall constitute completion of the Services for a specific order.

If no other deadline is specified in the Quote, the Professional shall submit completed reports no later than forty-five (45) calendar days from the date the Quote for the subject Services is accepted by NBU. The Professional shall communicate in writing any perceived conflicts with deadlines prior to accepting and performing the Services.

Unless otherwise specified by NBU, the Professional shall keep a record copy of each final appraisal report for ten (10) years.

Appraiser's Task Matrix

| Task No. | Task Description | Task Purpose |
|----------|--|---|
| 1 | Receive Acceptance of Quote from NBU | Authorizes the work to begin an appraisal |
| 2 | Review plat maps, parcel sketches, and other data associated with the subject property or parcel | Identify the relevant characteristics and attributes of the property being appraised |
| 3 | Contact property owner and view subject property | Gives the property owner the opportunity to accompany the appraiser when the property is viewed. If a property owner does not respond, then the property shall be valued using aerial imagery and viewing the property through public thoroughfares |
| 4 | Determine the Scope of Work | Determines the type and extent of research and analysis required for the appraisal |
| 5 | Gather the appropriate market data including comparable sales, | Collect all necessary market data for credible assignment results |

| | | |
|---|--|---|
| | construction costs, depreciation, comparable rentals, operating expenses, and capitalization rates | |
| 6 | Confirm the comparable data with Multiple Listing Service (“MLS”), local real estate agents, buyers, sellers, other appraisers, and public records, and through field viewings | Verify all information necessary for credible assignment results |
| 7 | Apply the Cost, Sales Comparison, and Income Capitalization approaches, as applicable, to arrive at an opinion of the market for the subject property. For a partial acquisition, appraiser shall value the whole property, the part to be acquired, and the remainder before and after the acquisition in order to arrive at an opinion of the total compensation due to the property owner | Analyze all appropriate approaches necessary to indicate a value conclusion. The steps for a partial acquisition are necessary to comply with the laws of Texas |
| 8 | In the case of a partial acquisition, the property shall be thoroughly investigated in order to determine whether there are improvements within the acquisition, whether there are any costs to cure due to the owner as a result of the acquisition, and to determine whether there are any damages to the remainder property resulting from the acquisition | To determine any special benefits and/or damages to the remainder property in accordance with the laws of Texas |
| 9 | The appraisal shall be prepared in Accordance | To meet the requirements of the appraisal development process in order to produce a credible appraisal |

| | | |
|----|--|--|
| | with Standard of the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by the Appraisal Standards Board of the Appraisal Foundation, the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and all applicable federal, state, and local laws | |
| 10 | The appraisal shall be conveyed in an appraisal report that conforms with Standard Rule 2-2(a) of USPAP | To communicate the analysis, opinion and conclusion in a manner that is not misleading |
| 11 | Transmit Final Report to NBU | Completes NBU order for an appraisal |

Exhibit B

Compensation

The Professional shall provide pricing for each appraisal order. In the case of an order for multiple appraisals, the Professional shall provide a breakdown for each parcel that needs an appraisal. NBU has allocated a not to exceed amount of \$100,000 per year for the Services under this Agreement and a total not to exceed amount of \$500,000 for the duration of the Agreement.

| APPRAISAL SERVICES | |
|--------------------------------------|--------------------|
| TITLE | HOURLY RATE |
| Principal Appraiser | \$250 |
| Appraiser Associate | \$250 |
| Review Appraiser | \$250 |
| Research/Mapping | \$150 |
| Administrative Assistant | \$150 |
| | |
| CONDEMNATION SUPPORT SERVICES | |
| TITLE | HOURLY RATE |
| Principal Appraiser | \$250 |
| Appraiser Associate | \$250 |
| Review Appraiser | \$250 |
| Research/Mapping | \$150 |
| Administrative Assistant | \$150 |
| | |
| EXPERT WITNESS | |
| TITLE | HOURLY RATE |
| Principal Appraiser | \$250 |
| Appraiser Associate | \$250 |
| Review Appraiser | \$250 |
| Research/Mapping | \$150 |
| Administrative Assistant | \$150 |

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 **DUGGER GRAFE SWANSON, INC. DBA VALBRIDGE PROPERTY ADVISORS/SAN ANTONIO, INC.**, a Texas corporation (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Term of Agreement.

This Agreement will be effective on the latest date subscribed below (the “Effective Date”) and will remain in full force and effect for a period of one (1) year from July 1, 2024, to June 30, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 30, 2029.

Section 2. Scope of Services.

(A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The 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. Standard of Care. As required by Section 271.9041 of the Texas Local Government Code, as amended, all services provided under this Agreement will be performed with the professional skill and care ordinarily provided by competent appraisers under the same or similar circumstances and professional license. The Professional shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent appraiser.

Section 9. Indemnification.

(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.9041 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:

- i. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY THE PROFESSIONAL, ITS AGENT, EMPLOYEE, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;**
- ii. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF PROFESSIONAL'S STANDARD OF CARE, BY THE**

PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;

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

(B) REIMBURSEMENT OF NBU'S FEES IN DEFENSE OF CLAIMS. TO THE EXTENT NBU INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST NBU THAT ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF THE PROFESSIONAL DESCRIBED IN THIS SECTION, THE PROFESSIONAL SHALL REIMBURSE NBU ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE PROFESSIONAL'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

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

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be

applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers' Compensation and Employer's Liability Insurance. The Professional shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

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

Section 11. Termination.

(A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The

Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

(C) Non-Collusion. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

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

Section 12. Miscellaneous.

- (A) Independent Contractor. The Professional acknowledges that the Professional is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Professional shall not represent, either expressly or through implication, that the Professional is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Professional.
- (B) Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- (C) Compliance with Laws. The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish satisfactory proof of compliance to NBU.
- (D) Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.
- (E) Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- (F) Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- (G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

(H) No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.

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

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

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

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

(M) Offset.

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

(N) Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the

party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities
 Attn: Real Estate Manager
 355 FM 306
 New Braunfels, TX 78130

With copy to:

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

If to the Professional:

Dugger Grafe Swanson, Inc. dba Valbridge Property Advisors/San Antonio, Inc.
 9901 W Interstate 10
 Suite 1035
 San Antonio, TX 78230

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

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

(P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

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

Section 16. Information Technology

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

(B) Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **TO THE EXTENT PERMITTED BY SECTION 271.9041 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, ANY TIER OF SUBCONTRACTOR, OR ANY ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.**

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

PROFESSIONAL:

DUGGER GRAFE SWANSON, INC. dba VALBRIDGE PROPERTY ADVISORS/SAN ANTONIO, INC.,
a Texas corporation

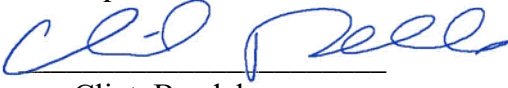
By: 
Name: _Clint Bendele_____
Title: Senior Managing Director

Exhibit A

Services

The Professional shall (i) perform real estate appraisal services for properties that NBU identifies and (ii) provide appraisal reports to document the findings in a format acceptable to NBU (the “Services”). The Professional shall perform the Services as described in the Appraiser’s Task Matrix attached in this Exhibit.

In addition to the Services, the Professional shall comply with the procedures described herein.

1. An NBU real estate services department representative shall send an email request to the Professional for the Services. The following information shall be contained in the body of the email or in an attachment(s) to the email request:
 - a. the legal description of the property to be appraised;
 - b. any surveys in NBU’s possession of any subset or component of the property relevant to NBU’s request (example: a proposed easement);
 - c. a brief synopsis of the basis for the request;
 - d. details about specific items NBU shall consider in connection with its request for the Services (examples: damages to trees, crops, property improvements, etc.); and
 - e. required completion dates, when a specific or expedited schedule is required.
2. Within twenty-four (24) hours of the Professional’s receipt of an NBU email order, the Professional shall contact NBU to confirm all requirements of the order and to communicate any inability to meet the required completion date. If the Professional is not able to meet the required completion date, NBU reserves the right to cancel the order and place it with an alternative professional or negotiate a new completion date.
3. The Professional shall be responsible for (i) notifying the property owner regarding the Services and (ii) securing any necessary access to the property in question prior to the performance of an appraisal. NBU shall provide property owner contact information if available and not identified as confidential. In cases where NBU cannot provide this information, the Professional shall identify the owner and secure permission to access the property for the purposes of conducting the Services. If the Professional is unable to identify a property owner, the Professional shall contact NBU for direction regarding further action for the order.
4. Within five (5) business days of receiving a request for the Services, the Professional shall compile a cost estimate for the Services requested (“Quote”) and submit the Quote to the NBU real estate services department by email. The Quote shall include a cost breakdown that utilizes the rates contained in the Agreement and the date by which the Professional will deliver the requested Services to NBU.
5. The Professional shall proceed with the Services described in the Quote upon NBU’s written acceptance of the Quote, which shall be communicated to the Professional by NBU in writing or by email.

6. Upon completion of all required appraisal tasks, the Professional shall complete an appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice and submit the preliminary report to the NBU real estate services department by email.
7. The report shall be subject to NBU's reasonable acceptance. NBU shall review the preliminary report. If the report is acceptable, NBU shall request finalization of the report within five (5) working days from the date of NBU acceptance.
8. The Professional's delivery of the finalized report shall be submitted via email. The receipt of the finalized report by NBU shall constitute completion of the Services for a specific order.

If no other deadline is specified in the Quote, the Professional shall submit completed reports no later than forty-five (45) calendar days from the date the Quote for the subject Services is accepted by NBU. The Professional shall communicate in writing any perceived conflicts with deadlines prior to accepting and performing the Services.

Unless otherwise specified by NBU, the Professional shall keep a record copy of each final appraisal report for ten (10) years.

Appraiser's Task Matrix

| Task No. | Task Description | Task Purpose |
|----------|--|---|
| 1 | Receive Acceptance of Quote from NBU | Authorizes the work to begin an appraisal |
| 2 | Review plat maps, parcel sketches, and other data associated with the subject property or parcel | Identify the relevant characteristics and attributes of the property being appraised |
| 3 | Contact property owner and view subject property | Gives the property owner the opportunity to accompany the appraiser when the property is viewed. If a property owner does not respond, then the property shall be valued using aerial imagery and viewing the property through public thoroughfares |
| 4 | Determine the Scope of Work | Determines the type and extent of research and analysis required for the appraisal |
| 5 | Gather the appropriate market data including comparable sales, | Collect all necessary market data for credible assignment results |

| | | |
|---|--|---|
| | construction costs, depreciation, comparable rentals, operating expenses, and capitalization rates | |
| 6 | Confirm the comparable data with Multiple Listing Service (“MLS”), local real estate agents, buyers, sellers, other appraisers, and public records, and through field viewings | Verify all information necessary for credible assignment results |
| 7 | Apply the Cost, Sales Comparison, and Income Capitalization approaches, as applicable, to arrive at an opinion of the market for the subject property. For a partial acquisition, appraiser shall value the whole property, the part to be acquired, and the remainder before and after the acquisition in order to arrive at an opinion of the total compensation due to the property owner | Analyze all appropriate approaches necessary to indicate a value conclusion. The steps for a partial acquisition are necessary to comply with the laws of Texas |
| 8 | In the case of a partial acquisition, the property shall be thoroughly investigated in order to determine whether there are improvements within the acquisition, whether there are any costs to cure due to the owner as a result of the acquisition, and to determine whether there are any damages to the remainder property resulting from the acquisition | To determine any special benefits and/or damages to the remainder property in accordance with the laws of Texas |
| 9 | The appraisal shall be prepared in Accordance | To meet the requirements of the appraisal development process in order to produce a credible appraisal |

| | | |
|----|--|--|
| | with Standard of the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by the Appraisal Standards Board of the Appraisal Foundation, the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and all applicable federal, state, and local laws | |
| 10 | The appraisal shall be conveyed in an appraisal report that conforms with Standard Rule 2-2(a) of USPAP | To communicate the analysis, opinion and conclusion in a manner that is not misleading |
| 11 | Transmit Final Report to NBU | Completes NBU order for an appraisal |

Exhibit B

Compensation

The Professional shall provide pricing for each appraisal order. In the case of an order for multiple appraisals, the Professional shall provide a breakdown for each parcel that needs an appraisal. NBU has allocated a not to exceed amount of \$100,000 per year for the Services under this Agreement and a total not to exceed amount of \$500,000 for the duration of the Agreement.

| APPRAISAL SERVICES | |
|--------------------------------------|--------------------|
| TITLE | HOURLY RATE |
| Principal Appraiser | \$240 |
| Appraiser Associate | \$170 |
| Review Appraiser | \$240 |
| Research/Mapping | \$130 |
| Administrative Assistant | \$85 |
| | |
| CONDEMNATION SUPPORT SERVICES | |
| TITLE | HOURLY RATE |
| Principal Appraiser | \$240 |
| Appraiser Associate | \$170 |
| Review Appraiser | \$240 |
| Research/Mapping | \$130 |
| Administrative Assistant | \$85 |
| | |
| EXPERT WITNESS | |
| TITLE | HOURLY RATE |
| Principal Appraiser | \$270 |
| Appraiser Associate | \$200 |
| Review Appraiser | \$270 |
| Research/Mapping | \$160 |
| Administrative Assistant | \$115 |

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 **TITAN COMMERCIAL VALUATION, LLC**, a Texas Limited Liability Company (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 271.9041 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).

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 September 2, 2024, to September 1, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond August 31, 2029

Section 2. Scope of Services.

(A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The 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. Standard of Care. As required by Section 271.9041 of the Texas Local Government Code, as amended, all services provided under this Agreement will be performed with the professional skill and care ordinarily provided by competent appraisers under the same or similar circumstances and professional license. The Professional shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent appraiser.

Section 9. Indemnification.

(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.9041 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:

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

(B) REIMBURSEMENT OF NBU'S FEES IN DEFENSE OF CLAIMS. TO THE EXTENT NBU INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST NBU THAT ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF THE PROFESSIONAL DESCRIBED IN THIS SECTION, THE PROFESSIONAL SHALL REIMBURSE NBU ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE PROFESSIONAL'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

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

Section 10. Insurance.

(A) General.

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

(subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.
- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be

specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional’s owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers’ Compensation and Employer’s Liability Insurance. The Professional shall maintain Workers’ Compensation insurance to cover the Professional’s employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

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

Section 11. Termination.

(A) For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services

performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

(C) Non-Collusion. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement.

The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

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

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

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

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

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

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

(G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and

superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

(H) No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.

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

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

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

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

(M) Offset.

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

- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.

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

If to NBU:

New Braunfels Utilities
 Attn: Real Estate Manager
 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:

Titan Commercial Valuation, LLC
 8820 Business Park Drive
 Suite 400
 Austin, TX 78759

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

(O) Confidentiality of Records. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under

this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

(P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the

relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

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

Section 16. Information Technology

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

(B) Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **TO THE EXTENT PERMITTED BY SECTION 271.9041 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, ANY TIER OF SUBCONTRACTOR, OR ANY ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.**

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

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

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

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

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

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

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

- ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

(B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

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

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

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

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

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

Section 22. Texas Public Information Act. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its

obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This 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.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the 28th day of May, 2024.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: CEO

PROFESSIONAL:
Titan Commercial Valuation, LLC
a Texas Limited Liability Company

By: Todd Milligan _____
Name: Todd Milligan
Title: Principal

Exhibit A

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Services

The Professional shall (i) perform real estate appraisal services for properties that NBU identifies and (ii) provide appraisal reports to document the findings in a format acceptable to NBU (the "Services"). The Professional shall perform the Services as described in the Appraiser's Task Matrix attached in this Section.

In addition to the Services, The Professional shall comply with the procedures described herein.

1. An NBU real estate services department representative shall send an email request to The Professional for the Services. The following information shall be contained in the body of the email or in an attachment(s) to the email request:
 - a. the legal description of the property to be appraised;
 - b. any surveys in NBU's possession of any subset or component of the property relevant to NBU's request (example: a proposed easement);
 - c. a brief synopsis of the basis for the request;
 - d. details about specific items NBU shall consider in connection with its request for the Services (examples: damages to trees, crops, property improvements, etc.); and
 - e. required completion dates, when a specific or expedited schedule is required.
2. Within twenty-four (24) hours of The Professional's receipt of an NBU email order, The Professional shall contact NBU to confirm all requirements of the order and to communicate any inability to meet the required completion date. If the Professional is not able to meet the required completion date, NBU reserves the right to cancel the order and place it with an alternative professional or negotiate a new completion date.
3. The Professional shall be responsible for (i) notifying the property owner regarding the Services and (ii) securing any necessary access to the property in question prior to the performance of an appraisal. NBU shall provide property owner contact information if available and not identified as confidential. In cases where NBU cannot provide this information, The Professional shall identify the owner and secure permission to access the property for the purposes of conducting the Services. If the Professional is unable to identify a property owner, The Professional shall contact NBU for direction regarding further action for the order.
4. Within five (5) business days of receiving a request for the Services, The Professional shall compile a cost estimate for the Services requested and submit the estimate to the NBU real estate services department by email. The estimate shall include a cost breakdown that utilizes the rates contained in the professional services agreement executed by NBU and The Professional.
5. NBU shall issue a purchase order ("PO") for the Services. Receipt of the PO by The Professional shall constitute the official notice to proceed.

6. Upon completion of all required appraisal tasks, The Professional shall complete an appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice and submit the preliminary report to the NBU real estate services department by email.
7. The report shall be subject to NBU's reasonable acceptance. NBU shall review the preliminary report. If the report is acceptable, NBU shall request finalization of the report within five (5) working days from the date of NBU acceptance.
8. The Professional's delivery of the finalized report shall be submitted via email. The receipt of the finalized report by NBU shall constitute completion of the Services for a specific order.

If no other deadline is specified in NBU's email order request, The Professional shall submit completed reports no later than forty-five (45) calendar days from the order receipt date. The Professional shall communicate in writing any perceived conflicts with deadlines prior to accepting and performing the Services.

Unless otherwise specified by NBU, The Professional shall keep a record copy of each final appraisal report for ten (10) years.

Appraiser's Task Matrix

| Task No. | Task Description | Task Purpose |
|----------|--|---|
| 1 | Receive Notice to Proceed (Purchase Order) from NBU | Authorizes the work to begin an appraisal |
| 2 | Review plat maps, parcel sketches, and other data associated with the subject property or parcel | Identify the relevant characteristics and attributes of the property being appraised |
| 3 | Contact property owner and view subject property | Gives the property owner the opportunity to accompany the appraiser when the property is viewed. If a property owner does not respond, then the property shall be valued using aerial imagery and viewing the property through public thoroughfares |
| 4 | Determine the Scope of Work | Determines the type and extent of research and analysis required for the appraisal |
| 5 | Gather the appropriate market data including comparable sales, | Collect all necessary market data for credible assignment results |

| | | |
|---|--|---|
| | construction costs, depreciation, comparable rentals, operating expenses, and capitalization rates | |
| 6 | Confirm the comparable data with Multiple Listing Service (“MLS”), local real estate agents, buyers, sellers, other appraisers, and public records, and through field viewings | Verify all information necessary for credible assignment results |
| 7 | Apply the Cost, Sales Comparison, and Income Capitalization approaches, as applicable, to arrive at an opinion of the market for the subject property. For a partial acquisition, appraiser shall value the whole property, the part to be acquired, and the remainder before and after the acquisition in order to arrive at an opinion of the total compensation due to the property owner | Analyze all appropriate approaches necessary to indicate a value conclusion. The steps for a partial acquisition are necessary to comply with the laws of Texas |
| 8 | In the case of a partial acquisition the property shall be thoroughly investigated in order to determine whether there are improvements within the acquisition, whether there are any costs to cure due to the owner as a result of the acquisition, and to determine whether there are any damages to the remainder property resulting from the acquisition | To determine any special benefits and/or damages to the remainder property in accordance with the laws of Texas |
| 9 | The appraisal shall be prepared in Accordance | To meet the requirements of the appraisal development process in order to produce a credible appraisal |

| | | |
|----|--|--|
| | with Standard of the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by the Appraisal Standards Board of the Appraisal Foundation, the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and all applicable federal, state, and local laws | 28th |
| 10 | The appraisal shall be conveyed in an appraisal report that conforms with Standard Rule 2-2(a) of USPAP | To communicate the analysis, opinion and conclusion in a manner that is not misleading |
| 11 | Transmit Final Report to NBU | Completes NBU order for an appraisal |

Exhibit B

M

Compensation

The Professional shall provide pricing for each appraisal order. In the case of an order for multiple appraisals, the Professional shall provide a breakdown for each parcel needing an appraisal. NBU has allocated a not to exceed amount of \$100,000.00 per year for the Services under this Agreement, with a total not to exceed amount of \$500,000.



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

From: Laura Rivers
Chief of Staff **Reviewed by:** Laura Rivers
Chief of Staff

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Public Relations Advertising Company dba Vladimir Jones for Communication and Marketing Support Services

BACKGROUND

On December 7, 2023, NBU and Public Relations Advertising Company dba Vladimir Jones (the “Professional”) entered into a Professional Services Agreement (the “Agreement”) for all labor, material, and equipment necessary to provide (i) a three-year strategic communication and marketing plan to be completed within 90 days after the effective date, and (ii) account management, public relations services, crisis communication, digital/media services, creative services, and strategic insight services to be provided on an hourly basis within one year after the effective date (the “Services”);

Working with the Professional, NBU has created a three-year communication plan that focuses on humanizing NBU’s communication to its customers by implementing industry best practices such as the PESO Model.

In order to engage a consultant to assist with rebuilding NBU’s brand, a request for proposals (“RFP”) was issued on May 24, 2024, and in response, received nine (9) proposals to the RFP. NBU staff evaluated the proposals and selected Public Relations Advertising Company dba Vladimir Jones (“the Professional”) as the consultant, considering the relative importance of price and the other evaluation factors included in the RFP.

The Professional will assist with rebuilding NBU’s brand by following the brand dimensions in the three-year marketing and communication plan, which will expand and enhance customer and stakeholder understanding of NBU’s value to the community and improve communication with customers and employees. NBU is engaging the Professional to consult and assist with strategic communication and provide marketing support services to effectively engage customers and implement best practices to disseminate information proactively to improve customer and employee communications.

NBU staff recommends that the NBU Board approve a Professional Services Agreement with Public Relations Advertising Company dba Vladimir Jones. This agreement is being presented to the Board because the total amount of the agreement exceeds \$250,000.

FINANCIAL IMPACT

The total financial impact of the Agreement with Public Relations Advertising Company dba Vladimir Jones is not to exceed \$1,300,000.00 per year and not to exceed \$6,500,000.00 for the term of the Contract.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

1. Professional Services Agreement with Public Relations Advertising Company Dba Vladimir Jones

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 **PUBLIC RELATIONS ADVERTISING COMPANY DBA VLADIMIR JONES**, a Colorado corporation authorized to transact business in the State of Texas (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Term of Agreement. This Agreement 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 July 1, 2024, to June 30, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 30, 2029.

Section 2. Scope of Services.

(A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The scope of work described in the Services constitutes the “Project.”

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

(C) The Professional shall perform the Services in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Professional may rely upon the accuracy of reports and surveys provided to it by NBU except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) Amount. The Professional shall be paid the amount set forth in Exhibit B as described herein.

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

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

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

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

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

Section 5. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by NBU shall be delivered to and become the property of NBU. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to NBU without restriction or limitation on the further use of such materials; however, such materials are not intended or represented to be suitable for reuse by NBU or others. Any reuse of the materials related to the Services without prior verification or adaptation by the Professional for the specific purpose intended will be at NBU's sole risk and without liability to the Professional. Where applicable, the Professional shall retain all pre-existing proprietary rights in the materials provided to NBU but shall grant to NBU a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at the Professional's expense, have copies made of the documents or any other data furnished to NBU under or pursuant to this Agreement.

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

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

Section 8. Performance Warranty. The Professional warrants that the Services provided under this Agreement shall conform to the professional standards performed by professionals regularly rendering this type of service.

Section 9. Indemnification. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE OR AGENT THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY"), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER ("CLAIMS"), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE GOODS OR SERVICES PROVIDED BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH BELOW SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be

applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$500,000 for each occurrence and a \$500,000 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. 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: Chief Administrative Officer
 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:

Vladimir Jones
 2 N Nevada Ave., Suite 1400
 Colorado Springs, CO 80903

or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in

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

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

(P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

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

Section 16. Information Technology

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

(B) Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.

(C) Data Security. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Professional

must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **THE PROFESSIONAL SHALL INDEMNIFY, DEFEND, AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM THE PROFESSIONAL’S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.**

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

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

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

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

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

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

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

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

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

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

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

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

Section 22. Texas Public Information Act. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This 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 14 day of JUNE, 2024.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

PROFESSIONAL:
PUBLIC RELATIONS ADVERTISING COMPANY
DBA VLADIMIR JONES,
a Colorado corporation authorized to
transact business in the State of Texas

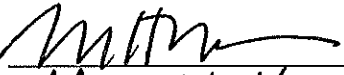
By: 
Name: Meredith Vaughan
Title: CEO

Exhibit A

Services

I. Background

- A. NBU has identified the need to expand and enhance customer and stakeholder understanding of NBU's value to the community and improve communication with customers and employees. NBU is engaging the Professional to consult and assist with strategic communication and provide marketing support services to effectively engage customers and implement best practices to disseminate information proactively to improve customer and employee communications.
- B. NBU's team will support the Professional by actively participating in collaborative discussions, establishing clear communication channels, providing necessary approvals, directing the Professional in the implementation of NBU's three-year communication plan, and providing any other support reasonably required to assist the Professional in delivering the desired outcomes.

II. Objective of this Project

- A. The objective of this Project is for the Professional to provide ongoing communication and marketing support services to NBU in order to rebuild the NBU brand. The Professional shall provide services in a manner that prioritizes the following style of communication:
 - 1. leading with customer needs;
 - 2. shifting from just functional to emotional and functional communications;
 - 3. prioritizing salient messages to rebuild community trust;
 - 4. portraying the message that NBU customers are citizen owners; and
 - 5. understanding that transparency in communications is equal to empathy and honesty.
- B. The Professional shall assist with rebuilding NBU's brand around the platform brand idea "It Takes Heart" by implementing the following brand dimensions:
 - 1. NBU's brand purpose is: To be the human utility;
 - 2. Brand position: The confidence to believe in New Braunfels again;
 - 3. Brand Character: Lead by example, Exuberant, Superhero; and
 - 4. Brand Personality: Relatable, Focused, Caring.

III. Scope of Work

- A. The Professional shall work with the NBU Communications and External Affairs team to perform the following communication and marketing support services:

1. provide and manage immediate ad agency support;
2. provide and manage immediate public and media communication support;
3. provide strategic recommendations and ongoing support in the execution of a three-year communications and marketing plan;
4. provide graphic designs, videos and additional deliverables to support communications and marketing plan goals at NBU's request;
5. provide crisis communication services;
6. provide spokesperson and social media interaction training to NBU Communications and External Affairs staff;
7. create a well-balanced community outreach program;
8. provide staff augmentation to support the existing communications team with different communications and marketing disciplines, as needed;
9. conduct monthly meetings with the NBU Communications and External Affairs team to review ongoing communications; and
10. establish a system for regular reporting and evaluation of NBU's communications, which shall involve tracking key performance indicators to measure the success of the communication implementation plan and making data-driven recommendations for continuous improvement.

IV. Request for Services and Deliverables Process

- A. The NBU Communications and Marketing staff shall send an email request to the Professional for the services. The following information shall be contained in the email request or in an attachment to the email request:
 1. a description of the type of communication and marketing support services requested (example: crisis communication, graphic design, video creation);
 2. details about the project;
 3. details about any specific items the Professional shall consider in connection with the request for the services;
 4. the expected deliverable;
 5. the delivery method for the deliverable; and
 6. required completion date for the project and if a specific or expedited schedule is required.
- B. Within twenty-four (24) hours of the Professional's receipt of an NBU email request for services, the Professional shall contact NBU to confirm all requirements of the project, ask questions about the project, and communicate any inability to meet the required completion date. If the Professional is not able to meet the required completion date, NBU reserves the right to cancel the request and place it with an alternative professional or negotiate a new completion date.

V. Deliverable Acceptance Process

- A. NBU shall accept the deliverables in the following process:
1. the Professional shall present the deliverables to NBU's Communications and External Affairs department for review and approval in the manner that NBU directs;
 2. NBU shall review the deliverables and provide feedback to the Professional;
 3. the Professional shall revise and resubmit the updated deliverables to NBU's Communications and External Affairs department; and
 4. NBU shall approve the deliverables upon its reasonable satisfaction.

Exhibit B

Compensation

NBU shall pay the Professional for the Services in an amount not to exceed \$1,300,000 annually during the Term of the Agreement and a total not to exceed amount of \$6,500,000 for the duration of the Agreement.

NBU agrees to pay the Professional for the Services rendered under the Agreement at the rates set forth in the table below.

| Services/Items | Price | UOM/Rate |
|--|--------------|--------------------|
| Ad Agency Support | \$175 | Hourly |
| Public and Media Communication Support | \$150 | Hourly |
| Strategic Insight Services/recommendations for the communications and marketing plan | \$200 | Hourly |
| Crisis Communications Services | \$275 | Hourly |
| Staff augmentation services | \$200* | Hourly |
| Direct Mail – Including production and mailing | \$0.70* | Per Mailing |
| Creative Services: Graphic Design, videos, and production of assets | \$200 | Hourly |
| Spokesperson and Social Media Interaction Training for NBU Employees | \$200 | Hourly |
| Travel Expenses | \$900 | Per Day/Per Person |
| Paid Media | \$400,000 | Per Year |
| Research | \$90,000 | Per Year |

* The rates set out in the table for the Services marked with an asterisk constitute the minimum rates the Professional will charge for the corresponding Services, provided, however, the Professional will obtain the prior written approval of NBU if the Professional is proposing to perform the Services marked with an asterisk at a rate in excess of the rate set forth in the table.



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

From: Jeffrey Jones **Reviewed by:** Greg Brown
 Information Technology Chief Technology Officer
 Manager

Submitted by: Greg Brown **Approved by:** Ryan Kelso
 Chief Technology Officer Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Cooperative Agreement with SHI/Government Solutions, Inc. for the Renewal of Microsoft EA Licensing to Maintain Critical Software Usage

BACKGROUND

New Braunfels Utilities (“NBU”) is currently under contract with SHI International Corp. (“SHI”) for a Microsoft EA licensing (“the Software”). The contract enables NBU to utilize the Microsoft Office suite on all desktops, laptops, and servers. The software is critical in nature for daily taskings, tracking, and communication spreading across the entire company. The contract needs to be renewed for continued use of new operating systems, which will aid involvement in technology and security standards. The DIR-CPO-5237 with SHI will continue to provide NBU with software, licensing, and support with Microsoft.

NBU’s selection of SHI to enter into this contract through the Texas Department of Information Resources DIR-CPO-5237 satisfies the bidding requirements under Texas law.

NBU staff requests that the Board of Trustees approve the contract renewal with SHI for continued use of Microsoft Office software.

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

FINANCIAL IMPACT

The total amount of the contract renewal is \$1,154,996.04 over a three (3) year period. Each year NBU will pay \$384,998.68 to satisfy the terms of the Contract. This item is budgeted under our Fiscal Year 2024 Operation and Maintenance Budgets. NBU has the right to terminate after each year for convenience or if funds are not appropriated.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Financial Excellence

EXHIBITS

1. SHI International Corp. DIR-CPO-5237 Contract: 06122024 Approved Combined DIR-CPO-5237

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCT, SERVICES, AND RELATED SERVICES
SHI/Government Solutions, Inc.

1 INTRODUCTION

1.1 Parties

This contract for Software, Commercial Off-the-Shelf (COTS) and Related Services (this "Contract") is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and SHI/Government Solutions, Inc. a Domestic For-Profit Corporation (hereinafter "Successful Respondent"), with its principal place of business at 3828 Pecana Trail Austin, Texas 78749.

1.2 Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-CPO-TMP-570, on February 2, 2023, for Software, Commercial Off-the-Shelf (COTS) and Related Services (the "RFO"). Upon execution of all Contracts, a notice of award for DIR-CPO-TMP-570, shall be posted by DIR on the Electronic State Business Daily.

1.3 Order of Precedence

- A. For transactions under this Contract, the order of precedence shall be as follows:
1. this Contract;
 2. Appendix A, Standard Terms and Conditions;
 3. Appendix B, Successful Respondent's Historically Underutilized Businesses Subcontracting Plan;
 4. Appendix C, Pricing Index;
 5. Exhibit 1, RFO DIR-CPO-TMP-570, including all Addenda; and
 6. Exhibit 2, Successful Respondent's Response to RFO DIR-CPO-TMP-570, including all Addenda.

- B. Each of the foregoing documents is hereby incorporated by reference and together constitute the entire agreement between DIR and Successful Respondent.

1.4 Definitions

Capitalized terms used but not defined herein have the meanings given to them in **Appendix A, Standard Terms and Conditions.**

2 TERM OF CONTRACT

The initial term of this Contract shall be up to two (2) years commencing on the date of the last signature hereto (the "Initial Term"), with one (1) optional two-year renewal and one (2) optional one-year renewal (each, a "Renewal Term"). Prior to expiration of the Initial Term and each Renewal Term, this Contract will renew automatically under the same terms and conditions unless either party provides written notice to the other party at least sixty (60) days in advance of the renewal date stating that the party wishes to discuss amendment or non-renewal.

3 OPTION TO EXTEND

Successful Respondent agrees that DIR may require continued performance under this Contract and if such a case arises, the parties by mutual agreement may extend the term as stated herein at the rates specified in this Contract following the expiration of the Initial Term or any Renewal Term. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed ninety (90) calendar days. Such extension of services shall be subject to the requirements of the Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written request to the Successful Respondent.

4 PRODUCT AND SERVICE OFFERINGS

Products and services available under this Contract are limited to Value Added Software Reseller Products and Related Services for Microsoft and Adobe, as defined in Request for Offer DIR-CPO-TMP-570 for Software, Commercial Off-the-Shelf (COTS) and Related Services. At DIR's sole discretion, Successful Respondent may incorporate changes or

make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO.

5 PRICING

5.1 Pricing Index

Pricing to Customers shall be as set forth in **Appendix C, Pricing Index**, and shall include the DIR Administrative Fee (as defined below).

5.2 Customer Discount

- A. The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in **Appendix C, Pricing Index**. Successful Respondent shall not establish a List Price or MSRP for a particular solicitation. For purposes of this Section, "List Price" is the price for a product or service published in Successful Respondent's price catalog (or similar document) before any discounts or price allowances are applied. For purposes of this Section, "MSRP," or manufacturer's suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.
- B. Customers purchasing products or services under this Contract may negotiate additional discounts with Successful Respondent. Successful Respondent and Customer shall provide the details of such additional discounts to DIR upon request.
- C. If products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract, or (ii) to any other customer under the same terms and conditions provided for the State for the same products and services under this contract, then the price of such products and services under this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Successful Respondent for a quantity of one (1), but does not apply to volume or special pricing purchases. Successful Respondent shall notify DIR within ten (10) days of providing a lower price as described in this Section, and this Contract shall be amended within ten (10) days to reflect such lower price.

5.3 Changes to Prices

- A. Subject to the requirements of this section, Successful Respondent may change the price of any product or service upon changes to the List Price or MSRP, as applicable. Discount levels shall not be subject to such changes, and will remain consistent with the discount levels specified in this Contract.
- B. Successful Respondent may revise its pricing by publishing a revised pricing list, subject to review and approval by DIR. If DIR, in its sole discretion, finds that the price of a product or service has been increased unreasonably, DIR may request that Successful Respondent reduce the pricing for the product or service to the level published before such revision. Upon such request, Successful Respondent shall either reduce the pricing as requested, or shall remove the product or service from the pricing list for this Contract. Failure to do so will constitute an act of default by Successful Respondent.

5.4 Shipping and Handling

Prices to Customers shall include all shipping and handling fees. Shipments will be Free On-Board Customer's Destination. No additional fees may be charged to Customers for standard shipping and handling. If a Customer request expedited or special delivery, Customer will be responsible for any additional charges for expedited or special delivery.

5.5 Travel Expenses

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of such services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking, and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services provided under this Contract. The DIR Administrative Fee is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by the Customer. The Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

6 DIR ADMINISTRATIVE FEE

- A. Successful Respondent shall pay an administrative fee to DIR based on the dollar value of all sales to Customers pursuant to this Contract (the "DIR Administrative Fee"). The amount of the DIR Administrative Fee shall be seventy-five hundredths of a percent (0.75%) of all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.
- B. All prices quoted to Customers shall include the DIR Administrative Fee. DIR reserves the right to increase or decrease the DIR Administrative Fee during the term of this Contract, upon written notice to Successful Respondent without amending this Contract. Any increase or decrease in the DIR Administrative Fee shall be incorporated in the price to Customers.

7 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION

In addition to the requirements listed in **Appendix A, Section 7.2, Internet Access to Contract and Pricing Information**, Successful Respondent shall include the following with its webpage:

- A. A current price list or mechanism to obtain specific contract pricing;
- B. MSRP/list price or DIR Customer price;
- C. Discount percentage (%) off MSRP or List Price;
- D. Warranty policies; and
- E. Return policies.
- F. A link to DIR's list of TX-RAMP certified Cloud Products; and
- G. Service Level Agreements for each SaaS product awarded, including metrics and method for calculating and reporting results, for:
 - i. service availability.
 - ii. recovery time objectives; and
 - iii. data loss tolerance levels (also known as recovery point objectives).

8 USE OF ORDER FULFILLERS

8.1 Authorization to Use Order Fulfillers

Subject to the conditions in this Section 8, DIR agrees to permit Successful Respondent to utilize designated order fulfillers to provide products, services, and support resources to Customers under this Contract (“Order Fulfillers”).

8.2 Designation of Order Fulfillers

- A. Successful Respondent may designate Order Fulfillers to act as the distributors for products and services available under this Contract. In designating Order Fulfillers, Successful Respondent must be in compliance with the State’s Policy on Utilization of Historically Underutilized Businesses. DIR and Successful Respondent will agree on the number of Order Fulfillers that are Historically Underutilized Businesses as defined by the CPA.
- B. In addition to the required Subcontracting Plan, Successful Respondent shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
- C. DIR reserves the right to require Successful Respondent to rescind any Order Fulfiller participation or request that Successful Respondent name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- D. Successful Respondent shall be fully liable for its Order Fulfillers’ performance under and compliance with the terms and conditions of this Contract. Successful Respondent shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of this Contract.
- E. Successful Respondent may qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Successful Respondent’s established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the criteria.
- F. Successful Respondent shall not prohibit any Order Fulfiller from participating in other procurement opportunities offered through DIR.

8.3 Changes in Order Fulfiller

Successful Respondent may add or remove Order Fulfillers throughout the term of this Contract upon written authorization by DIR. Prior to adding or removing Order Fulfillers, Successful Respondent must make a good faith effort to revise its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Successful Respondent shall provide DIR with its updated Subcontracting Plan and the Order Fulfillers information listed above.

8.4 Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall be in accordance with Section 5.

9 NOTIFICATION

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

If sent to the State:

Lisa Massock or Successor in Office
Chief Procurement Officer
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Email: lisa.massock@dir.texas.gov

If sent to Successful Respondent:

Kristina Mann
Senior Manager / Contracts
SHI/Government Solutions, Inc.
3828 Pecana Trail
Austin, Texas 78749
Phone: (908) 547-9471
Email: Kristina_mann@shi.com

10 SOFTWARE LICENSE

10.1 Software License Agreement

- A. Customers acquiring software licenses under this Contract shall hold, use, and operate such software subject to compliance with the Software License Agreement. Customer and Successful Respondent may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Successful Respondent. Successful Respondent shall make the Software License Agreement terms and conditions available to all Customers at all times.
- B. Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement.

11 CONFLICTING OR ADDITIONAL TERMS

- A. The terms and conditions of this Contract shall supersede any additional conflicting or additional terms in any additional service agreements, statement of work, and any other provisions, terms, conditions, and license agreements, including those which may be affixed to or accompany software upon delivery (sometimes called shrink-wrap or click-wrap agreements), and any linked or supplemental documents, which may be proposed, issued, or accepted by Successful Respondent and Customer in addition to this Contract (such additional agreements, "Additional Agreements"), regardless of when such Additional Agreements are proposed, issued, or accepted by Customer. Notwithstanding the foregoing, it is Customer's responsibility to review any Additional Agreements to determine if Customer accepts such Additional Agreement. If Customer does not accept such Additional Agreement, Customer shall be responsible for negotiating any changes thereto.
- B. Any update or amendment to an Additional Agreement shall only apply to Purchase Orders for the associated product or service offering after the effective date of such update or amendment; provided that, if Successful Respondent has responded to a Customer's solicitation or request for pricing, any subsequent

update or amendment to an Additional Agreement may only apply to a resulting Purchase Order if Successful Respondent directly informs such Customer of such update or amendment before the Purchase Order is executed.

- C. Successful Respondent shall not require any Additional Agreement that: i) diminishes the rights, benefits, or protections of Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of Customer; or ii) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.
- D. If Successful Respondent attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to this Contract or the Purchase Order between Successful Respondent and Customer, and Successful Respondent will nonetheless be obligated to perform such Purchase Order without regard to the prohibited documents, unless Customer elects instead to terminate such Purchase Order, which in such case may be identified as a termination for cause against Successful Respondent.

12 AUTHORIZED EXCEPTIONS TO APPENDIX A, STANDARD TERMS AND CONDITIONS

No exceptions have been agreed to by DIR and Successful Respondent.

(Remainder of this page intentionally left blank.)

This Contract is executed to be effective as of the date of last signature.

SHI/Government Solutions, Inc.

Authorized By: Signature on File

Name: Kristina Mann

Title: Senior Manager / Contracts

Date: 9/20/2023

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Lisa Massock

Title: Chief Procurement Officer

Date: 9/22/2023

Office of General Counsel: M.R.

Date: 9/22/2023



Department of Information Resources

DIR-CPO-5237

Appendix A

Standard Contract Terms and Conditions

Cooperative Contracts

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The following terms and conditions shall govern the conduct of DIR and Successful Respondent during the term of the Contract.

1 CONTRACT SCOPE

Successful Respondent shall provide the products and/or services specified in the Contract for purchase by Customers. Terms used in this document shall have the meanings set forth below in Section [3 Definitions](#).

2 NO QUANTITY GUARANTEES

The Contract is not exclusive to Successful Respondent. Customers may obtain services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and/or services will be procured through the Contract.

3 DEFINITIONS

3.1 Compliance Check

An audit of Successful Respondent's compliance with the Contract which may be performed by a third-party auditor, DIR Internal Audit department, DIR contract management staff, or their designees.

3.2 Contract

The DIR Contract between DIR and Successful Respondent into which this Appendix A is incorporated.

3.3 CPA

Refers to the Texas Comptroller of Public Accounts.

3.4 Customer

Any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001:

- A. A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- B. A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- C. Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;

- D. A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- E. A local workforce development board created under Section 2308.253, Texas Government Code;
- F. A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- G. The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- H. A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- I. A nonprofit organization that provides affordable housing.

3.5 **Business day**

Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

3.6 **DIR**

Refers to the Texas Department of Information Resources.

3.7 **Effective Date**

Refers to the effective date of the Contract as set forth therein.

3.8 **Invoice**

Refers to a Customer approved instrument submitted by Successful Respondent for payment of services.

3.9 **Purchase Order**

Refers to Customer's fiscal form or format, contract with Successful Respondent, or other document used by Customer to authorize the purchase of products or services from Successful Respondent under the Contract, including but not limited to a formal written purchase order, procurement card, electronic purchase order, or another authorized instrument.

3.10 **State**

Refers to the State of Texas.

3.11 **Statement of Work (SOW)**

Means a document entered into between Customer and Successful Respondent describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Successful Respondent is to provide Customer, issued pursuant to the Contract.

3.12 **Subcontracting Plan**

Refers to **Appendix B**, Successful Respondent's Historically Underutilized Business Subcontracting Plan.

3.13 **Successful Respondent**

Refers to the party identified as either "Successful Respondent" or "Vendor" in Section 1.1 of the Contract.

3.14 **Third-Party Provider**

Refers to an agent, affiliate, subcontractor, vendor, reseller, manufacturer, publisher, distributor, order fulfiller or other person or entity designated or directed by Successful Respondent to provide products or services to a Customer in performance of, related to, or in support of a Purchase Order issued under the Contract.

4 **GENERAL PROVISIONS**

4.1 **Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and Successful Respondent. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

4.2 **Modification of Contract Terms and/or Amendments**

- A. The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Successful Respondent.
- B. DIR may amend the Contract upon thirty (30) calendar days written notice to Successful Respondent without the need for Successful Respondent's written consent: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.
- C. Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Successful Respondent may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- D. Customer(s) and Successful Respondent will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract.

4.3 **Invalid Term or Condition**

- A. To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a Contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.
- B. If one (1) or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent

jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

4.4 Assignment

- A. DIR may assign the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- B. A Customer may assign a Purchase Order issued under the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- C. Successful Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the DIR. Any attempted assignment in violation of this provision is void and without effect.

4.5 Survival

All applicable Statements of Work that were entered into between Successful Respondent and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Successful Respondent shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than three (3) years. In all instances of termination or expiration and no later than five (5) days after termination or expiration or upon DIR request, Successful Respondent shall provide a list, in accordance with the format requested by DIR (i.e., Excel, Word, etc.), of all surviving Statements of Work and Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Statements of Work and Purchase Orders. Rights and obligations under the Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee and any and all payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality; and indemnification will remain in effect.

4.6 Choice of Law

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. In any litigation where any state agency is a party, and subject to the requirements of Chapter 2260, Texas Government Code, the exclusive venue of any such suit arising under the Contract is fixed in the state courts of Travis County, Texas. If litigation does not involve any state agency, then venue is fixed in the state courts of the Texas county where the Customer is primarily situated, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency. Regardless of any provision anywhere in the Contract, no state agency or other Customer in any manner waives any defense or immunity whatsoever.

4.7 Limitation of Authority

Successful Respondent shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in the Contract; no other authority,

power or use is granted or implied. Successful Respondent may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

4.8 Proof of Financial Stability

Either DIR or Customer may require Successful Respondent to provide proof of financial stability prior to or at any time during the Contract term.

4.9 Data Location

Regardless of any other provision of the Contract or its incorporated or referenced documents, all of the data for State of Texas Customers shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise; however, Successful Respondent shall notify DIR promptly after such request is made. For all Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. **NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE CONTIGUOUS US-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.**

4.10 Independent Contractor

SUCCESSFUL RESPONDENT AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THE CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT SUCCESSFUL RESPONDENT IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR, OR THE STATE OF TEXAS.

5 INTELLECTUAL PROPERTY MATTERS

5.1 Intellectual Property Matters Definitions

5.1.1 "Work Product"

Means any and all deliverables produced by Successful Respondent for Customer under a Statement of Work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Effective Date, including but not limited to any:

- (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, configurations, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works),
- (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin,
- (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how,
- (iv) domain names,
- (v) any copies, and similar or derivative works to any of the foregoing,

- (vi) all documentation and materials related to any of the foregoing,
- (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and
- (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with the Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit:
 - a. by any Successful Respondent personnel or Customer personnel, or
 - b. any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5.1.2 "Intellectual Property Rights"

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:

- i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;
- ii) any work of authorship, including any copyrights, moral rights or neighboring rights;
- iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin;
- iv) domain name registrations; and
- v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

5.1.3 "Third Party IP"

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Order or Statement of Work issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract or a Purchase Order or Statement of Work issued under the Contract.

5.1.4 "Successful Respondent IP"

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Successful Respondent:

- i) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the services or Work Product, or

- ii) after the Effective Date if such tangible or intangible items or things were independently developed by Successful Respondent outside Successful Respondent's provision of services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5.2 Ownership

As between Successful Respondent and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Successful Respondent. Successful Respondent specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Successful Respondent hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Successful Respondent acknowledges that Successful Respondent and Customer do not intend Successful Respondent to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Successful Respondent, to all Successful Respondent materials, premises, and computer files containing the Work Product. Successful Respondent and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Successful Respondent.

5.3 Further Actions

Successful Respondent, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Successful Respondent's signature due to the dissolution of Successful Respondent or Successful Respondent's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Successful Respondent hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Successful Respondent's agent and Successful Respondent's attorney-in-fact to act for and in Successful Respondent's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Successful Respondent, provided however that no such grant of right to Customer is applicable if Successful Respondent fails to execute any document due to a good faith dispute by Successful Respondent with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Successful Respondent shall

cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

5.4 Waiver of Moral Rights

Successful Respondent hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Successful Respondent may now have or which may accrue to Successful Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Successful Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

5.5 Confidentiality

All documents, information and materials forwarded to Successful Respondent by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Successful Respondent under Section [5.8 Successful Respondent License to Use](#). Hereunder, Successful Respondent shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

5.6 Injunctive Relief

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Successful Respondent acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

5.7 Return of Materials Pertaining to Work Product

Upon the request of Customer, but in any event upon termination or expiration of the Contract, or a Statement of Work, Successful Respondent shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Successful Respondent or furnished by Customer to Successful Respondent, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Successful Respondent by Customer or by anyone else that pertain to the Work Product.

5.8 **Successful Respondent License to Use**

Customer hereby grants to Successful Respondent a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the services to Customer. Except as provided in this Section, neither Successful Respondent nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

5.9 **Third-Party Underlying and Derivative Works**

- A. To the extent that any Successful Respondent IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the services, Successful Respondent hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to
 - i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Successful Respondent IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and
 - ii) authorize others to do any or all of the foregoing. Successful Respondent agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party IP.
- B. On request, Successful Respondent shall provide Customer with documentation indicating a third party's written approval for Successful Respondent to use any Third Party IP that may be embodied or reflected in the Work Product.

5.10 **Agreement with Third Party Providers**

Successful Respondent agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any Third Party Providers, prior to their providing such services or Work Product pursuant to the Contract, and that Successful Respondent shall maintain such written agreements at all times during performance of the Contract, which are sufficient to support all performance and grants of rights by Successful Respondent. Copies of such agreements shall be provided to the Customer promptly upon request.

5.11 **License to Customer**

Successful Respondent grants to Customer, at no additional charge, a world-wide, non-exclusive, perpetual, irrevocable, royalty free right and license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Successful Respondent IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Successful Respondent IP remain in Successful Respondent.

5.12 Successful Respondent Development Rights

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in the Contract shall preclude Successful Respondent from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Successful Respondent wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Successful Respondent and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6 TERMS AND CONDITIONS APPLICABLE TO STATE AGENCY PURCHASES ONLY

- A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes 1 TAC 206, 1 TAC 213, and in the Worldwide Web Consortium WCAG 2.0 AA technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations. Successful Respondent hereby represents, certifies, and warrants that it and its products and services comply with all relevant accessibility laws and standards.
- i) Upon request, and prior to a DIR Customer purchase, Successful Respondent must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such completed ACRs already exist, and there have been no changes to the product/service since the time of the original document completion.
 - ii) If Successful Respondent claims that a proposed product or family of products is exempt from accessibility requirements, it must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.
 - iii) Upon request, and prior to a DIR customer purchase for IT development services, Successful Respondent must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Successful Respondent's capability or ability to produce accessible electronic and information resources.
 - iv) Additionally, Successful Respondent must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to

planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

- v) Upon request, and prior to a Customer purchase for COTS products, or IT development services, Successful Respondent must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.
- vi) Also upon request, Successful Respondent must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to: executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

- i) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).
- ii) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.
- iii) Successful Respondent agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Section.

7 CONTRACT FULFILLMENT AND PROMOTION

7.1 Service, Sales and Support of the Contract

Successful Respondent shall provide service, sales, and support resources to serve all Customers. It is the responsibility of Successful Respondent to sell, market, and promote products and services available under the Contract. Successful Respondent shall use best efforts to ensure that potential Customers are made aware of the existence of the Contract. All contracts for and sales to Customers for products and services available under the Contract shall be in accordance with the Contract.

7.2 Internet Access to Contract and Pricing Information

A. Successful Respondent Webpage

Within thirty (30) calendar days from the Effective Date, Successful Respondent will establish and maintain a webpage specific to the services awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Successful Respondent's website. Successful Respondent must use a web hosting service that provides a dedicated internet protocol (IP) address. Successful Respondent's website must have a Secure Sockets Layer (SSL) certificate and Customers must access Successful Respondent's website using Hyper Text Transfer Protocol Secure (HTTPS) and it will encrypt all communication between Customer browser and website. The webpage must include:

- i) a list with description of products and/or services awarded;
- ii) Successful Respondent contact information (name, telephone number and email address);
- iii) instructions for obtaining quotes and placing Purchase Orders;
- iv) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- v) a link to the DIR "Cooperative Contracts" webpage;
- vi) the DIR logo in accordance with the requirements of Section 7.9; and
- vii) any other information that the Contract indicates is required to be included on the webpage.

- B. If Successful Respondent does not meet the webpage requirements listed above, DIR may cancel the Contract without penalty.

7.3 Accurate and Timely Contract Information

Successful Respondent warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained, and displayed in an objective and timely manner. Successful Respondent, at its own expense, shall correct any non-conforming or inaccurate information posted at Successful Respondent's website within ten (10) business days after written notification by DIR.

7.4 Webpage Compliance Checks

Periodic Compliance Checks of the information posted for the Contract on Successful Respondent's website will be conducted by DIR. Upon request by DIR, Successful Respondent shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

7.5 Webpage Changes

Successful Respondent hereby consents to a link from the DIR website to Successful Respondent's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Successful Respondent with subsequent notice of link suspension, termination or removal. Successful Respondent shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

7.6 Use of Access Data Prohibited

If Successful Respondent stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Successful Respondent for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Successful Respondent shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

7.7 Responsibility for Content

Successful Respondent is solely responsible for administration, content, intellectual property rights, and all materials at Successful Respondent's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

7.8 Services Warranty and Return Policies

Successful Respondent will adhere to Successful Respondent's then-currently published policies concerning product and service warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated customers for like products and services.

7.9 DIR and Customer Logos

Successful Respondent may use a Customer's logo only upon prior written approval of such Customer. Successful Respondent may use the DIR logo in the promotion of the Contract to Customers with the following stipulations:

- A. the logo may not be modified in any way,
- B. when displayed, the size of the DIR logo must be equal to or smaller than Successful Respondent's logo,
- C. the DIR logo is only used to communicate the availability of services under the Contract to Customers, and
- D. any other use of the DIR logo requires prior written permission from DIR.

7.10 Successful Respondent Logo

If DIR receives Successful Respondent's prior written approval, DIR may use Successful Respondent's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. Use of the logo may be on the DIR website or on printed materials. Any use of Successful Respondent's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Successful Respondent's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Successful Respondent.

7.11 Trade Show Participation

At DIR's discretion, Successful Respondent may be required to participate in no more than two (2) DIR sponsored trade shows each calendar year. Successful Respondent understands and agrees that participation, at Successful Respondent's expense, includes providing a manned booth display or similar presence. DIR will provide four (4) months advance notice of any required participation. Successful Respondent must display the DIR logo at all trade shows that potential Customers will attend. DIR

reserves the right to approve or disapprove of the location or the use of the DIR logo in or on Successful Respondent's booth.

7.12 **Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Successful Respondent will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include administrative requirements for reporting and administrative fee payments. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

7.13 **Performance Review Meetings**

Successful Respondent shall attend periodic meetings to review Successful Respondent's performance under the Contract at DIR's request. The meetings will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

7.14 **DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Successful Respondent shall provide DIR with a detailed report of a representative sample of products or services sold under the Contract. The report shall contain: product or service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR Customers can procure the products or services.

8 PURCHASE ORDERS, INVOICES, AND PAYMENTS

8.1 **Purchase Orders**

All Customer Purchase Orders will be placed directly with Successful Respondent. Accurate Purchase Orders shall be effective and binding upon Successful Respondent when accepted by Successful Respondent.

8.2 **Invoices**

- A. Invoices shall be submitted by Successful Respondent directly to Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to Successful Respondent. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.
- B. Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices, and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the products and services by the Customer.
- C. The DIR Administrative Fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

8.3 Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Successful Respondent. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later.

Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.

8.4 Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under the Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under the Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Successful Respondent upon request.

8.5 Travel Expense Reimbursement

Pricing for services provided under the Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under the Contract. The DIR Administrative Fee is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

9 CONTRACT ADMINISTRATION

9.1 Contract Managers

DIR and Successful Respondent will each provide a contract manager (“Contract Manager”) to support the Contract (respectively, the “DIR Contract Manager” and “Successful Respondent Contract Manager”). Information regarding each Contract Manager will be posted on the internet website designated for the Contract. DIR reserves the right to require a change in Successful Respondent Contract Manager if Successful Respondent Contract Manager is not, in the sole opinion of DIR, adequately serving the needs of the State.

9.1.1 DIR Contract Manager

The DIR Contract Manager’s duties include but are not limited to:

- A. monitoring compliance and management of the Contract,
- B. advising DIR of Successful Respondent’s performance under the Contract, and
- C. periodic verification of pricing and monthly reports submitted by Successful Respondent.

9.1.2 Successful Respondent Contract Manager

Successful Respondent Contract Manager’s duties shall include but are not limited to:

- A. supporting the marketing and management of the Contract,
- B. facilitating dispute resolution between Successful Respondent and Customers, and
- C. advising DIR of Successful Respondent's performance under the Contract.

9.2 Reporting and Administrative Fees

9.2.1 Reporting Responsibility

- A. Each month, Successful Respondent shall report all products and services purchased under the Contract. Successful Respondent shall file monthly reports to include monthly sales reports, subcontract reports, and pay the DIR Administrative Fees in accordance with the due dates specified in this Section.
- B. DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this Section, including but not limited to, Compliance Checks of Successful Respondent's applicable Contract books. Successful Respondent will provide all required documentation at no cost.

9.2.2 Detailed Monthly Report

- A. Using the Vendor Sales Report (VSR) portal, Successful Respondent shall provide DIR with a monthly report in the format required by DIR detailing sales activity under the Contract for the previous month period. This included months in which there are no sales. Reports may be submitted between the first (1st) and the fifteenth (15th) of each month and are due no later than the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. Per transaction, the monthly report shall include, at a minimum, the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated DIR Administrative Fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to Successful Respondent for correction in accordance with this Section.
- B. Successful Respondent shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in Contract termination.

9.2.3 Historically Underutilized Businesses Subcontract Reports

- A. Successful Respondent shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- B. Reports shall be due in accordance with the CPA rules.

9.2.4 DIR Administrative Fee

- A. The DIR Administrative Fee shall be paid by Successful Respondent to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review monthly sales reports, close the sales period, and notify Successful Respondent of the amount of the DIR Administrative Fee no later than the fourteenth (14th) calendar day of the month following the date of the reported sale. Successful Respondent shall pay the amount of the DIR Administrative Fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Successful Respondent reports January sales no later than February 15th; DIR closes January sales and notifies Successful Respondent of the amount of the DIR Administrative Fee by March 14th; Successful Respondent submits payment of the DIR Administrative Fee for January sales by March 25th.
- B. DIR may change the amount of the DIR Administrative Fee upon thirty (30) calendar days written notice to Successful Respondent without the need for an amendment to the Contract.
- C. To preserve the DIR Administrative Fee in place at the time of the sale of product or service, the calculation of the DIR Administrative Fee is based on the Purchase Order date for each sale.
- D. Successful Respondent shall reference the Contract number, reporting period, and DIR Administrative Fee amount on any remittance instruments.

9.2.5 Accurate and Timely Submission of Reports

- A. Successful Respondent shall submit reports and DIR Administrative Fee payments accurately and timely in accordance with the due dates specified in this Section. Successful Respondent shall correct any inaccurate reports or DIR Administrative Fee payments within three (3) business days upon written notification by DIR. Successful Respondent shall deliver any late reports or late DIR Administrative Fee payments within three (3) business days upon written notification by DIR. If Successful Respondent is unable to correct inaccurate reports or DIR Administrative Fee payments or deliver late reports and DIR Administrative Fee payments within three (3) business days, Successful Respondent shall contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- B. Should Successful Respondent fail to correct inaccurate reports or cure the delay in timely and accurate delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right at DIR's expense to require an independent third-party audit of Successful Respondent's records as specified in Section [9.3 Records and Audit](#). DIR will select the auditor (and all payments to auditor will require DIR approval).
- C. Failure to timely submit three (3) reports or DIR Administrative Fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Successful Respondent's Contract.

9.3 Records and Audit

- A. Acceptance of funds under the Contract by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Successful Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Successful Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Successful Respondent and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- B. Successful Respondent shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract, whichever is later. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- C. Successful Respondent shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the Compliance Checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking, and/or copying such books and records.
- D. Successful Respondent shall provide copies and printouts requested by DIR without charge. DIR shall use best efforts to provide Successful Respondent ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Successful Respondent's records. Successful Respondent's records, whether paper or electronic, shall be made available during regular office hours. Successful Respondent personnel familiar with Successful Respondent's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Successful Respondent shall provide adequate office space to DIR staff during the performance of Compliance Check. If Successful Respondent is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.

- E. For procuring State Agencies whose payments are processed by the CPA, the volume of payments made to Successful Respondent through the CPA and the administrative fee based thereon shall be presumed correct unless Successful Respondent can demonstrate to DIR's satisfaction that Successful Respondent's calculation of DIR's administrative fee is correct.

9.4 Contract Administration Notification

- A. Prior to execution of the Contract, Successful Respondent shall provide DIR with written notification of the following:
 - i) Successful Respondent Contract Manager's name and contact information,
 - ii) Successful Respondent sales representative name and contact information, and
 - iii) name and contact information of Successful Respondent personnel responsible for submitting reports and payment of DIR Administrative Fees.
- B. Upon execution of the Contract, DIR shall provide Successful Respondent with written notification of the DIR Contract Manager's name and contact information.

10 SUCCESSFUL RESPONDENT RESPONSIBILITIES

10.1 Indemnification

10.1.1 Indemnities by Successful Respondent

- A. Successful Respondent shall defend, indemnify, and hold harmless DIR, the State of Texas, and Customers, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, resulting from, or related to:
 - i) any acts or omissions of Successful Respondent, its employees, or Third Party Providers in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
 - ii) any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
 - iii) any breach, disclosure, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Successful Respondent in connection with the Contract, including DIR data, Customer data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract; and
 - iv) tax liability, unemployment insurance or workers' compensation or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.
- B. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED

DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. FOR NON-STATE AGENCY CUSTOMERS, THE DEFENSE SHALL BE COORDINATED BY CUSTOMER'S LEGAL COUNSEL. SUCCESSFUL RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER AND TO DIR OF ANY SUCH CLAIM.

10.1.2 Infringements

If Successful Respondent becomes aware of an actual or potential claim of an Infringement, or Customer provides Successful Respondent with notice of an actual or potential claim of an Infringement, Successful Respondent may (or in the case of an injunction against Customer, shall), at Successful Respondent's sole expense: (i) procure for Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

10.2 Property Damage

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF SUCCESSFUL RESPONDENT, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, SUCCESSFUL RESPONDENT SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY SUCCESSFUL RESPONDENT NINETY (90) CALENDAR DAYS AFTER THE DATE OF SUCCESSFUL RESPONDENT'S RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

10.3 Taxes/Worker's Compensation/Unemployment Insurance

Successful Respondent agrees and acknowledges that during the existence of the Contract, Successful Respondent shall be entirely responsible for the liability and payment of Successful Respondent's and its employees' taxes of whatever kind, arising out of the performances in the Contract. Successful Respondent agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. Successful Respondent agrees and acknowledges that Successful Respondent and its employees, representatives, agents, and subcontractors shall not be entitled to any state benefit or benefit of another governmental entity Customer. Customer, DIR, and/or the State shall not be liable to Successful Respondent, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee or employee of another governmental entity Customer.

10.4 Successful Respondent Certifications

- A. Successful Respondent represents and warrants that, in accordance with Section 2155.005, Texas Government Code, neither Successful Respondent nor the firm, corporation, partnership, or institution represented by Successful Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Successful Respondent.
- B. Successful Respondent hereby certifies, represents, and warrants, on behalf of Successful Respondent that:
- i) it has not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
 - ii) it is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under Section 231.006, Texas Family Code, and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
 - iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
 - iv) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;
 - v) under Section 2155.004, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
 - vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Successful Respondent, which if determined adversely to Successful Respondent, will have a material adverse effect on the ability to fulfill its obligations under the Contract;
 - vii) Successful Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration, nor is Successful Respondent subject to any Federal Executive Orders issued banning certain entities or countries.
 - viii) as of the Effective Date, it is not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
 - ix) in the performance of the Contract, Successful Respondent shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Section 2155.4441, Texas Government Code;

- x) all equipment and materials to be used in fulfilling the requirements of the Contract are of high-quality and consistent with or better than applicable industry standards, if any. All works and services performed pursuant to the Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- xi) to the extent Successful Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Successful Respondent is otherwise owed under the Contract may be applied toward any debt Successful Respondent owes the State of Texas until the debt is paid in full;
- xii) it is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- xiii) the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that Successful Respondent will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify Successful Respondent shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- xiv) under Section 2155.006 and Section 2261.053, Texas Government Code, it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xv) it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Successful Respondent acknowledges the applicability of Section 2155.444 and Section 2155.4441, Texas Government Code, in fulfilling the terms of the Contract;
- xvi) Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Section 556.005 or Section 556.008, Texas Government Code;
- xvii) in accordance with Section 2271.002, Texas Government Code, by signature hereon, Successful Respondent does not boycott Israel and will not boycott Israel during the term of the Contract;
- xviii) in accordance with Section 2155.0061, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xix) in accordance with Section 2252.152, Texas Government Code, it is not identified on a list prepared and maintained under Section 2270.0201 (previously 806.051) or Section 2252.153, Texas Government Code;
- xx) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract;
- xxi) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it (A) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (B) will not discriminate during the term of the contract against a firearm entity or firearm trade association;

- xxii) under Section 161.0085, Texas Health and Safety Code, Successful Respondent is not ineligible to receive the Contract;
 - xxiii) if Successful Respondent is required to make a certification pursuant to Section 2274.0101, Texas Government Code, (A) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Respondent is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; (B) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Successful Respondent is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; and (C) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure;
 - xxiv) if the services to be provided under a Purchase Order include cloud computing services, Successful Respondent shall comply with the requirements of the Texas Risk and Authorization Management Program (“TX-RAMP”), as provided by 1 TAC §§ 202.27 and 202.77, and the TX-RAMP Program Manual (“Program Manual”). Successful Respondent shall maintain program compliance and certification throughout the term of such Purchase Order, including providing all quarterly and ongoing documentation required by the Program Manual and any other continuous monitoring documentation or artifacts required by the Customer issuing such Purchase Order. Upon request from DIR or the Customer issuing such Purchase Order, Successful Respondent shall provide all documents and information necessary to demonstrate Successful Respondent’s compliance with TX-RAMP; and
 - xxv) all information provided by Successful Respondent is current, accurate, and complete.
- C. During the term of the Contract, Successful Respondent shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Successful Respondent covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations, and warranties and any changes thereto.
- D. In addition, Successful Respondent understands and agrees that if Successful Respondent responds to certain Customer pricing requests, then, in order to contract with the Customer, Successful Respondent may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

10.5 Ability to Conduct Business in Texas

Successful Respondent shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas in accordance with Texas Business Organization Code, Title 1, Chapter 9. Upon request by DIR, Successful Respondent shall provide all

documents and other information necessary to establish Successful Respondent's authorization to do business in the State of Texas and the validity of Successful Respondent's existence under the laws of its state of organization.

10.6 Equal Opportunity Compliance

Successful Respondent agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State of Texas in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Successful Respondent agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Successful Respondent under the Contract. If Successful Respondent is found to be not in compliance with these requirements during the term of the Contract, Successful Respondent agrees to take appropriate steps to correct these deficiencies. Upon request, Successful Respondent will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

10.7 Use of Subcontractors

If Successful Respondent uses any subcontractors in the performance of the Contract, Successful Respondent must make a good faith effort in the submission of its HUB Subcontracting Plan (HSP) in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised HSP approved by DIR's HUB Office shall be required before Successful Respondent can engage additional subcontractors in the performance of the Contract. A revised HSP approved by DIR's HUB Office shall be required before Successful Respondent can remove subcontractors currently engaged in the performance of the Contract. Successful Respondent shall remain solely responsible for the performance of its obligations under the Contract.

10.8 Responsibility for Actions

- A. Successful Respondent is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Successful Respondent nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- B. Successful Respondent, for itself and on behalf of its subcontractors, shall report to the DIR Contract Manager within five (5) business days any change to the information contained in the Certification Statement of **Exhibit A** of the RFO or Section [10.4, Successful Respondent Certifications](#) of this Appendix A to the Contract. Successful Respondent covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

10.9 Confidentiality

- A. Successful Respondent acknowledges that DIR and Customers that are governmental bodies as defined by Section 552.003, Texas Government Code, are subject to the Texas Public Information Act. Successful Respondent also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

- B. Under the terms of the Contract, DIR may provide Successful Respondent with information related to Customers. Successful Respondent shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

10.10 Security of Premises, Equipment, Data and Personnel

- A. Successful Respondent or Third-Party Providers may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to a Customer. Successful Respondent and Third-Party Providers shall preserve the safety, security, and the integrity of such personnel, premises, equipment, and other property, including data, information, files, and materials belonging to Customer, in accordance with the instruction of Customer and to the degree in which Successful Respondent or such Third-Party Provider protects its own information. Successful Respondent shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by Successful Respondent or a Third-Party Provider. If Successful Respondent or Third-Party Provider fails to comply with Customer's security requirements, then Customer may immediately terminate the Purchase Order and related Service Agreement.
- B. If a Purchase Order is subject to Section 2054.138, Texas Government Code, Successful Respondent shall meet the security controls required by such Purchase Order, and shall periodically provide to the Customer evidence that Successful Respondent meets such required security controls.

10.11 Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of Successful Respondent's employees and Third-Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Successful Respondent conduct such background checks. Should any employee or Third-Party Provider of Successful Respondent who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or Third-Party Provider in question.

10.12 Limitation of Liability

- A. For any claim or cause of action arising under or related to the Contract, to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages.
- B. Successful Respondent and a Customer may include in a Purchase Order a term limiting Successful Respondent's liability for damages in any claim or cause of action arising under or related to such Purchase Order; provided that any such term may not limit Successful Respondent's liability below two-times the total value of the Purchase Order. Such value includes all amounts paid and amounts to be paid over the life of the Purchase Order to Successful Respondent by such Customer as described in the Purchase Order.
- C. Notwithstanding the foregoing or anything to the contrary herein, any limitation of Successful Respondent's liability contained herein or in a Purchase Order shall not apply to: claims of bodily

injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under the Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

10.13 Overcharges

Successful Respondent hereby assigns to DIR any and all of its claims for overcharges associated with the Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

10.14 Prohibited Conduct

Successful Respondent represents and warrants that, to the best of its knowledge as of the date of this certification, neither Successful Respondent nor any subcontractor, firm, corporation, partnership, or institution represented by Successful Respondent, nor anyone acting for Successful Respondent or such subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the RFO directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

10.15 Required Insurance Coverage

- A. As a condition of the Contract, Successful Respondent shall provide the listed insurance coverage within five (5) business days of execution of the Contract if Successful Respondent is awarded services which require that Successful Respondent's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, Successful Respondent shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to such Customer within five (5) business days following the execution of the Purchase Order. Successful Respondent may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. If Successful Respondent's services under the Contract will not require Successful Respondent to perform work on Customer premises, or to use vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Successful Respondent may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing the Certification of Off-Premise Customer Services in the form provided by DIR, which shall serve to meet the insurance requirements.
- B. All required insurance must be issued by companies that have an A rating and a minimum Financial Size Category Class of VII from AM Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as additional insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Successful Respondent thereunder. The minimum acceptable insurance provisions are as follows:

10.15.1 Commercial General Liability

Commercial General Liability must include \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- A. Blanket contractual liability coverage for liability assumed under the Contract;
- B. Independent Contractor coverage;
- C. State of Texas, DIR, and Customer listed as an additional insured; and
- D. Waiver of Subrogation.

10.15.2 Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code) and minimum policy limits for Employers' Liability of \$1,000,000 per accident, \$1,000,000 disease PER EMPLOYEE and \$1,000,000 per disease POLICY LIMIT.

10.15.3 Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- A. Waiver of subrogation;
- B. Additional insured.

10.16 Use of State Property

Successful Respondent is prohibited from using a Customer's equipment, location, or any other resources of a Customer, DIR, or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Successful Respondent using a Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Successful Respondent to such Customer immediately upon demand by such Customer. Such use shall constitute breach of contract and may result in termination of the Contract, the Purchase Order, and other remedies available to DIR and Customer under the Contract and applicable law.

10.17 Immigration

- A. Successful Respondent shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under the Contract.
- B. Pursuant to Chapter 673, Texas Government Code, Successful Respondent shall, as a condition of the Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- i) all persons 1) to whom the E-Verify system applies, and 2) who are hired by Successful Respondent during the term of the Contract to perform duties within Texas; and
 - ii) all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of the Contract and assigned by the subcontractor to perform work pursuant to the Contract.
- C. Successful Respondent shall require its subcontractors to comply with the requirements of this Section and Successful Respondent is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Successful Respondent and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

10.18 Public Disclosure

No public disclosures or news releases pertaining to the Contract shall be made by Successful Respondent without prior written approval of DIR.

10.19 Product and/or Services Substitutions

Substitutions are not permitted without the prior written consent of DIR or Customer.

10.20 Secure Erasure of Hard Disk Managed Services Products and/or Services

Successful Respondent agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase, destroy, or render unreadable data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Purchase Order for such products and/or services, in accordance with 1 TAC 202 or NIST 800-88.

10.21 Deceptive Trade Practices; Unfair Business Practices

- A. Successful Respondent represents and warrants that neither Successful Respondent nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- B. Successful Respondent certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

10.22 Drug Free Workplace Policy

Successful Respondent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 280, Subpart F182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.23 Public Information

- A. Pursuant to Section 2252.907, Texas Government Code, Successful Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- B. Each State government entity should supplement the provision set forth in Section A, above, with the additional terms agreed upon by the parties regarding the specific format by which Successful Respondent is required to make the information accessible by the public.
- C. Successful Respondent represents and warrants that it will comply with the requirements of Section 552.372(a), Texas Government Code, where applicable. Except as provided by Section 552.374(c), Texas Government Code, the requirements of Subsection J, Chapter 552, Texas Government Code, may apply to the Contract or certain Purchase Orders, and Successful Respondent agrees that the Contract or such Purchase Orders can be terminated if Successful Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

10.24 Successful Respondent Reporting Requirements

Successful Respondent shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109, requiring computer technicians to report images of child pornography.

10.25 Cybersecurity Training

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Successful Respondent, or a subcontractor, officer, or employee of Successful Respondent, will have access to a state computer system or database, then Successful Respondent shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency or institution of higher education. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the Contract and during any renewal period. Successful Respondent shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

11 CONTRACT ENFORCEMENT

11.1 Enforcement of Contract and Dispute Resolution

- A. Successful Respondent and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, (iii) except as provided in Sec. 2251.051 Texas Government Code, Successful Respondent shall continue performance while the dispute is being resolved, and (iv) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- B. Disputes arising between a Customer and Successful Respondent shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with the above. DIR shall not be a party to any such dispute unless DIR, Customer, and Successful Respondent agree in writing.

- C. State agencies are required by rule (34 TAC §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.00.

11.2 Termination

11.2.1 Termination for Non-Appropriation

11.2.1.1 Termination for Non-Appropriation by Customer

Customers may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Successful Respondent will be provided ten (10) calendar days written notice of intent to terminate. In the event of such termination, Customer will not be in default or breach under the Purchase Order or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

11.2.1.2 Termination for Non-Appropriation by DIR

DIR may terminate the Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Successful Respondent will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

11.2.2 Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Successful Respondent becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Successful Respondent becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Successful Respondent is found by DIR to be ineligible to hold the Contract under Subsection (b) of Section 2155.006, Texas Government Code. Successful Respondent shall be provided written notice in accordance with Section 14.1, Notices, of intent to terminate.

11.2.3 Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days' written notice.

11.2.4 Termination for Cause

11.2.4.1 Contract

Either DIR or Successful Respondent may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

11.2.4.2 Purchase Order

Customer or Successful Respondent may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Successful Respondent fails to comply with confidentiality, privacy, security requirements, environmental, or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

11.2.5 Immediate Termination or Suspension

DIR may immediately suspend or terminate the Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Successful Respondent (whether or not such potential violations directly impact the provision of goods or services under the Contract). In such case, Successful Respondent may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to Successful Respondent within five (5) business days after the suspension or termination. Successful Respondent may provide a response and request an opportunity to present its position. DIR or Customer will review Successful Respondent's presentation but is under no obligation to provide formal response.

11.2.6 Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract in accordance with Section [4.5](#).

11.2.7 Successful Respondent Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay all amounts due for products or services ordered prior to the effective expiration or termination date and ultimately accepted.

11.3 Force Majeure

DIR, Customer, or Successful Respondent may be excused from performance under the Contract or a Purchase Order for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order (each such event, an “Event of Force Majeure”), provided that the party experiencing such Event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party’s control to ensure performance and to shorten the duration or impact of the Event of Force Majeure. The party suffering an Event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this Section, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by such Customer that Successful Respondent will not be able to deliver services in a timely manner to meet the business needs of such Customer.

12 NON-SOLICITATION OF STATE EMPLOYEES

Successful Respondent shall not solicit, directly or indirectly, any employee of DIR who is associated with the Contract for a period of ninety (90) calendar days following the expiration or termination of the Contract. Further, Successful Respondent shall not solicit, directly or indirectly, any employee of a Customer who is associated with a Purchase Order for a period of ninety (90) calendar days following the expiration or termination of such Purchase Order.

13 WARRANTY

Customers may provide written notice to Successful Respondent of errors, inaccuracies, or other deficiencies in products or services provided by Successful Respondent under a Purchase Order within thirty (30) calendar days or receipt of an invoice for such products or services. Successful Respondent shall correct such error, inaccuracy, or other deficiency at no additional cost to Customer.

14 NOTIFICATION

14.1 Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals, and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three (3) business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in the Contract or to such other address as such party shall have notified the other party in writing.

14.2 Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

15 CAPTIONS

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

<END OF APPENDIX A>



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: SHI Gouvernement Solutions State of Texas VID #: 1223695478500
 Point of Contact: Lisa Black Phone #: 512-701-9188
 E-mail Address: lisa_black@shi.com Fax #: 512-732-0232
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: RFO-DIR-CPO-TMP-570 Bid Open Date: 05/23/2023
(mm/dd/yyyy)

Enter your company's name here: SHI Government SolutionsRequisition #: RFO-DIR-CPO-TM

Item 20.

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)

- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

| Item # | Subcontracting Opportunity Description | HUBs | | Non-HUBs |
|--|--|--|--|--|
| | | Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years . | Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years . | Percentage of the contract expected to be subcontracted to non-HUBs. |
| 1 | | % | % | % |
| 2 | | % | % | % |
| 3 | | % | % | % |
| 4 | | % | % | % |
| 5 | | % | % | % |
| 6 | | % | % | % |
| 7 | | % | % | % |
| 8 | | % | % | % |
| 9 | | % | % | % |
| 10 | | % | % | % |
| 11 | | % | % | % |
| 12 | | % | % | % |
| 13 | | % | % | % |
| 14 | | % | % | % |
| 15 | | % | % | % |
| Aggregate percentages of the contract expected to be subcontracted: | | % | % | % |

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years, meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: SHI Government Solutions

Requisition #: RFO-DIR-CPO-TM

Item 20.

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

| Item # | Subcontracting Opportunity Description | HUBs | | Non-HUBs |
|--|--|--|--|--|
| | | Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years . | Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years . | Percentage of the contract expected to be subcontracted to non-HUBs. |
| 16 | | % | % | % |
| 17 | | % | % | % |
| 18 | | % | % | % |
| 19 | | % | % | % |
| 20 | | % | % | % |
| 21 | | % | % | % |
| 22 | | % | % | % |
| 23 | | % | % | % |
| 24 | | % | % | % |
| 25 | | % | % | % |
| 26 | | % | % | % |
| 27 | | % | % | % |
| 28 | | % | % | % |
| 29 | | % | % | % |
| 30 | | % | % | % |
| 31 | | % | % | % |
| 32 | | % | % | % |
| 33 | | % | % | % |
| 34 | | % | % | % |
| 35 | | % | % | % |
| 36 | | % | % | % |
| 37 | | % | % | % |
| 38 | | % | % | % |
| 39 | | % | % | % |
| 40 | | % | % | % |
| 41 | | % | % | % |
| 42 | | % | % | % |
| 43 | | % | % | % |
| Aggregate percentages of the contract expected to be subcontracted: | | % | % | % |

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: SHI Government SolutionsRequisition #: RFO-DIR-CPO-TM

Item 20.

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SHI has established a dedicated account team to support executing an effective customer service strategy. SHI has an existing staff of technical resources across our service portfolio in the areas of software and licensing specialists, implementation, and project management.

SHI uses the Design, Build, Test and Deploy model as a standard for all software based services. This model is an industry accepted best practice that allows for optimal system configurations and usage of appropriate tools and functionality to support customer's individual requirements.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature on File

Sarash St John

Senior Proposal Specialist

5/22/2023

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

Item 20.

Enter your company's name here: SHI Gouvernement Solutions Requisition #: RFO-DIR-CPO-TMP-570

IMPORTANT: If you responded "Yes" to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

| Company Name | Texas certified HUB | Texas VID or federal EIN <small style="color: red;">Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small> | Approximate Dollar Amount | Expected Percentage of Contract |
|--------------|--|---|---------------------------|---------------------------------|
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

Item 20.

Enter your company's name here: SHI Gouvernement SolutionsRequisition #: RFO-DIR-CPO-TMP-570

IMPORTANT: If you responded "No" to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)

- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmlbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

| Company Name | Texas VID <small>(Do not enter Social Security Numbers.)</small> | Date Notice Sent <small>(mm/dd/yyyy)</small> | Did the HUB Respond? |
|------------------------|---|---|---|
| Brock Technology Group | | 02/23/2023 | <input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No |
| Elite Solutions Inc | | 02/23/2023 | <input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No |
| NewEdge Services | | 02/23/2023 | <input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No |

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

| Trade Organizations or Development Centers | Date Notice Sent <small>(mm/dd/yyyy)</small> | Was the Notice Accepted? |
|--|---|--|
| | | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
| | | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |

HSP Good Faith Effort - Method B (Attachment B) Cont.

Item 20.

Enter your company's name here: SHI Gouvernement Solutions

Requisition #: RFO-DIR-CPO-TMP-570

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcblsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

| Company Name | Texas certified HUB | Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small> | Approximate Dollar Amount | Expected Percentage of Contract |
|--------------|--|---|---------------------------|---------------------------------|
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

Item 20.

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: SHI Government SolutionsState of Texas VID #: 1223695478500Point-of-Contact: Lisa BlackPhone #: 512-701-9188E-mail Address: lisa_black@shi.comFax #: 512-732-0232

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____

Phone #: _____

Requisition #: RFO-DIR-CPO-TMP-570Bid Open Date: 05/23/2023

(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____ .

Central Time

Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

 - Not Applicable

4. Bonding/Insurance Requirements:

 - Not Applicable

5. Location to review plans/specifications:

 - Not Applicable

DIR-CPO-5237
SHI Government Solutions
APPENDIX C PRICING INDEX

| Publisher Category | Publisher Discount Level | DIR Customer Discount (from Publisher Discount Level) |
|---|---|--|
| Adobe: | | |
| Cumulative Licensing Program (CLP) Education Membership | Level 3 Points target: 100,000+ points | 6.00% |
| Cumulative Licensing Program (CLP) Government Membership | Level 2 Points target: 300,000+ points | 6.00% |
| Microsoft: | | |
| Enterprise Agreement (comprised of subcategories as listed below) | | 18.25% |
| Office Professional/Standard | Level D less 7.5% | |
| Windows Pro Desktop Operating System | Level D less 7.5% | |
| Core CAL/Enterprise CAL Suite (to include stand alone components) | Level D less 6% | |
| All other or additional EA licensing | Level D | |
| Enterprise Subscription Agreement | Level D less 2% | 18.25% |
| Select Plus Government | Level D | 18.00% |
| Select Plus Academic | Level D | 18.00% |
| Enrollment for Education Solutions (comprised of subcategories as listed below) | | |
| Online Services | | 5.00% |
| License/Software Assurance Pack, SA Step Up, Upgrade/Software Assurance Pack | | 14.00% |
| Azure pre-paid commitment and Calling Plan | | 0.00% |
| This Contract covers the entire Microsoft Catalogue of products and Related Services plus any and all government and education volume licensing MSRP special Discount programs. | | 18.25% Depending on the Type of Software License negotiated |

DIR-CPO-5237**SHI Government Solutions****APPENDIX C PRICING INDEX**

Item 20.

| Publisher Category | Publisher Discount Level | DIR Customer Discount (from Publisher Discount Level) |
|---|------------------------------------|--|
| Software Related Services, such as installation, Configuration, etc., will be provided upon request based on the following: | | |
| Description | DISCOUNT OF MSRP/List Price | Unit of Measure |
| Technical Consultant | 1.00% | Hourly |
| Solution Architect | 1.00% | Hourly |
| Senior Solution Architect | 1.00% | Hourly |
| Project Management | 1.00% | Hourly |
| Project Coordinator | 1.00% | Hourly |
| Technician | 1.00% | Hourly |
| Cable Technician | 1.00% | Hourly |
| Engineer | 1.00% | Hourly |
| SME/Data/Mobility Architect | 1.00% | Hourly |
| Associate Consultant | 1.00% | Hourly |
| Staff Augmentation | 1.00% | Hourly |
| Implementation | 1.00% | Hourly |
| Help Desk/Service Desk | 1.00% | Hourly |
| Migration/Deployment | 1.00% | Hourly |
| DevOps | 1.00% | Hourly |
| Technical Review Level I | 1.00% | Hourly |
| Technical Solutions Level I | 1.00% | Hourly |
| Technical Solutions Level II | 1.00% | Hourly |
| Services hourly rate will be posted to the Vendor's contract website. | | |
| PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The administrative fee = .75% x Customer Price | | |



Department of Information Resources

Request for Offer

DIR-CPO-TMP-570

Software, Commercial Off-the-Shelf (COTS)

And

Related Services

| Class | Item | Description |
|--------------|-------------|---|
| 208 | 10 | Accounting/Financial: Bookkeeping, Billing, and Invoicing, Budgeting, Payroll, Taxes, etc., Microcomputer |
| 208 | 11 | Application Software, (Not Otherwise Classified), Microcomputer |
| 208 | 12 | Architectural Software, Microcomputer |
| 208 | 15 | Aviation Software, Flight Control, Ground Support, Testing, etc., Microcomputer |
| 208 | 18 | Bar Code Software, Microcomputer |
| 208 | 19 | Biometric Authentication System Software, Microcomputer |
| 208 | 20 | Business Software, Misc.: Agenda, Labels, Mail List, Planning, Scheduling, etc., Microcomputer |
| 208 | 21 | Business Intelligence Software, Microcomputer |
| 208 | 27 | Communications: Networking, Linking, etc. (Includes Clustering Software), Microcomputer |
| 208 | 30 | Computer Aided Design (CAD) and Vectorization Software, Microcomputer |
| 208 | 31 | Course Evaluation Software |

| | | |
|-----|----|---|
| 208 | 32 | Customer Relationship Management Software (CRM), Microcomputer |
| 208 | 36 | Data Processing Software, Microcomputer |
| 208 | 37 | Database Software, Microcomputer |
| 208 | 39 | Desktop Publishing, Microcomputer |
| 208 | 40 | Driver and Hardware Support Programs, Microcomputer |
| 208 | 41 | Engineering Software, Microcomputer |
| 208 | 42 | EDI (Electronic Data Interchange) Translator Software, Microcomputer |
| 208 | 43 | Educational: eLearning, Foreign Languages, Math, Science, Social Studies, etc., Microcomputer |
| 208 | 45 | Expert System Software, Microcomputer |
| 208 | 46 | E-Commerce Software, Microcomputer |
| 208 | 47 | Games: Adventure, Board, Puzzles, Strategy, etc. (See 037-84; 209-48; 785-53; and 805-51 for other type games), Microcomputer |
| 208 | 50 | Graphics: Clip Art, Demos, Presentation, Slide Shows, etc., Microcomputer |
| 208 | 51 | Human Resources Software, Microcomputer |
| 208 | 53 | Integrated Software, Microcomputer |
| 208 | 54 | Internet, Web Site and Mobile Application Development Software, Microcomputer |
| 208 | 55 | Inventory Management Software, Microcomputer |
| 208 | 56 | Logistics and Supply Chain Software, Microcomputer |
| 208 | 57 | Law Enforcement Software, Microcomputer |
| 208 | 58 | Language Translation Software, Microcomputer |
| 208 | 59 | Library Information Management and Library Catalog Database Software, Microcomputer |
| 208 | 60 | Medical Software, All Types, Microcomputer |
| 208 | 61 | OCR and Scanner Software, Microcomputer |
| 208 | 63 | Personnel Software, Microcomputer |

| | | |
|-----|----|--|
| 208 | 64 | Postage/Mailing and Shipping Software, Microcomputer |
| 208 | 65 | Point of Sale Software, Microcomputer |
| 208 | 66 | Professional: Computer Training, E-learning, Hospital/Pharmacy, Legal, etc. Software, Microcomputer |
| 208 | 67 | Programming: Basic, Assembler, Computer Assisted Software Engineering Tools (CASE), Libraries, etc., Microcomputer. |
| 208 | 68 | Project Management Software, Microcomputer |
| 208 | 70 | Printing Software, Microcomputer |
| 208 | 71 | Procurement Software, Microcomputer |
| 208 | 72 | Procurement and Accounting Taxonomy Software, Microcomputer |
| 208 | 76 | Real Estate/Property Management Software, Microcomputer |
| 208 | 77 | Recycled Software, Microcomputer |
| 208 | 80 | Software, Microcomputer (Not Otherwise Classified) |
| 208 | 81 | Software For Computer Software Training, Microcomputer |
| 208 | 82 | Scientific, Statistical, Engineering, Mathematical, and Mapping Software, Including Photogrammetry, Microcomputer |
| 208 | 83 | Shipping, Postal Management and Address Verification Software, Microcomputer |
| 208 | 84 | Spreadsheet Software, Microcomputer |
| 208 | 85 | Surveying Systems Software, Microcomputer |
| 208 | 86 | Sound or Music Editing Software, Microcomputer |
| 208 | 87 | Tools, Programming and Case Software, Microcomputer |
| 208 | 88 | Software, Monitoring, Microcomputer |
| 208 | 90 | Utilities: Back-up, Batch File, Firewall, Menus, Operating System, Network Operating System, Network Management, Recovery, Screen, Security, Virus Protection, etc., Microcomputer |
| 208 | 94 | Word Processing, Text Editors, Spell Checkers, Microcomputer |

| | | |
|-----|----|--|
| 209 | 11 | Accounting/Financial: Bookkeeping, Billing, and Invoicing, Budgeting, Payroll, Taxes, etc., Mainframes and Servers |
| 209 | 12 | Application Software, Mainframe Computer, Including Cobol |
| 209 | 13 | Application Software, Servers |
| 209 | 14 | Architectural Software, Mainframes and Servers |
| 209 | 22 | Bar Code Software, Mainframes and Servers |
| 209 | 24 | Biometric Authentication System Software, Mainframes and Servers |
| 209 | 28 | Communications: Networking, Linking, etc., Mainframes and Servers |
| 209 | 31 | Computer Aided Design (CAD) Software, Mainframes and Servers |
| 209 | 37 | Data Processing Software, Mainframes and Servers |
| 209 | 38 | Database Software, Mainframes and Servers |
| 209 | 40 | Desktop Publishing, Mainframes and Servers |
| 209 | 41 | Driver and Hardware Support Programs, Mainframes and Servers |
| 209 | 42 | E-Commerce Software, Mainframes and Servers |
| 209 | 45 | Email Software, Mainframes and Servers |
| 209 | 46 | Expert System Software, Mainframes and Servers |
| 209 | 47 | Engineering Software, Mainframes and Servers |
| 209 | 48 | Games: Adventure, Board, Puzzles, Strategy, etc. (See 037-84; 208-47; 785-53; and 805-51 for other type games), Mainframes and Servers |
| 209 | 49 | Geographic Information System (GIS) Software, Mainframes and Servers |
| 209 | 51 | Graphics: Clip Art, Demos, Presentation, Slide Shows, etc., Mainframes and Servers |
| 209 | 52 | Human Resources Software, Mainframes and Servers |
| 209 | 54 | Internet, Web Site and Mobile Application Software, Mainframes and Servers |
| 209 | 56 | Inventory Management Software, Mainframes and Servers |
| 209 | 58 | Language Translation Software, Mainframes and Servers |

| | | |
|-----|----|--|
| 209 | 59 | Logistics and Supply Chain Software, Mainframes and Servers |
| 209 | 60 | Music or Sound Editing Software, Mainframes and Servers |
| 209 | 62 | OCR and Scanner Software, Mainframes and Servers |
| 209 | 64 | Personnel Software, Mainframes and Servers |
| 209 | 66 | Point of Sale (POS) Software, Mainframes and Servers |
| 209 | 68 | Programming: Basic, Assembler, etc., Software, Mainframes and Servers |
| 209 | 69 | Project Management Software, Mainframes and Servers |
| 209 | 70 | Printing Software, Mainframes and Servers |
| 209 | 72 | Procurement Software, Mainframes and Servers |
| 209 | 77 | Real Estate and Property Management Software, Mainframes and Servers |
| 209 | 78 | Recycled Software, Mainframes and Servers |
| 209 | 82 | Scientific, Statistical, Engineering, Mathematical, and Mapping Software, Including Photogrammetry, Mainframes and Servers |
| 209 | 84 | Shipping, Postal Management and Address Verification Software, Mainframes and Servers |
| 209 | 85 | Spreadsheet Software, Mainframes and Servers |
| 209 | 87 | Software, Mainframes and Servers (Not Otherwise Classified) |
| 209 | 88 | Tools, Programming and Case Software, Mainframes and Servers |
| 209 | 91 | Utilities: Back-up, Batch File, Menus, Network Management, Operating System, Recovery, Screen, Security, Virus Protection, etc., Mainframes and Servers |
| 209 | 95 | Word Processing, Text Editors, Label Makers, Spell Checkers, etc., Mainframes and Servers |
| 550 | 90 | Transportation Systems, Intelligent (An automated information system which provides traffic management, communications, and analysis of data as a minimum) |
| 920 | 2 | Data Processing, Computer and Software Services Access Services, Data |
| 920 | 3 | Application Service Provider (ASP), Web Based Hosted |
| 920 | 4 | Applications Software, Main Frame Server Systems |

| | | |
|-----|----|--|
| 920 | 7 | Applications Software for Microcomputer Systems: Business, Mathematical and Statistical, Medical, Scientific, etc. |
| 920 | 13 | Advanced Authentication System Software Services, Including Maintenance and Repair |
| 920 | 14 | Applications Software, Mainframes and Servers |
| 920 | 15 | Assessment and Profiling Services of Software |
| 920 | 16 | Biometric Authentication System Software Services, Including Maintenance and Repair |
| 920 | 39 | Processing System Services, Data (Not Otherwise Classified) |
| 920 | 45 | Software Maintenance and Support Services |
| 920 | 46 | Software Updating and Upgrading Services |
| 920 | 49 | Systems and Executive Software, Mainframe and Servers |
| 920 | 56 | Systems and Executive Software, Microcomputer |
| 920 | 63 | Systems and Executive Software, Mainframe and Servers |
| 920 | 66 | System, Network, Database, DBA Administration Services |
| 920 | 91 | Training, Computer Based, Software Supported |
| 920 | 94 | Word Processing Software, Mainframe and Servers |
| 920 | 95 | Word Processing Software, Microcomputer |
| 920 | 96 | Word Processing Software, Minicomputer |

Issued: 2/2/2023

Version 1

Responses Due: Friday April 28, 2023, 2:00 P.M., CST

SOLICITATION CONTENTS

The list below contains a summary of the documents comprising this Request for Offer (RFO) issued by DIR. The Successful Response shall be responsible for fulfilling all requirements contained in these documents.

Software, Commercial Off-The-Shelf (COTS) RFO DIR-CPO-TMP-570

Solicitation Package 1

Exhibit A: Respondent Information

Exhibit A1: Exceptions

Exhibit B: Respondent History and Experience

Exhibit C: Contract Marketing and Support Plan

Exhibit D: HUB Subcontracting Plan (HSP) Sample Form

Exhibit E: VPAT (for COTS)

Exhibit F: Respondent Release of Liability

Exhibit G: EDGAR Certification Form

Exhibit H: Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment

Exhibit I: Certification of OFF-Premises Customer Services

Exhibit J: Reference Forms

Exhibit K: Vendor Accessibility Development Services Information Request (VADSIR)

Exhibit L: Definitions

Solicitation Package 2

Itemized Pricing Spreadsheet

Solicitation Package 3

Attachment 1: Sample Contract

Attachment 2: Appendix A Terms and Conditions

Attachment 3: Service Agreement Template

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1. INTRODUCTION

1.1. Statutory Authority

DIR has authority to complete the objectives of this procurement. This procurement fulfills the objectives of Chapter 2054 of the Texas Government Code, specifically including Sections 2054.0565, 2054.059, 2059, and Subchapters F, I and L, of the Texas Government Code. In accordance with Texas Government Code Sec. 2054.0565, USE OF CONTRACTS BY OTHER ENTITIES, (a) The department may include terms in a procurement contract entered into by the department, including a contract entered into under Section 2157.068, that allow the contract to be used by another state agency, a political subdivision of this state, a governmental entity of another state, or an assistance organization as defined by Section 2175.001.

This RFO is **not** a solicitation for professional or consulting services as defined in Chapter 2254, Texas Government Code.

1.2. Purpose

The objective of this Request for Offer (RFO) is to solicit Responses from potential Respondents to provide Software, Commercial Off-the-Shelf (COTS) and Related Services, in addition DIR will be soliciting responses for Value Added Software from authorized resellers for software publishers with which DIR has established publisher agreements for **volume license** programs to DIR Customers, acting by and through the Department of Information Resources (DIR).

As a result of this RFO, DIR expects to receive and evaluate responses and select one (1) or more qualified Respondents with whom to enter into negotiations. **Section 4 EVALUATIONS, NEGOTIATIONS, AND AWARD** of this RFO contains more information regarding evaluation and Respondent selection process. DIR reserves the right to make a single award or multiple awards from this RFO. All contract(s) awarded shall be indefinite quantity contracts with no minimum guarantees of any purchases.

For administrative efficiency for DIR and its Customers, DIR reasonably anticipates that it will award a finite number of Contracts as determined by the competitive breaks created through evaluation of Responses.

1.3. DIR Vision and Desired Outcomes

1.3.1 Background

DIR delivers the strategic thinking, purchasing power, and policy insights necessary to ensure organizations across all levels of state and local government can find, procure, and securely implement innovative technology. As the only state agency with a view into how every other agency uses technology, DIR helps the Texas legislature craft smart, statewide IT policy. While DIR is specifically charged with overseeing state government, countless local government entities—including K-12 education organizations and public colleges and universities—also depend on DIR's services to keep their technology reliable, secure, and forward-looking. For

more information on DIR and its offerings, see the DIR website at: <https://dir.texas.gov/>

1.3.2 DIR Information

DIR, a State of Texas agency, is responsible for strategic planning and coordination of the State's Information Technology (IT) environment. DIR directly assists agencies in meeting their IT requirements by providing services in the following areas:

1. IT strategic planning and IT standards development and direction;
2. Central procurement for commodity IT equipment, supplies, and selected services;
3. Coordination and sponsorship of IT training and educational events;
4. Centrally managed statewide telecommunications services; and
5. Planning and management of State technology centers, including the outsourcing and consolidation of the State agencies' data centers.

1.3.3 Information Technology Acquisition

Through its Cooperative Contracts Program, DIR assists state agencies and local governments (collectively Customers) with cost-effective acquisition of their information resources by negotiating, managing, and administering contracts with information technology providers. Customers include any Texas state agency, unit of local government, or institution of higher education as defined in Texas Government Code, Section 2054.003; the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, or a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district; those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Texas Government Code, Chapter 771; any local government as authorized through Texas Government Code, Chapter 791; the Interlocal Cooperation Act; the state agencies and political subdivisions of other states as authorized by Texas Government Code, Section 2054.0565; and for non-telecommunications IT Commodity products and services, "assistance organizations" defined in Texas Government Code, Section 2175.001.

DIR combines the buying power of authorized Customers to obtain volume-discounted pricing for selected technology products and services. In addition to offering volume-discounted pricing, DIR created the Cooperative Contracts (Co-op Contracts) Program to make it easier for Customers to acquire these products and services. Customers place orders with and issue payments directly to the Successful Respondents participating in the Co-op Contracts Program. Subject to DIR rights, DIR will award and negotiate base contract documents with Respondents. Customers contact the Successful Respondent for product and/or services and pricing

information, negotiate their own service level agreements and additional terms and conditions, if any and if more favorable to the Customer, and send their purchase orders (with the DIR contract number) and payments directly to the Successful Respondent, not to DIR. Information regarding the Co-op Contracts Program is located on DIR's Web site at <http://dir.texas.gov/View-About-DIR/Pages/Content.aspx?id=41>.

1.3.4 Texas Government Code, Section 2157.068

Texas Government Code, Section 2157.068, effective September 1, 2005, requires State agencies to buy commodity items, as detailed below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

Commodity items are commercially available software, hardware, and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two (2) or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive, or deliver information. Software is a commercially available program that operates hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates, or replacements, and may include Software provided as a service. Technology services are the services, functions, and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staff augmentation, training, maintenance, and subscription services. Seat management is a service through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software, and technology services.

1.3.5 Cost Recovery

DIR recovers the costs of negotiating, executing, and administering the Co-op Contracts through an administrative fee. DIR is authorized to charge a reasonable administrative fee to all customers per Section 2157.068(d) of the Texas Government Code. The administrative fee must be included in the Successful Respondent's price to the Customer and paid to DIR by the Successful Respondent. The fee has been set at a not-to-exceed level of two percent (2.00%) by the current appropriations act of the State Legislature. For the purposes of responding to this RFO, the administrative fee is seventy-five hundredths of a percent (0.75%). DIR may change the administrative fee at any time during a Contract term. DIR will notify Successful Respondents of any change in the administrative fee.

1.3.6 DIR Cooperative Contracts Program Historical Sales

Contracts negotiated and managed through the Cooperative Contracts Program resulted in over \$8.2 billion in Customer purchases for the past three (3) fiscal years combined. Information contained within the table below shows the total purchases for the past three (3) fiscal years by

Customer segment. These purchases represent contracts that are hardware, software, and services related. The State’s fiscal year runs September 1st through August 31st.

Table 1: DIR Cooperative Contracts Historical Sales

| | 2020 | 2021 | 2022 |
|------------------|------------------------|------------------------|------------------------|
| Assistance Org | \$7,470,000 | \$5,980,000 | \$4,660,000 |
| Higher Ed | \$374,820,000 | \$398,930,000 | \$446,820,000 |
| K-12 | \$851,820,000 | \$920,490,000 | \$891,630,000 |
| Local Government | \$687,950,000 | \$731,240,000 | \$783,360,000 |
| Out of State | \$59,450,000 | \$74,970,000 | \$84,600,000 |
| State Agency | \$606,910,000 | \$645,990,000 | \$839,580,000 |
| Total: | \$2,588,420,000 | \$2,778,000,000 | \$3,051,000,000 |

1.3.7 Current Contracts

DIR currently has multiple categories of contracts to provide Software, Commercial Off-the-Shelf (COTS) and Related Services. These categories of contracts were previously awarded from multiple RFOs but have been combined for this RFO. [Table 2: Software, Commercial Off-the-Shelf \(COTS\) and Related Services Sales Volume by DIR Fiscal Year](#) shows the total sales volume of products and services sold through the Software, Commercial Off the Shelf and Related Services (RFO416 and RFO449), the Case Management (RFO401) and the Value-Added Resellers (RFO404) contracts for fiscal years 2020, 2021, and 2022.

Table 2: Software, Commercial Off-the-Shelf (COTS) and Related Services Sales Volume by DIR Fiscal Year

| FY 2020 Sales | FY 2021 Sales | FY 2022 Sales | Total Sales |
|------------------|------------------|------------------|--------------------|
| \$268,325,331.28 | \$377,273,633.18 | \$530,092,683.99 | \$1,175,691,648.45 |

2. SCOPE

It is the responsibility of the Respondent to ensure the products and/or services proposed are within the scope of this RFO.

At the discretion of DIR, the scope of this RFO may be modified by an Addendum. It is the responsibility of the Respondent to monitor ESD for Addendum updates and to make any necessary adjustments to its response accordingly.

2.1. Products

DIR intends to contract with the Successful Respondent(s) to provide Software, Commercial Off the Shelf (COTS), including, but not limited to, the following Categories/Functionalities:

- Analytics Administrator and Explorer Software
- Application Monitoring Software
- Appointment Management Software
- Artificial Intelligence (AI)

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Audit Management
Back-Up Software
Board Management software
Building Maintenance Management Software
Business Process Management Software
Case Management Software
Check Writing and Management Software
Construction Management
Content Management Software
Contract Management (including eProcurement and Procure-to-Pay suites)
Customer Support Software Tools
Cybersecurity Software
Data and Device Security Software
Data Loss Prevention Storage Software
Data Management Software
Design and Development Software
Developer Tools Software
Disaster Recovery Software
Document Generation Software
Document Imaging Software
Document Management Software
E-discovery such as Relativity
Emergency Notification Systems Software
Engineering Design Software
Enterprise Resource Planning (ERP)
eProcurement Software
Fax Management Software
File Synchronization Software (personal cloud, and client)
File Transfer Software
Financial Management Systems Software
Fleet Management Software
GIS/Mapping Software
Government Compliance Software Solutions
Grant Management Software
Healthcare Management Software Systems
Human Resource Management Software
Insurance Software Solutions
Intelligent Data Capture Software
It Operations and Service Management Software

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Laboratory Information Management Systems Software
 License Management Software
 Messaging Software
 Migration Software
 Modern Incident Management Software
 Multifactor Authentication Software
 Network Controller Software
 Network Management Software
 Network Protocol Analyzer Software
 Presentation Management Software
 Privileged Access Management Software
 Procurement Management Software
 Procure-to Pay suites Software
 Project and Portfolio Management Software
 Project Management Software
 Proxy Server Software
 Quality Management Software
 Radiology Information System Software Solutions
 Rational Application Developer Software
 Records Management Software
 Robotic Process Automation (RFA) Software
 Robotic Process Automation* Software
 Security and access manager Software
 Statistics Software
 Survey Software
 Training and Development Software
 Transportation Routing and Management Software
 Virtualization Software
 Vulnerability Management Connectivity Software
 Web Design Software
 What You See is What You Get (WYSIWYG) Editor Software
 Workflow Automation Software

2.2. Value Added Resellers (VAR)

DIR enters into Master License Agreements (MLA) with the software publishers named in this RFO to establish statewide pricing level/band or discount levels for software that is available through each of the software publisher's volume license program. DIR intends to contract with an authorized reseller or authorized resellers for these software publishers with which DIR has existing publisher agreements. The authorized Resellers will provide the software and related

services for **Adobe, Microsoft, and Novell ONLY**. DIR reserves the right to make a single award for all the software publishers or multiple awards for each software publisher.

2.3. Out of Scope Products

The following products are out of Scope of this RFO;

- 2.3.1 Custom application development products.
- 2.3.2 Products that require customization of the COTS core code; and
- 2.3.3 Standalone hardware products (hardware is allowed when it is part of a complete software solution system).

2.4. Related Software Services

- 2.4.1 Related software services include but are not limited to installation; product configuration; maintenance and technical support; project management; licensing management services; managed services, licensing compliance services; and product training. If providing product-related services, the Successful Respondent shall provide a description of those services and the related pricing in **Package 2 - Pricing Form**.

***Software Services will only be entered in Package 2 spreadsheet. Do not enter Services in BidStamp.**

- 2.4.2 **VAR authorized Resellers** will provide, at no additional cost, reseller management services to include, but not be limited to, providing price quotes, tracking licenses (new and existing), management of licenses, monitoring volume levels and opportunities for cost savings, training, installation/de-installation/implementation support, and software advisement to DIR and/or DIR Customers. The VAR authorized Resellers would be expected to provide, at no additional cost, assistive and support services regarding the software that is representative of the State's interest and best value.

2.5. Out of Scope Services

The following Services are out of Scope of this RFO:

- 2.5.1 Services only (installation, configuration, interfacing, migration, maintenance, support, etc.) without also providing any associated software or SaaS product.
- 2.5.2 Custom application development services:
- 2.5.3 Deliverables-Based Information Technology Services (DBITS)
- 2.5.4 Infrastructure as a Service (IaaS)

2.5.5 Cloud Broker Services

2.5.6 Cloud Assessment Services

2.5.7 Professional or Consulting services as defined in Chapter 2254 of the Texas Government Code.

2.6. Respondent Requirements

- a) The Successful Respondent shall ensure that all network ports and protocols utilized by the software are documented; the Successful Respondent shall provide documentation to the Customer.
- b) The Successful Respondent shall provide remote customer support through telephone, email, and /or the web.
- c) The Successful Respondent shall only provide software that is free of date related defects (e.g., four-digit years).
- d) The authorized VAR Resellers must be able to provide a comprehensive system for license tracking and inventory management of license product purchases, including but not limited to, accurate record keeping for product purchases, tracking maintenance renewals/due dates, etc.
- e) The authorized VAR Resellers must be able to provide reporting, including but not limited to, standard and online reports for individual customers, custom or ad-hoc reports as requested by individual customers, etc.
- f) The authorized VAR Resellers shall meet customer service expectations, including but not limited to dedicated representation and timely response, problem escalation, providing service level performance standards, etc.
- g) The authorized VAR Resellers shall be a liaison with the software Publisher and work in the best interest of the state and its customers to leverage volume or enterprise license agreements and maximize cost savings through better pricing, publisher's promotions, or other savings opportunities.
- h) THE AUTHORIZED VAR RESELLERS MUST HONOR EXISTING/CURRENT CUSTOMER AGREEMENTS A DIR CUSTOMER MAY HAVE THAT CONTAIN REMAINING PAYMENT TERMS AT EQUAL TO OR BETTER PRICING. PRICE ESCALATION FOR EXISTING CUSTOMER AGREEMENTS WILL NOT BE ALLOWED. IF MORE ADVANTAGEOUS PRICING IS PROVIDED DURING THE EXISTING TERM OF A CUSTOMER AGREEMENT, THE AUTHORIZED RESELLER SHALL EXTEND THE REDUCED PRICING TO ALL DIR CUSTOMERS.

2.7. Electronic and Information Resources (EIR) Accessibility

Products, applications, and websites that will be used by Texas state employees or members of the public must comply with EIR accessibility technical standards as defined in [1 TAC 206](#), [1 TAC 213](#), and in the [Worldwide Web Consortium WCAG 2.0 AA](#). Accurate product Voluntary Product

Accessibility Templates (VPATs) are required for Commercial Off-the-Shelf (COTS) offerings included in this contract. If development services are included, vendors will be required to complete the Vendor Accessibility Services Development Information Request (VASDIR) or other documents as requested that describe vendor's ability to produce accessible offerings. The Successful Respondent shall provide a solution that is compliant with the above referenced standards and provide satisfactory responses on the documents.

Respondent shall complete:

1. Exhibit E Voluntary Product Accessibility Templates (VPATs)
2. Exhibit H: Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-assessment; and
3. Exhibit K: Vendor Accessibility Development Service Information Request (VADSIR).

Per Table 5: Response, the Respondent shall include completed above-referenced attachments in the response.

2.8. Proposed Changes and Exceptions

Caution: Respondent's Response may be disqualified if their exceptions are excessive.

Item 13 of **Exhibit A Respondent Information** contains the format for Respondent to note any exception to any provision, term, or condition specified in the *Contract for Products and Related Services* and *Standard Terms and Conditions*. Respondent should provide any proposed changes to contract language in redline in the "Proposed Language (redline)" column of the chart in Item 13 of **Exhibit A Respondent Information**. Failure to abide by these instructions may result in DIR rejecting all exceptions submitted by the Respondent.

Respondents may request exceptions to standard contract terms and conditions, provided that they provide a legally sustainable reason for the exception (i.e., NOT "My prior contract had the same exception"). If Respondent is unable to comply with these provisions, the Respondent's Response may be subject to disqualification from further consideration; (2) DIR in its discretion may or may not accept the Respondent's requested exceptions; exceptions submitted without a legally sustainable reason will not be considered; and (3) material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) may render the Response non-responsive and may result in rejection of the bid. In addition to the explanation as to why the Respondent cannot comply with the provision, term, or condition, proposed alternative language **must** be included in the Response. If Respondent fails to note any exception, Respondent will not be allowed to request an exception at some later date.

DIR reserves the right to make changes to the Contract for Products and Related Services or the Standard Terms and Conditions if it is in the best interest of the State to do so. Should this occur prior to the award of any Contract, any Respondent selected for negotiations will be notified.

2.9. Term of Contract

DIR anticipates that the initial term of the Contract will be up to two (2) years with one (1) optional two-year renewal and two (2) optional one-year renewal (each, a "Renewal Term") to be exercised by DIR at its discretion. In the event of prolonged Contract negotiations due to the number and/or significance of exceptions taken, lack of responsiveness, or other failure to close Contract negotiations on the part of Respondent that are not due to a failure on the part of DIR, DIR may, in its sole discretion, bypass the Respondent and commence negotiations with the next-highest scoring Respondent, or continue with the current Respondent with a shorter contract term.

Section 3.9.4 of this RFO contains the format for Respondents to note any exception to any provision, term, or condition specified in the RFO.

Any objections or exceptions should be noted in keeping with **RFO Section 3.9.4**.

DIR reserves the right to make changes to the Standard Terms and Conditions if it is in the best interest of the State to do so. Should this occur prior to the award of any Contract as a result of this RFO, any Respondents selected for negotiations will be notified.

2.10. Option to Extend

The Successful Respondent agrees that DIR may require continued performance, beyond the initial or any renewal Contract term, of any of the within described services at the rates specified in the Contract. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed four (4) calendar months or December 31, of the then-ending Contract Term year, whichever is later. Such extension of services shall be subject to the requirements of the Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written notice to the Successful Respondent.

2.11. Products and Services Offerings

Products and services available under the Contract are limited to the technology categories defined in Request for Offer DIR-CPO-TMP-570 for Software Commercial off the Shelf (COTS) and Related Services. At DIR's sole discretion, Successful Respondent may incorporate changes or make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO.

3. GENERAL SOLICITATION INFORMATION

3.1. Point of Contact

Vania Ramaekers is the sole point of contact for this procurement. Routine correspondence may be directed to Vania Ramaekers as follows:

Vania Ramaekers, CTCD, CTCM

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Department of Information Resources
 300 W. 15th Street, Suite 1300
 Austin, Texas 78701
 Internet: vania.ramaekers@dir.texas.gov

Respondents shall make no contact concerning this RFO with other DIR personnel, except as permitted by the point of contact. **Failure to comply with this requirement at any point prior to contract award may result in disqualification.** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement. Contact with the DIR Historically Underutilized Business (HUB) office is allowed solely for the purpose of addressing HUB Subcontracting Plan (HSP) questions.

3.2. Response Integrity

To ensure the integrity of the competitive process, a Respondent may not directly or indirectly communicate any of the contents of its Response to:

- i) A competitor of the Respondent; or
- ii) Any other company, corporation, firm, partnership, individual, or related entities of the same parent company engaged in the same line of business as the Respondent; or
- iii) A related entity of the Respondent engaged in the same line of business as the Respondent.

This prohibition is in effect during the preparation of the offer and while the offer is pending with DIR, including the negotiation and finalization of any resulting Contract. The term "related entities" includes, but is not limited to, affiliates, subsidiaries, associates, branches, and divisions. It does not include entities that may occasionally enter into teaming agreements with one another to provide services under a contract with a third party but otherwise have no legal relationship with each other.

When a related entity of the Respondent (whether related at the time Responses are due or at any time thereafter) submits a competing offer, DIR may require additional information to ensure each separate Response is independent. Failure to provide or fully disclose all such information may, at DIR's discretion, disqualify Respondent or result in the termination of any resulting contract. **RESPONDENT HAS AN ONGOING DUTY TO UPDATE ALL INFORMATION INCLUDED IN ITS RESPONSE AT ANY TIME THAT SUCH INFORMATION CHANGES.**

3.3. Schedule of Events

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. DIR reserves the right to modify these dates at any time. Prospective Respondents will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

Table 3: Tentative Schedule of Events

| Activity | Date/Time (CST) |
|---|------------------------------|
| Publish RFO on Electronic State Business Daily | 2/2/2023 |
| Deadline for submitting Pre-Proposal Conference questions | 02/24/2023 05:00 PM (CT) |
| Pre-Proposal Conference (Optional) | 03/01/2023 01:00 PM (CT) |
| Deadline for submitting all RFO Questions | 03/21/2023 05:00 PM (CT) |
| Deadline for submitting Response to RFO | 04/28/2023 02:00 PM (CT) |
| Deadline for DIR to receive Respondent References | 04/28/2023 02:00 PM (CT) |
| Evaluations, Clarifications, and Amended Responses | 05/01/2023 – 5/30/2023 |
| Negotiations and Awards | 06/01/2023 – until completed |

3.3.1 Optional Webinar

DIR will hold a webinar for this procurement on the date and time specified in **Section 3.3 Schedule of Events**. It is recommended that at least one (1) Respondent representative attend this webinar.

DIR will provide attendees the opportunity to submit written questions via the webinar. DIR requests that all questions submitted at the webinar reference the appropriate RFO or Exhibit page and section number.

The webinar will provide overview information of the RFO and will provide preliminary answers to questions submitted prior to the webinar question deadline as well as questions submitted via the webinar itself. Although DIR may provide tentative verbal answers to questions on the webinar, only answers provided in writing by DIR shall be considered official. Information in any form other than the materials constituting this RFO and its Exhibits, the Question and Answer Document(s), and any Addenda shall not be binding on DIR. DIR reserves the right to amend answers prior to the offer submission deadline.

ATTENDANCE AT THE PRE-SOLICITATION WEBINAR IS HIGHLY RECOMMENDED.

- Date:** 03/01/2023
- Time:** 10:00 a.m.
- Location:** Zoom / Interactive Webcast
- Address:** NA- Remote Only

The webinar will be available live via the web. **To participate in this live interactive Webcast, you must register at:**

https://www.zoomgov.com/webinar/register/WN_Lt-vdVRyQyGsHo5mLL8IGw

3.3.2 Written Questions and Official Answers

Using Table 4: Question Template, Respondents shall submit all questions regarding this RFO through the BidStamp VIS. **Questions regarding this RFO will be accepted until the date and**

time specified Section 3.3 Schedule of Events. Official answers will be posted as an Addendum to this RFO, on the Electronic State Business Daily (ESBD), available at <http://www.txsmartbuy.com/esbd>.

By submission of a question, vendors acknowledge that the applicable question will be posted with each official answer and therefore vendors should not include any confidential or proprietary information in such questions. DIR will not publish the identity of any vendor that submitted any inquiry.

Table 4: Question Template

| # | RFO/Document Location/Cell Reference | Question |
|----------------------|--|--|
| <i>Example:</i> 1 | <i>RFO Section 3.4 Historically Underutilized Business</i> | <i>What is the HUB goal expected for this procurement?</i> |
| | | |
| | | |

3.4. Historically Underutilized Businesses

The purpose of the Historically Underutilized Business (HUB) Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency must make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

- i) 11.2% for heavy construction other than building contracts;
- ii) 21.1% for all building construction, including general contractors and operative builders' contracts;
- iii) 32.9% for all special trade construction contracts;
- iv) 23.7% for professional services contracts;
- v) 26.0% for all other services contracts;
- vi) 21.1% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code

, Chapter 2161.252(b), and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

HUBs are strongly urged to respond to this RFO. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. Successful Respondents who meet the qualifications are strongly encouraged to apply for certification as HUBs.

3.4.1 HUB Subcontracting Plan

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. **The HUB Goal for this RFO is <21.1%>. ALL RESPONDENTS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBS. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION.**

The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are available at: <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. **NOTE:** Respondent must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Successful Respondent for more than five (5) years. If the Successful Respondent does not plan to subcontract, Successful Respondent must state that fact in their plan. A scan of the original, signed paper copy of the HSP must be uploaded into BidStamp. Please provide an unsigned copy of the editable PDF in BidStamp as well. The completed, approved plan shall become a part of the Contract if the Respondent is selected to receive a contract as a result of this RFO.

3.5. HUB Continuing Performance

Any Contract includes reporting responsibilities related to HUB subcontracting. Successful Respondent shall not change any subcontractor without submitting a revised HSP. Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation. **Customers are not required to pay for services received from subcontractors that are not part of an approved HSP.**

3.5.1 HUB Resources Available

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Website at: <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. For additional information, contact the CPA's HUB program office at StatewideHUBProgram@cpa.texas.gov. If Respondent knows of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

3.6. Successful Respondent Qualifications

3.6.1 Federal Requirements

State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Respondent listed in the prohibited Vendor list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of

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Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Respondent awarded a Contract (a Contract Holder) must agree that if at any time during the term of the Contract the Contract Holder is listed on the Terrorism List, the Contract Holder shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure Contract Holder remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the Contract without recourse in the event the Contract Holder becomes listed on the Terrorism List.

Should any Contract Holder become suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration, the Contract Holder's Contract will be terminated without recourse.

Contract Holders shall comply with the requirements of the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

The **Education Department of General Administrative Regulations (EDGAR)** are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014. EDGAR encourages the use of cooperative agreements for procurement or use of common or share goods and services in order to foster greater economy and efficiency. DIR uses an open market competitive procurement process to award contracts as required by Texas Government Code 2054 and 2157. If Successful Respondent provides evidence of its EDGAR compliance that DIR to the best of information and belief, finds to be satisfactory, then DIR may identify Successful Respondent as certifying that all or a portion of Successful Respondent's listings are EDGAR eligible, and DIR may then permit Successful Respondent to so identify all or part of its offerings on Successful Respondent's DIR website. In such cases, upon request from eligible Customer, Successful Respondent must complete EDGAR certification affirmation forms to satisfy Customer requirement.

3.6.2 Successful Respondent Performance and Debarment

In accordance with 34 TAC, Chapter 20, Subchapter C, a Respondent that is debarred from doing business with the State of Texas will not be awarded a Contract. The list of debarred vendors is located on the CPA Web site at:

<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>

3.6.3 Required Respondent and Subcontractor Current and Former State Employee Disclosures

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Respondent shall disclose, for itself and on behalf of all of its Subcontractors, in its response to **Exhibit A Respondent Information, Section 12 Respondent and Subcontractor Conflict of Interest Disclosure**, all of the following:

Any current or former employees of Respondent who will spend twenty percent (20%) or more of their time on the Contract and are current or former employees of DIR within the past five (5) years.

Any proposed Respondent personnel assigned to work directly on the Contract twenty percent (20%) or more of their time who are related within two (2) degrees of consanguinity of any current or former employees of DIR. Disclosure of former state employees may be limited to the last five (5) years; and

Respondent will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Respondent will complete the following information in order for the Response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Respondent, and Date of Employment with Respondent.

3.6.4 Cybersecurity Training

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Successful Respondent, or a subcontractor, officer, or employee of Successful Respondent, will have access to a state computer system or database, then Successful Respondent shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Successful Respondent shall verify to the Customer state agency are institution of higher education completion of the program by each such officer, employee, or subcontractor.

3.6.5 Authorized Resellers/Order Fulfillers

Any Respondent who is not the manufacturer or publisher of a product included in its Response must supply a signed letter from the manufacturer or publisher certifying that Respondent is an authorized reseller of the manufacturers or publisher's products to the agencies and political subdivisions of the State, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Respondent's proposal.

Signed letters of authorization must be submitted with Respondent's proposal.

Any Respondent who is an authorized VAR Resellers must supply a letter from the publisher applicable to their response certifying that **Vendor is an authorized volume licensing reseller of publisher's** products to the agencies and political subdivisions of the State of Texas as

described in **Section 2. Scope** of this RFO. **Failure to supply all letters of authorization will result in elimination of the related product or the entire proposal from the solicitation process.**

3.7. Electronic and Information Resources (EIR) Accessibility

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR's state agency and Institution of Higher Education Customers must procure EIR that complies with the accessibility standards defined in the Texas Administrative Codes [1 TAC 206](#), [1 TAC 213](#), and in the [Worldwide Web Consortium WCAG 2.0 AA](#) technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations.

Accordingly, all Respondents must provide the following accessibility documentation:

- i. For each commercial product (also referred to as commercial off the shelf or COTS), and service products such as Software as a Service (SaaS), Platform as a Service (PaaS), and any other managed services that include a user interface, a completed Accessibility Conformance Report (ACR) and or the URL to view the ACR online. See RFO Section 3.7.1 for detailed requirements.
- ii. For non-product offerings (such as IT related development services, services that include user interfaces, managed services, online components, etc.), a Vendor Accessibility Development Services Information Request (VADSIR), which documents Respondent's capability or ability to produce or customize accessible EIR (also referred to as Information and Communications Technology (ICT)). See RFO Section 3.7.2 for detailed requirements.
- iii. The Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment. See RFO Section 3.7.3 for detailed requirements.

Responses with missing or incomplete required accessibility documentation will receive a failing score for the EIR accessibility evaluation and may be disqualified.

3.7.1 ACR Submission and Review

All Respondents must provide ACRs created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (version 2.3 or higher) or provide links to ACRs located on manufacturer(s)' websites (where available) for every product (as defined above) or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such completed ACRs already exist, and there have been no changes to the product or service since April 18, 2020.

Respondents claiming that a proposed product or family of products is exempt from

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accessibility requirements must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.

Respondents that do not already have accessibility documentation should complete the form included in the bid package or may obtain the form located here: <http://www.itic.org/public-policy/accessibility>. Resellers should obtain an ACR(s) from the manufacturer and or provide links to the manufacturer's accessibility documentation.

DIR will review a sample of ACRs for credibility and completeness.

Respondents that submit incomplete ACRs or are unable to provide or obtain ACRs for products it manufactures or for products from manufacturers it represents, may be required to submit a letter (Accessibility Statement) stating that some or all product(s) accessibility documentation may be missing, product accessibility is untested, and an explanation of alternate accommodation.

3.7.2 VADSIR Submission and Review

Respondents must ensure that EIR and ICT accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

Respondents must complete a VADSIR Questionnaire to document the Respondent's capability or ability to produce accessible EIR and ICT if the response includes one or more of the following offerings:

- i. Website development services
- ii. Web Application Development Services
- iii. Custom development services as part of an integrated solution
- iv. Client based software application development services
- v. Other software development services containing one or more user interfaces (end user, administrative, etc.)

VADSIRs will be evaluated by DIR for credibility and completeness.

3.7.3 PDAA Submission and Self-Assessment Score

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All Respondents must complete the PDAA Self-Assessment Questionnaire for responses that include EIR or ICT. The PDAA generates a self-assessment score which is an indicator of the extent to which a Respondent's organization has implemented accessibility best practices within operations and integrated accessibility criteria into all phases of a product life cycle. The PDAA is an organizational assessment, not an assessment of products or services.

PDAA score will be included in the evaluation and a missing or blank PDAA will receive a score of 0 (fail) and will disqualify the Response.

3.8. Response Deadline and Submission Requirements

Respondents are required to submit Responses in accordance with the requirements outlined in this document. Responses must be received by DIR on or before **the date and time specified in RFO Section Table 3: Tentative Schedule of Events**. **No late Responses will be reviewed.**

No facsimile or e-mail responses shall be accepted unless otherwise indicated in an addendum on the ESD, provided that DIR may, in its sole discretion, grant an accommodation upon showing of good cause by a Respondent.

The system clock in the BidStamp VIS is the official timepiece for determining compliance with the deadline. The "Submit Response" button in the BidStamp VIS MUST be engaged prior to the due date and time or the response will not be received through the automated system. All responses will be date and time stamped electronically in the BidStamp VIS or if accommodation is granted by DIR, when received by the Purchasing Office on the 13th floor, at which point the clock in the Purchasing office shall serve as the official timepiece for those Responses.

DIR Procurement staff are unable to view any submission documents prior to the closing date and time of the RFO. Therefore, DIR Procurement staff are unable to pre-view any submissions in the BidStamp VIS portal for completeness. It is the responsibility of the Respondent to ensure their submission meets the requirements of the RFO.

3.9. Response Instructions

Respondent will follow the instructions set forth in the following Exhibits and Attachments to this RFO.

Each section, Exhibit, and Attachment of this RFO, along with any other associated files, contains individual detailed instructions regarding the required format of the Respondent's Response. The Respondent is required to respond according to the instructions contained in each section of this RFO.

Respondent's Response must be consistent with the structure, sequencing, and terminology used in this RFO.

3.9.1 BidStamp Vendor Information System (VIS) Portal

DIR's BidStamp Vendor Information System (BidStamp VIS) provides prospective Respondents with the ability to create a profile that supports the key functions required during the solicitation

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response process. The high-level processes associated with the portal include vendor account/profile creation, vendor contact creation, vendor account management, and Response submission. In addition to the account management and solicitation response capabilities enabled by the BidStamp VIS portal, Respondents will be able to view open solicitations and additional information about DIR.

3.9.1.1 VIS Account Request Process

Before users can access any of the BidStamp VIS portal functionality, they will be required to provide login credentials to access a new or existing account. Respondents may access the BidStamp VIS Portal via <http://dircommunity.force.com/BidStamp>, and enter in their access credentials. If a potential Respondent does not yet have login credentials, the Respondent should request one by clicking on “Are you a Vendor and need to request an account?” button that is located on the login page. **NOTE: This process can take up to forty-eight (48) hours to complete. Interested parties should not wait until the closing date to begin the process of creating an account.**

Instructions for VIS account access and using the BidStamp VIS portal to submit solicitation response can be found on DIR’s website [Information for Vendors](#) page.

3.9.1.2 Solicitation Response Requirement

Any Respondent to this RFO must submit their Response through the BidStamp VIS unless other arrangements are made in advance of the RFO due date and time. Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact DIR at the point of contact in Section [3.1 Point of Contact](#). Please allow at least five (5) Business Days for response.

Respondents shall follow the specific naming conventions detailed in this RFO. For electronic files, the Respondent must use a three-letter identifier preceding each named file (e.g., Big Service Company, Inc., “BSC”). This three-letter identifier shall replace the “ABC” referenced in the file names below. **All files submitted by the Respondent should use the same three-letter identifier.**

Respondents should note that DIR expects each Respondent to comply with the requirements of this RFO as written, and to price its Response accordingly. DIR strongly discourages any Respondent from indicating that it does not agree or does not comply with a provision because the Respondent is unwilling to price it (for risk, liability, or any other reason).

Non-submission of any of the requested information may disqualify the Respondent’s Response from further consideration by DIR.

3.9.2 No Marketing Materials Desired

Unnecessarily elaborate brochures or other presentations beyond those requested and sufficient

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to present a complete Response **are not desired**.

3.9.3 Response Documents

3.9.3.1 Exhibit A Respondent Information and Executed Offer Form

The Respondent shall complete and sign the Executed Offer Form found in **Exhibit A** of this RFO document. **Failure to sign Exhibit A will result in the disqualification of the response as noncompliant.**

3.9.3.2 Exhibit A1 Exception Table

Respondent shall complete Exhibit A1 Exceptions - Any Exceptions requested or Affirmative Statement that Respondent takes no Exceptions.

3.9.3.3 Exhibit B Respondent Experience

Respondent shall complete Exhibit B Respondent Experience, providing information regarding its past relevant experience.

Respondent shall not refer to information provided elsewhere in the RFO Response or reference website links.

3.9.3.4 Exhibit C Contract Marketing and Support Plan & Attachments

Respondent shall complete Exhibit C Contract Marketing and Support Plan, providing information regarding its plan to market and support the DIR contract if awarded. Respondent shall include any requested attachments as part of the complete response to Exhibit C.

Respondent shall not refer to information provided elsewhere in the RFO Response or reference website links.

3.9.3.5 Exhibit D HUB Subcontracting Plan (HSP)

Respondent shall download the most recent version of the HUB Subcontracting Plan, complete, sign and submit the HUB Subcontracting Plan in accordance with Section 3.4 Historically Underutilized Businesses and the instructions in the HSP document.

The Exhibit D HUB Subcontracting Plan document is provided as an example only. Respondent shall not utilize the actual document to complete as part of their response.

3.9.3.6 Exhibit E Accurate Product Voluntary Product Accessibility Templates (VPATs)

Respondent shall download the most recent version of the VPATs form and complete this form for each software being proposed.

3.9.3.7 Exhibit J Respondent References and Exhibit F Respondent Release of Liability

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Respondent must complete the top portion of and send **Exhibit J Reference Form** to a minimum of three (3) companies or government agencies who are capable of providing comment on the Respondent's ability to provide the services described in this RFO and who are willing to do so. Reference should be able to comment on work performed by the Respondent in the past two (2) to five (5) years. Instructions are included in **Exhibit J Reference Form**. DIR is not responsible for undeliverable e-mails or for non-responsive references. Respondent's references will be evaluated in accordance with Section [4.2.2 Weighted Evaluation Criteria](#). References must respond directly to DIR on the form provided by the due date in order to be considered for evaluation. **Exhibit J Reference Form** must be submitted by the reference directly to the point of contact listed in the Reference Form. The Respondent may not submit the reference form to DIR. Completed **Exhibit J Reference Forms** submitted by the Respondent will **NOT** be considered. DIR may contact References for clarification at DIR's discretion.

For each reference provided, Respondent shall provide a signed RFO **Exhibit F, Respondent Release of Liability**.

3.9.3.8 Canceled Contract References

Using **Exhibit, A Respondent Information, Attachment 1 Canceled Contracts** (included as part of **Exhibit A**), Respondent shall provide the name, title, contact number and description of services provided for any contract that was canceled or prematurely terminated in the past five (5) years. Respondent shall include details on the reason for the cancelation and the Respondent's position relevant to the cancelation, including the final resolution of the contract cancelation. For each company or entity listed, Respondent shall provide a signed RFO **Exhibit F, Respondent Release of Liability**. Failure to disclose Canceled Contracts may lead to a Respondent not being considered for award.

3.9.4 Pricing

Any Respondent responding to this RFO must submit specific pricing for the products and services requested herein. For the purposes of obtaining pricing and evaluating the responses to this RFO, the products and related services, if any, shall be priced and discounted as instructed. **may be made available through a Contract.**

Respondents should not assume they will have the ability to negotiate better pricing/discounts, but rather respondents should make their best offer on pricing/discounts with their initial response.

3.9.4.1 Automated Pricing Form in BidStamp Vendor Information System (VIS)

Respondents must submit product pricing on DIR's Automated Pricing Form in the BidStamp VIS. Failure to respond as instructed may result in Respondents' offer being disqualified from further evaluation.

Respondents must submit the discount(s) of the offerings on Automated Pricing Form in BidStamp VIS (by selecting "Create Pricing Form" button)

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Automated Pricing Form: The products shall be categorized by brand, product category, product family or whatever group of Respondent's choice.

Please note **only products** shall be included on this Automated Pricing Form in BidStamp VIS, no services shall be included.

Respondents must offer only one discount for each brand, product family or whatever group of Respondent's choice proposed. The discount shall be applied to all products within that brand, product family or whatever group of Vendor's choice.

Product discount ranges and/or averages will not be accepted. The price to the DIR Customer shall include all shipping and handling fees.

BidStamp VIS Automated Pricing fields include:

- i. **Product Category/Function** Enter product family or product category of the proposed brand. Example: Case Management
- ii. **Brand Name:** Example: Sony
NOTE: **Brand name must be submitted as spelled in the general marketplace.** (Example: HoverCam is correct. Hover Cam is incorrect)
- iii. **Discount off MSRP or List Price:** provide discount for detailed line item. Provide discount for each brand.

For the purposes of this RFO, the following definitions will apply:

- i. **List Price:** the price at which a product is usually sold to the public and from which a trade discount is computed by a prime Vendor that is an authorized reseller for a manufacturer.
- ii. **MSRP:** the price of a product which the manufacturer recommends that the reseller sell the product. The intention of the MSRP is to help standardize prices among authorized resellers.

3.9.4.2 Package 2 – Itemized Pricing

Respondent shall use the electronic version of Package 2- Itemized Pricing to provide a detailed response. Respondent shall not alter the format of the pricing template. Respondent may add additional rows but shall not delete or change formulas.

The detailed products and/or services offerings shall be provided on Package 2 Itemized Pricing and shall be uploaded as an excel spreadsheet in the BidStamp VIS document set.

Discounts entered in Package 2 Itemized Pricing must match the discounts entered in the Automated Pricing Form. **DIR may disqualify brand(s) proposed if a discrepancy is found.**

For purposes of this RFO, there are Five (5) Tabs identified below that are in the "Package 2", Itemized Pricing Sheet:

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- i. Tab 0: Instructions
- ii. Tab 1: Products Detail
- iii. Tab 2: BidStamp Brand Average Discount
- iv. Tab 3: Service Details
- v. Tab 4: Volume Discount
- vi. Tab 5a VAR Product Volume Discount
- vii. Tab 5: VAR Products Pricing Sheet

3.9.4.3 Related Services

Any Vendor offering product-related services must submit a description of those services and the related pricing in the Package 2, Itemized Price Sheet.

3.9.4.4 Manufacture Letters of Authorization

Respondent responding to this RFO as the Reseller/Order Fulfiller of the Software, Commercial Off the Shelf (COTS) and Related Services must submit the Manufacturer's resell authorization letter from the Manufacturer and/or Publisher. Refer to Section 3.6.5 for detailed information.

3.9.5 Exceptions to Requirements (including Appendix A Standard Terms and Conditions)

The final terms and conditions of any Contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that will be included in any awarded Contract are contained in **Package 3A DIR Standard Terms and Conditions** included in the RFO documents.

Exhibit A Respondent Information item 13 contains the format for Respondents to note any exception to any standard provision, term, or condition specified in the RFO. **Exceptions to the RFO document itself are prohibited.** An explanation as to why the Respondent **cannot** comply with the provision, term, or condition **and** why the proposed alternative language **must** be included in the Response. Examples of nonresponsive explanations include:

- i) Referencing negotiation of revised language in another DIR or other state agency contract;
- ii) Referring to an internal division's need for the revised language without a valid reason as to why the exception is necessary;
- iii) Indicating the proposed language is "negotiable" without further justification;
- iv) Referencing an internal Respondent terms and conditions document.

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Exceptions must include:

- i) RFO document title (Exhibit, Attachment, etc.) section number and section title;
- ii) Explanation as to why Respondent **cannot** comply with the term or condition; and
- iii) Proposed alternate language (redlined against the standard language).

If Respondent fails to note any exception within its initial Response, Respondent will not be allowed to request an exception upon award or at some later date.

The column labeled "Location/Specific Section Reference" should be used to identify the specific RFO document and the location(s) (section number or other identifiable reference) within the RFO documents that the language addresses. The Respondent must provide, as a separate Microsoft Excel document, a file entitled "**ABC_ Exhibit A1_Exceptions.xlsx.**"

Respondents are encouraged not to request exceptions or optional term formats to standard contract terms and conditions; DIR, in its sole discretion, may or may not accept the Respondent's requested exceptions.

Prior to the final award of a Contract, DIR reserves the right to make changes to standard terms and conditions. Should this occur, any Respondent selected for negotiations will be notified.

If there are no exceptions, the Respondent shall explicitly state the Respondent takes no exception to any part of this RFO. **Any exception may result in the Contract not being awarded to the Respondent.**

3.9.6 Addenda to the RFO

To acknowledge receipt of all Addenda, the Respondent shall provide a completed and signed "page one" of each Addendum.

3.9.7 Response Files

The following table summarizes the files to be loaded into the BidStamp VIS in order to be considered a complete Response, with the corresponding file names. It includes required Accessibility documents referenced in RFO Section [3.7 Electronic and Information Resources \(EIR\) Accessibility](#).

Table 5: Response Files

| RFO Reference | Form of Response |
|---|-----------------------------------|
| Package 1 | |
| Exhibit A: Respondent Information Form – MUST BE SIGNED | "ABC_570_Exhibit A.docx" |
| Exhibit A1: Exceptions - Any Exceptions requested or Affirmative Statement that Respondent takes no Exceptions | "ABC_570_Exceptions.xlsx" |
| Redlined version of Package 3a Standard Terms and Conditions, if applicable | "ABC_570_Package 3a_Redline.docx" |
| Exhibit B: Respondent History and Experience | "ABC_570_Exhibit B.docx" |

| RFO Reference | Form of Response |
|--|--|
| Exhibit C: Contract Marketing and Support Plan | "ABC_570_Exhibit C.docx" |
| Exhibit D: HUB Subcontracting Plan (HSP) – MUST BE COMPLETED and SIGNED | "ABC_570_HSP.docx" |
| Exhibit E: ACR (VPAT) | "ABC_570_ACR_Brand.docx" *include the actual "Brand" name in the document naming convention* |
| Exhibit F: Respondent Release of Liability | "ABC_570_Exhibit F.docx" |
| Exhibit G: EDGAR Certification Form | "ABC_570_EDGAR.docx" |
| Exhibit H: PDAA Form | "ABC_570_PDAA.docx" |
| Exhibit I: Certification of OFF Premise Customer Services | "ABC_570_Off Premise.docx" |
| Exhibit J: Reference Form | To Be submitted by Customers via Email. |
| Exhibit K: VADSIR (if applies) | "ABC_570_VADSIR.docx" |
| Package 2 Itemized Pricing | "ABC_570_Pricing.xlsx" |
| Signed Addenda to the RFO | "ABC_570_Addenda" (.docx or .pdf) |
| Manufacture Letters of Authorization | "ABC_570_LOA_Brand.docx" *include the actual "Brand" name in the document naming convention* |

3.10. Rejection of Responses

DIR has sole discretionary authority and reserves the right to reject any and all Responses received as a result of this RFO. Responses that do not comply with the mandatory submission requirements may be rejected. In addition, DIR reserves the right to accept or reject, in whole or in part, any Responses submitted, and to waive minor technicalities when in the best interest of the State.

3.11. Right to Amend or Withdraw RFO

DIR reserves the right to alter, amend, or modify any provision of this RFO, or to withdraw this RFO, in whole or in part, at any time prior to the award of a Contract if doing so is in the best interest of the State. DIR reserves the right to re-solicit for like or similar products and services whenever it determines re-solicitation to be in the best interest of the State.

Any changes or additional information regarding this RFO will be posted as an Addendum on the ESD, at <http://www.txsmartbuy.com/esbd>. It is the responsibility of Respondents to monitor the web site for Addenda. Respondent's failure to periodically check the ESD will in no way release the Respondent from Addenda or additional information resulting in additional costs to meet the requirements of the RFO.

3.12. Pre-agreement Costs

DIR shall not be responsible or liable for any cost incurred by any Respondent in the preparation and submission of its Response to this RFO or for other costs incurred by participating in this procurement process.

3.13. Ownership of Responses

All Responses become the property of DIR. DIR reserves the right to use any and all information or materials presented in response to this RFO. Disqualification of a Respondent's Response does not eliminate this right.

3.14. Public Information

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. Respondent may not mark its complete Response "copyrighted" or mark every page as proprietary or confidential, but if a Respondent believes that its Response, or parts of its Response, may be exempted from disclosure under Texas law, the Respondent must specify page-by-page and line-by-line the parts of the Response that it believes are exempt. In addition, the Respondent must specify which exception(s) are applicable and provide detailed reasons substantiating the exception(s). Pursuant to Texas Government Code section 2252.907, Respondent is required to make any information created, exchanged with the state pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

The Office of the Texas Attorney General (OAG) has the sole authority to determine whether information is confidential and not subject to disclosure under the Public Information Act. DIR shall comply with all decisions of the OAG.

DIR assumes no responsibility for asserting legal arguments on behalf of any Respondent. Respondents are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

The issuance of this RFO does not imply that DIR is making an offer to do business with any RFO recipient or Respondent. No agreement or other binding obligation on DIR is implied or will occur unless and until a definitive agreement is executed. The issuance of this RFO and the submission of the Respondent's Response do not create any obligation upon DIR to purchase goods or Services from the Respondent, or to enter into any binding legal relationship with one (1) or more of the Respondents.

DIR makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFO, its Appendices, Exhibits, and Attachments. The Respondent is responsible for making its own evaluation of information and data contained in this RFO and in preparing and submitting its Response.

3.15. News Release

Respondent-initiated news releases pertaining to this RFO shall not be made without prior written approval of DIR, in its sole and absolute discretion. A minimum of ten (10) Business Days written notice is required for such approval.

4. EVALUATIONS, NEGOTIATIONS, AND AWARD

4.1. Evaluation of Responses

DIR will review Responses to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. All Responses determined to be responsive will go through a financial review overseen by the Chief Financial Officer's (CFO's) office. **The financial review (here, a review of the financial solvency of the Respondent), Completed HUB Subcontracting Plan, and the submittal of a signed Exhibit A Respondent Information are pass/fail determinations that are final.** Only Responses that pass all three (3) will be considered for award.

At any time during the evaluation process, DIR may ask any or all Respondents to elaborate on or clarify specific points or portions of their Response. DIR's request and Respondent's response shall be in writing.

4.2. Evaluation Criteria

4.2.1 Pass/Fail Criteria

In addition to the weighted criteria listed below DIR also reviews additional Pass/Fail criteria as follows:

Financial Information is a Pass/Fail review conducted by the Finance Group based on the Respondent's financial stability as reported by Dun and Bradstreet; Respondent shall provide an accurate DUNS number online item 3 of **Exhibit A Respondent Information**; the DUNS number shall correspond to the company name AND address on file with Dun and Bradstreet.

Completion and signing of HUB Subcontracting Plan (**Exhibit D**); and

Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

- i) A score of less than "C" in the Vendor Performance System;
- ii) Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports; and
- iii) Having purchase orders that have been cancelled in the previous twelve (12) months for non-performance (including but not limited to late delivery, etc.).

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Compliance with Texas Government Code 2054, subchapter M, TAC 206, TAC 213, and WC3 WCAG 2.0 AA technical standards, as applicable. Respondents may fail this selection criterion for any of the following reasons:

- i) Missing or incomplete ACRs (VPAT) for products listed on the itemized price sheet;
- ii) Missing or incomplete VADSIR for proposed development services on the itemized price sheet or;
- iii) Missing or blank PDAA self-assessment

4.2.2 Weighted Evaluation Criteria

DIR will use the following criteria (listed in order of priority) to determine the best value for the state:

4.2.2.1 Exhibit E Itemized Price Sheet – 40%

Respondents should not assume they will have the ability to negotiate better pricing/discounts, but rather Respondents should make their best offer on pricing/discounts with their initial response.

4.2.2.2 Exhibit B Respondent History and Experience – 30%

4.2.2.3 Exhibit C Respondent Contract Marketing and Support Plan – 30%

DIR's evaluation of Respondent's history and experience may include consideration of Respondent performance as recorded in the CPA Vendor Performance Tracking System as described in the Texas Administrative Code, 34 TAC 20.115.

DIR will consider exceptions in light of a Respondent's score in other areas. Excessive exceptions or exceptions which are not presented in the formats described in RFO Section [3.8.3.5](#) may affect a Respondent's standing, may delay negotiations resulting in a shorter contract term, or may cause the Respondent's Response to be deemed non-responsive and be removed from further consideration.

4.3. Revised Offer

DIR in its discretion will make the determination whether to request oral presentations and/or engage in a Revised Offer process. The Revised Offer process, if held, may be scored.

DIR reserves the right to continue to evaluate Responses until such point as the best value, as defined by Texas Government Code, Section 2157.003, is obtained for the State.

4.4. Negotiations

At the conclusion of the evaluation, as described within **RFO Section 4.1** above, DIR will determine the number of Respondents with whom it will start Contract negotiations. Negotiations will continue until DIR, in its sole discretion, determines that the best value for the

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State has been obtained.

4.5. Award of Contract

DIR Executive Management shall make the decision to award a Contract, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final.

Award(s) for this RFO shall be posted under requisition number RFO DIR-CPO-TMP-570 on the ESBD, <http://www.txsmartbuy.com/esbd>. All Responses and working papers pursuant to this RFO are not subject to disclosure under the Public Information Act until all Contracts resulting from this RFO have been executed.

4.6. Protest Procedures

Any Respondent who is aggrieved in connection with this RFO, evaluation, or award of a Contract may formally protest to DIR in accordance with the Vendor protest procedures posted on the DIR Web site at:

<http://dir.texas.gov/View-Information-For-Vendors/Pages/Content.aspx?id=21>

End of RFO

Exhibit A

Respondent Information

This form must be filled out in its entirety and signed on the last page by an officer or agent empowered to contractually bind the Respondent.

1) A) Legal Entity Name: _____

B) Company "friendly" Name (DBA): _____

2) Comptroller of Public Accounts Respondent Identification Number: _____

3) DUNS # _____

4) Federal Employer Identification Number (FEIN) _____

5) Parent company name (if applicable) _____

6) Principal place of business

Address:

City:

State:

Zip Code:

7) Facility responsible for servicing the contract

Address:

City:

State:

Zip Code:

NOTE: Respondents are encouraged to provide multiple contact persons in order to ensure critical information is received and acted upon timely. Updates to contact information should be provided throughout the duration of the procurement process. DIR is not responsible for a Respondent's failure to timely respond due to outdated contact information.

8) Contact Person(s) regarding Respondent's Response to the RFO

Name:

Address:

City, State, Zip:

Phone Number:

Fax:

Email:

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9) Contact Person(s) responsible for contract negotiation (if different from above)

- Name:
- Address:
- City, State, Zip:
- Phone Number:
- Fax:
- Email:

10) Officer or Agent empowered to contractually bind the Respondent: (if different from above)

- Name:
- Title:
- Address:
- Phone Number:
- Fax:
- Email:

11) Indicate whether your company is a certified Historically Underutilized Business (HUB) with the State of Texas by the CPA.

_____ Yes _____ No

12) Year of incorporation: _____

13) Exceptions

Caution: Respondent's Response may be disqualified if their exceptions are excessive, or if they list exceptions to non-negotiable terms.

(a) This section contains the format for Respondents to note any exception to any standard provision, term, or condition specified in the RFO. **Respondents should note that DIR expects each Respondent to comply with the requirements of this RFO as written.** An explanation as to why the Respondent **cannot** comply with the provision, term, or condition **and** why the proposed alternative language **must** be included in the Response. Examples of nonresponsive explanations include:

- (i) Referencing negotiation of revised language in another DIR or other state agency contract;
- (ii) Referring to an internal division's need for the revised language without a valid reason as to why the exception is necessary;
- (iii) Indicating the proposed language is "negotiable;" and
- (iv) Referencing an internal Respondent terms and conditions document.

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- (b) Exceptions **must include**:
 - (i) RFO document title, section number, and section title;
 - (ii) Explanation as to why Respondent cannot comply with the term or condition; and
 - (iii) Proposed alternate language (redline).
- (c) If Respondent fails to note any exception within its Response, Respondent may not be allowed to request an exception throughout the procurement process. No new exceptions will be considered after negotiations or Contract Award.
- (d) Refer to the table below. The column labeled "Location/Specific Section Reference" should be used to identify the specific RFO document and the location(s) (section number or other identifiable reference) within the RFO documents that the language addresses. The Respondent must submit, as a separate document, provided here as Exhibit A1 Exceptions Table and name it "ABC Exhibit A1_Exceptions.xlsx."
- (e) **Respondents are encouraged not to request exceptions to standard contract terms and conditions; DIR, in its sole discretion, may or may not accept the Respondent's requested exceptions.** Exceptions will be one (1) factor considered by DIR in determining best value for the State.
- (f) If there are no exceptions, the Respondent shall explicitly state in the Exhibit A1 document "ABC Exhibit A1_Exceptions.xlsx" that the Respondent takes no exception to any part of this RFO.
- (g) **Any exception may result in the Contract not being awarded to the Respondent. DIR reserves the right to exclude a Respondent based upon the quality and substance of any exception(s).**

| Location/Specific Section Reference | Objection/Issue | Proposed Alternative Language (redline) |
|-------------------------------------|-----------------|---|
| | | |

In addition to completing the Exhibit A1 Exceptions spreadsheet, Respondent shall include in its Response a red-lined version of Attachment 1 Standard Contract Terms and Conditions containing only those Exceptions specific to that document. Further, Respondent shall include a comment with each redline providing the above-described explanation for why the redlined language is necessary and why the Respondent cannot comply with the original language.

14) Respondent and Subcontractor Conflict of Interest Disclosure

List below all current or former employees of Respondent and/or proposed Respondent personnel with conflict of interests as follows:

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- a) **NOTE:** Any current or former employees of Respondent who will spend twenty percent (20%) or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and
- b) **NOTE:** Any proposed Respondent personnel assigned to work directly on any Contract to arise from this RFO twenty percent (20%) or more of their time who are related within two (2) degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.

Respondent Personnel:

| Current or Former Employees who are current or former State employees (see NOTE a) above) | Respondent Personnel related to State of Texas Employees (see NOTE b) above) |
|---|--|
| | |
| | |
| | |

Subcontractor personnel:

| Current or Former Employees of Subcontractor(s) who are current or former State employees (see Note a) above) | Subcontractor Personnel related to State of Texas Employees (see Note b) above) |
|---|---|
| | |
| | |

c) Respondent certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Respondent will complete the following information in order for the Response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Respondent, and Date of Employment with Respondent.

15) Proof of Financial Stability

All Respondents responding to this RFO and all Respondents that will enter into a contract with DIR must be and remain current in payment of all taxes, including Sales and Franchise Taxes. In general, the Comptroller of Public Accounts must identify the Respondent to be "in good standing" and a Respondent with which the state is authorized to do business.

16) Statement of Compliance

A. Checklist for the RFO

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- (i) The following checklist is provided for the convenience of Respondents in their Response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFO. Respondents must ensure that all mandatory requirements for this RFO are met, even if they are not included in this checklist.
- (ii) A completed checklist shall not be binding on DIR’s administrative review for compliance with the mandatory Response contents specified in this RFO. As step one of the evaluation process, DIR will review all Responses to ensure compliance with the mandatory Response contents as specified in Section 3.8.4 of the RFO and reject any Response that does not comply.
- (iii) **All Responses must be received by DIR on or before the date and time specified in Section 3.3 of this RFO. No late Responses will be reviewed.**

| Item | Check |
|--|--------------------------|
| Responses must be submitted in the BidStamp VIS Portal | <input type="checkbox"/> |
| Mandatory Response Contents | |
| Package 1 Forms | |
| Exhibit A: Respondent Information Form (this document) – MUST BE SIGNED | <input type="checkbox"/> |
| Exhibit A1 – Exceptions Any Exceptions requested or Affirmative Statement that Respondent takes no Exceptions | <input type="checkbox"/> |
| Exhibit B: Respondent History and Experience | <input type="checkbox"/> |
| Exhibit C: Contract Marketing and Support Plan | <input type="checkbox"/> |
| Exhibit D: HUB Subcontracting Plan (HSP) – MUST BE COMPLETED and SIGNED | <input type="checkbox"/> |
| Exhibit E: VPAT | <input type="checkbox"/> |
| Exhibit F: Respondent Release of Liability | <input type="checkbox"/> |
| Exhibit G EDGAR Certification Form | <input type="checkbox"/> |
| Exhibit H: PDAA Form | <input type="checkbox"/> |
| Exhibit I: Certification of OFF-Premises Customer Services | <input type="checkbox"/> |
| Exhibit J: Reference Forms (to be submitted by vendors customers) | <input type="checkbox"/> |
| Exhibit K: VADSIR | <input type="checkbox"/> |
| Package 2 – Itemized Pricing Spreadsheet | <input type="checkbox"/> |
| Signed Addenda to the RFO | <input type="checkbox"/> |
| Manufacture Letters of Authorization | <input type="checkbox"/> |

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B. Certification Statement

The undersigned hereby certifies on behalf of insert company name here that DIR-CPO-TMP-570, has been read and understood. In submitting its Response insert company name here represents to DIR the following:

- (i) Respondent is capable of providing the products and services as described in the RFO
- (ii) Respondent is offering true and correct pricing and discounts for the products and services;
- (iii) Respondent agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- (iv) as of the date of signature below, Respondent is not listed in the prohibited Respondents list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (v) Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (vi) Respondent certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate;
- (vii) Respondent certifies that, to the extent applicable to this scope of this RFO, Respondent is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
- (viii) Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response;
- (ix) Respondent has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- (x) Respondent has not, nor has anyone acting for Respondent, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any

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competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;

- (xi) Respondent is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Respondent subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the Response, prior to award; .Enter the name and Social Security Numbers for each person below (alternatively, if this section applies, Respondent may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

| Name | Social Security Number |
|------|------------------------|
| | |
| | |

- (xii) Respondent agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) Respondent agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
- (xiv) Respondent certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency; if Section 669.003 applies, bidder will complete the following information for the bid to be evaluated:

Name of Former Executive: _____
 Name of State Agency: _____
 Date of Separation from State Agency: _____
 Position with Bidder: _____
 Date of Employment with Bidder: _____

- (xv) Respondent certifies for itself and its subcontractors that it has identified all current or former, within the last five (5) years, employees of the State of Texas assigned to work on the DIR Contract twenty percent (20%) or more of their time and has disclosed them to

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DIR and has disclosed or does not employ any relative of a current or former state employee within two (2) degrees of consanguinity, and, if these facts change during the course of the Contract, Respondent certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;

- (xvi) Respondent represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;
- (xvii) Respondent certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Respondent Information Form, Respondent qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;
- (xviii) Respondent understands and agrees that Respondent may be required to comply with additional terms and conditions or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements); and
- (xix) Respondent agrees that these representations will be incorporated into any subsequent agreement(s) between Respondent and Customer that result from this RFO;
- (xx) Respondent certifies that there have / have not been canceled contracts in the past five (5) years. **NOTE:** If "have" is checked, Respondent must complete and submit **Exhibit A, Attachment 1**; if "have not" is checked, Respondent shall include a statement certifying that they have had no canceled contracts in the past five (5) years.
- (xxi) Respondent represents and warrants as required by Texas Government Code section 2270.002, by executing this Contract, that Respondent does not, and will not during the term of this Contract, boycott Israel. Respondent further certifies that no subcontractor of the Respondent boycotts Israel or will boycott Israel during the term of this Contract. Respondent agrees to take all necessary steps to ensure this certification remains true during the term of this Contract; and

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(xxii) Respondent certifies, under Texas Government Code, Section 2155.0061, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

Signature of Officer or Agent empowered to contractually bind the Respondent.

Title

Date

<END OF EXHIBIT A>

Exhibit A

Attachment 1

List of Respondent's Cancelled Contracts

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR ANY IDENTIFIED CONTRACT CANCELLED WITHIN THE PAST FIVE (5) YEARS REFERENCE AND SUBMITTED WITH THE RESPONDENT'S RESPONSE

Respondent may add additional fields as necessary to comply with the required disclosure.

RESPONDENT NAME: _____

| | | | |
|--|------------------------|-----------------------------|--|
| COMPANY NAME | | | |
| COMPANY ADDRESS (Street, City, State, Zip Code) | | | |
| *CONTACT NAME / PHONE | | | |
| *E-MAIL | | | |
| CONTRACT AWARD DATE: | OPERATIONS START DATE: | CONTRACT CANCELLATION DATE: | |
| DESCRIPTION OF SERVICE: | | | |
| REASON FOR CANCELLATION: | | | |

| | | | |
|--|------------------------|-----------------------------|--|
| COMPANY NAME | | | |
| COMPANY ADDRESS (Street, City, State, Zip Code) | | | |
| *CONTACT NAME / PHONE | | | |
| *E-MAIL | | | |
| CONTRACT AWARD DATE: | OPERATIONS START DATE: | CONTRACT CANCELLATION DATE: | |
| DESCRIPTION OF SERVICE: | | | |

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REASON FOR CANCELLATION:

*** Note: Do NOT complete these fields if DIR is the Cancelled Contract Reference**

Company Name: _____

DIR-CPO-TMP-570 – Software COTS, and Related Services

| Section | Section Title | Exception | Proposed Language (Please redline existing documents) | DIR Response |
|---------|---------------|-----------|--|--------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
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| | | | | |
| | | | | |
| | | | | |

Exhibit B Respondent History and Experience

- 1) In no more than two (2) pages, provide a detailed history of your company.
- 2) Indicate the Technology Category(ies) to which your company is Responding:

Table 1: Category(ies) to which Respondent is Responding

| Technology Category | Submitting Response? |
|--|--------------------------|
| Software | <input type="checkbox"/> |
| Software as a Service (SaaS) | <input type="checkbox"/> |
| Related Services | <input type="checkbox"/> |
| Complete Solution Software/Hardware and Services | <input type="checkbox"/> |

- 3) For each Technology Category selected in [Table 1](#) and in no more than three (3) pages total, provide a brief summary of the Respondent’s experience. Each summary should clearly indicate which Technology Category will be discussed highlighting work completed by the Respondent either as the prime or as a subcontractor. Experience should focus on projects completed within the past five (5) years. If serving as a subcontractor, Respondent should clearly indicate the percentage of work for which the Respondent was directly responsible.
- 4) Using [Table 2](#), for each category to which you are Responding, provide the total number of years your company has provided the products/services requested in this RFO.

Table 2: Number of Years Providing Requested Products/Services

| Products and Related Services | | |
|-------------------------------|----------------|--|
| Products / Services | Market Segment | Total Number of Years Providing Products or Services being Requested |
| | | |
| | | |
| | | |
| | | |
| | | |

- 5) Using [Table 3](#), indicate if, in the last twelve (12) months, your company has sold the requested products/services to the Market Segments listed below. Include the entity name, total sales, and average hourly rate, if applicable. Extra rows may be added as necessary.

Table 3: Sales to Texas State Agencies, Local Governments, etc.

| Market Segment | Entity Name | Total Sales | Scope |
|--------------------------------|-------------|-------------|-------|
| Texas State Agencies | | | |
| Local Governments | | | |
| Independent School Districts | | | |
| Institutes of Higher Education | | | |

- 6) Using [Table 4](#), indicate whether your company holds a contract for use by public entities (state agencies, local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO.

Table 4: Sales to Other State Public Entities

| State | Entity Name | Total Sales | Scope |
|---------|-------------|-------------|-------|
| State 1 | | | |
| State 2 | | | |
| State 3 | | | |
| State 4 | | | |

- 7) Using [Table 5](#), provide the complete list of any DIR Contracts your company has held within the last five (5) years. Include the contract number and estimated total sales.

Table 5: DIR Contracts

| DIR Contract Number | Contract Scope | Estimated Total Sales |
|---------------------|----------------|-----------------------|
| Contract 1 | | |
| Contract 2 | | |
| Contract 3 | | |
| Contract 4 | | |

- 8) Using [Table 6](#), indicate whether your company holds another cooperative contract? (Example: GSA, NASPO, TIPS, etc.) and include the list of the contracts and the links to the contract pages. **(This response is not scored as part of the evaluation).**

Table 6: Other Cooperative Contracts

| Cooperative Contract | Contract Number | Link to Contract Page |
|----------------------|-----------------|-----------------------|
| GSA | | |
| NASPO | | |
| TIPS | | |
| Etc. | | |

<END OF EXHIBIT B>

Exhibit C

Contract Marketing and Customer Support Plan

In no more than five (5) pages total, non-inclusive of the requested attachments, Respondent must provide a plan that describes the Respondent's ability and strategy for promoting and supporting the contract, if awarded. The plan must include the information listed below.

- 1) Describe your company's strategy for marketing and selling the products/services listed in this RFO to eligible DIR Customer Channels as specified below.

A Contract Marketing Plan, as an example, would list the marketing elements Respondent would use like publishing on DIR website, email signature tag, Trade Publication Advertisements, social media, direct sales, etc.

- a. Texas State Agencies
 - b. Public and Private Institutions of Higher Education
 - c. Public and Private School Districts (K-12)
 - d. Local Governments
 - e. Assistance Organizations
 - f. Public Hospitals
 - g. [Public Institutions outside of Texas](#)
- 2) Describe your company's strategy for providing sales, order processing, and support of eligible DIR Customers throughout the State of Texas. **NOTE:** For a complete list of DIR eligible customers, refer to the DIR website information on eligibility, located here: [Customer Eligibility | Texas Department of Information Resources](#).
 - 3) Provide an overview of the products and services proposed in the response and how the contract marketing plan supports the promotion of the proposed products and services to DIR eligible customers.
 - 4) Describe how will your other contracts impact the marketing of this contract, should you receive an award?
 - 5) Provide an overview of the management and customer relationship team that will be responsible for managing the State's relationship in the event of being awarded a contract. Address the following:
 - a. Describe your company's geographical reach, teaming partners and subcontractors (if any), to include, at a minimum, locations of corporate and branch offices as well as locations where work is currently taking place. Explain how these locations and

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any proposed new locations will be used in the performance of this contract.

- b. Provide names, titles, prior account management experience for accounts of the State's size and type.
- 6) In a narrative, describe how the Respondent will manage the contract to ensure uninterrupted, high-quality performance and overall contract effectiveness.
 - 7) Successful Respondents selected for Contract Award will be contractually required to maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on your website. Website page may not require a log-in by the customer for access.

Briefly explain who (what position) in your company will be responsible for ensuring the information on the DIR webpage is accurate and complies with the contract requirements throughout the life of the contract.

Provide steps successful respondent will take to remedy any webpage information that is determined to be out of contract compliance. Provide steps to ensure contract pricing published to the webpage is accurate and up to date and in compliance with the awarded contract.

(see list below for webpage requirements).

- a. A current price list or mechanism to obtain specific contract pricing;
- b. MSRP/list price or DIR Customer price;
- c. Discount percentage (%) off MSRP or List Price;
- d. A list with the description of products and/or services awarded;
- e. Successful Respondent contact information (name, telephone number and email address) for your point of contact for customer inquiries;
- f. instructions for obtaining quotes and placing Purchase Orders;
- g. warranty policies;
- h. return policies;
- i. the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- j. a link to the DIR "Cooperative Contracts" webpage; and
- k. the DIR logo.

** The attachments provided in response to numbers 8 & 9 is/are not included in the 5-page limit for Respondent's response for Exhibit C. **

- 8) **Provide and label a as an Attachment 1 to Exhibit C** an organization chart identifying the chain of command for managing this contract, including resource sourcing responsibility, and organization components that support this contract.

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- 9) **Provide and label as an Attachment 2 to Exhibit C** a sample of a Service Level Agreement (SLA) between you and DIR for DIR Customers containing the following but not limited to:
- a. Reporting to be provided to DIR and when;
 - b. On-boarding times;
 - c. Order Tracking communications; and
 - d. Follow-up process and timeline.

<END OF EXHIBIT C>

EXHIBIT D

SAMPLE HUB Subcontracting Plan (HSP)

Respondents must download and complete the most recent version of the HUB Subcontracting Plan in from the Comptroller's Website:

<https://comptroller.texas.gov/purchasing/docs/hub-forms/hsp-allfms.pdf>

Note: Respondents must also print, sign, and upload the signed HSP in BidStamp.

SAMPLE



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

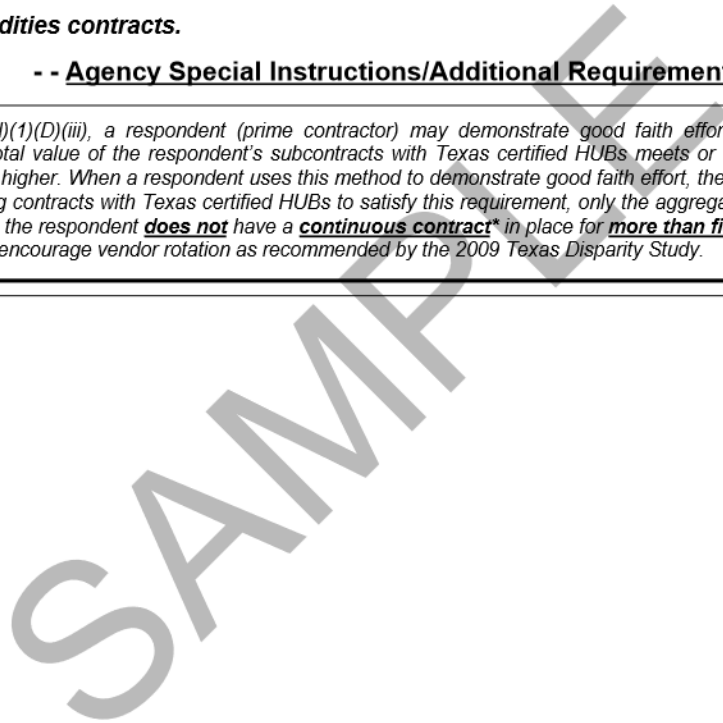
NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*



SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____ **Item 20.**

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

| Item # | Subcontracting Opportunity Description | HUBs | | Non-HUBs |
|--|--|--|--|--|
| | | Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years . | Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years . | Percentage of the contract expected to be subcontracted to non-HUBs. |
| 1 | | % | % | % |
| 2 | | % | % | % |
| 3 | | % | % | % |
| 4 | | % | % | % |
| 5 | | % | % | % |
| 6 | | % | % | % |
| 7 | | % | % | % |
| 8 | | % | % | % |
| 9 | | % | % | % |
| 10 | | % | % | % |
| 11 | | % | % | % |
| 12 | | % | % | % |
| 13 | | % | % | % |
| 14 | | % | % | % |
| 15 | | % | % | % |
| Aggregate percentages of the contract expected to be subcontracted: | | % | % | % |

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years, meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____ **Item 20.**

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

| Item # | Subcontracting Opportunity Description | HUBs | | Non-HUBs |
|--|--|---|---|--|
| | | Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years. | Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years. | Percentage of the contract expected to be subcontracted to non-HUBs. |
| 16 | | % | % | % |
| 17 | | % | % | % |
| 18 | | % | % | % |
| 19 | | % | % | % |
| 20 | | % | % | % |
| 21 | | % | % | % |
| 22 | | % | % | % |
| 23 | | % | % | % |
| 24 | | % | % | % |
| 25 | | % | % | % |
| 26 | | % | % | % |
| 27 | | % | % | % |
| 28 | | % | % | % |
| 29 | | % | % | % |
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| 31 | | % | % | % |
| 32 | | % | % | % |
| 33 | | % | % | % |
| 34 | | % | % | % |
| 35 | | % | % | % |
| 36 | | % | % | % |
| 37 | | % | % | % |
| 38 | | % | % | % |
| 39 | | % | % | % |
| 40 | | % | % | % |
| 41 | | % | % | % |
| 42 | | % | % | % |
| 43 | | % | % | % |
| Aggregate percentages of the contract expected to be subcontracted: | | % | % | % |

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

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SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

Large empty rectangular box for justification text, overlaid with a large diagonal watermark reading "EXAMPLE".

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature _____

Printed Name _____

Title _____

Date
(mm/dd/yyyy) _____

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "Yes" to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort – Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL)-Historically Underutilized Business (HUB) Directory Search located at <http://mvcoa.cpa.state.tx.us/tpasscmlsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

| Company Name | Texas certified HUB | Texas VID or federal EIN <small style="color: red;">Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small> | Approximate Dollar Amount | Expected Percentage of Contract |
|--------------|--|---|------------------------------|---------------------------------------|
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
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| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract **no later than ten (10) working days** after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

Item 20.

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "No" to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

| Company Name | Texas VID <small>(Do not enter Social Security Numbers.)</small> | Date Notice Sent <small>(mm/dd/yyyy)</small> | Did the HUB Respond? |
|--------------|---|---|--|
| | | | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
| | | | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
| | | | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

| Trade Organizations or Development Centers | Date Notice Sent <small>(mm/dd/yyyy)</small> | Was the Notice Accepted? |
|--|---|--|
| | | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
| | | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |

HSP Good Faith Effort - Method B (Attachment B) Cont.

Item 20.

Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

| Company Name | Texas certified HUB | Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small> | Approximate Dollar Amount | Expected Percentage of Contract |
|--------------|--|---|---------------------------|---------------------------------|
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |
| | <input type="checkbox"/> - Yes <input type="checkbox"/> - No | | \$ | % |

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

Item 20.

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

| | |
|-------------------------|-----------------------------|
| Company Name: _____ | State of Texas VID #: _____ |
| Point-of-Contact: _____ | Phone #: _____ |
| E-mail Address: _____ | Fax #: _____ |

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

| | |
|-------------------------|----------------------|
| Agency Name: _____ | Phone #: _____ |
| Point-of-Contact: _____ | Bid Open Date: _____ |
| Requisition #: _____ | (mm/dd/yyyy) |

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____

Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: - Not Applicable

4. Bonding/Insurance Requirements: - Not Applicable

5. Location to review plans/specifications: - Not Applicable

Department of Information Resources
Request for Offer DIR-CPO-TMP-570
Software, Commercially Off the Shelf (COTS) and
Related Services
Voluntary Product Accessibility Template® (VPAT®)
Revised Section 508 Edition
Version 2.4Rev

| | |
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About This Document

The VPAT is provided in four editions based on the standards/guidelines being evaluated. The editions are WCAG, Revised 508, EN 301 549 and International, which includes all of the standards.

This is the Revised Section 508 edition of the VPAT. It includes the following standards/guidelines:

- [Web Content Accessibility Guidelines 2.0](#)
- [Revised Section 508 standards published January 18, 2017 and corrected January 22, 2018](#)

If you need a different combination of standards/guidelines, use the appropriate alternate edition of the VPAT found on the [ITI Accessibility web page](#).

This document is broken into two main sections:

- Essential Requirements and Best Practices for using the VPAT® to complete an Accessibility Conformance Report (the instructions)
- The VPAT

Please carefully review the Essential Requirements and Best Practices sections before using the VPAT to create an Accessibility Conformance Report.

The purpose of these instructions is to promote accurate and consistent reporting of product accessibility information.

The VPAT is a template used to document a product's conformance with accessibility standards and guidelines. The purpose of the Accessibility Conformance Report is to assist customers and buyers in making preliminary assessments regarding the availability of commercial "Electronic and Information Technology," also referred to as "Information and Communication Technology" (ICT) products and services with features that support accessibility.

The Information Technology Industry Council (ITI) provides the VPAT. Use of the template and service mark does not require membership in ITI.

Essential Requirements and Best Practices for Information & Communications Technology (ICT) Vendors

This section provides guidance for reporting product conformance for major accessibility standards and guidelines using the VPAT® to produce the Accessibility Conformance Report. Deviating from these guidelines precludes vendors from referencing the template by name and/or the VPAT acronym.

Getting Started

1. Before creating a report, read all of the materials provided in this document.
2. Determine which accessibility standards/guidelines will be included in the Accessibility Conformance Report and use the appropriate VPAT file.
3. It is the vendor's responsibility to maintain the integrity of the data in the report.

Essential Requirements for Authors

The following are the minimum requirements to produce an Accessibility Conformance Report based on the VPAT®.

1. The VPAT name and template are registered service marks of ITI. Use of the VPAT template and name requires the inclusion of the registered service mark (i.e., "VPAT®"). Users of the VPAT agree not to deviate from the Essential Requirements for Authors.
2. The template file can be used as is or replicated in a different delivery format, for example as HTML or PDF. The final conformance report must be accessible.
3. A report must contain the following content at a minimum:
 - **Report Title** – In the heading format of "[Company Name] Accessibility Conformance Report"
 - **VPAT Heading Information** – Template version
 - **Name of Product/Version** – Name of Product being reported, including product version identifier if necessary
 - **Report Date** – Date of report publication. At a minimum, provide the month and year of the report publication. For example, "May 2016". If date is included, ensure it is clear "4 May 2016" or "May 4, 2016".

- **Product Description** – A brief description of the product
- **Contact Information** – Contact Information for follow-up questions. Listing an email is sufficient.
- **Notes** – Any details or further explanation about the product or the report. This section may be left blank.
- **Evaluation Methods Used** – Include a description of evaluation methods used to complete the VPAT for the product under test.
- **Applicable Standards/Guidelines** – A clear indication of which Standards/Guidelines this Conformance Report covers.
 - The list must include only the Standards/Guidelines used to evaluate the product.
 - The applicable Standards/Guidelines that are included in this VPAT edition are:
 - [Web Content Accessibility Guidelines 2.0](#) or WCAG 2.0 (ISO/IEC 40500)
 - [Revised Section 508 standards](#) – the U.S. Federal accessibility standard for ICT Products, published by the U.S. Access Board in the Federal Register on January 18, 2017 and corrected on January 22, 2018
 - If other Standards/Guidelines are reported, then use the appropriate VPAT edition.
 - This information can be in a table format at the top of the report with the table heading 'Standards/Guidelines' and the reported Standards/Guidelines identified. This information can alternatively be supplied in the introductory text of the report. In the VPAT we have used a table as an example and listed "(yes / no)" for each standard/guideline. To indicate what the report covers leave the appropriate yes or no on each standard/guideline.
 - If multiple Standards or Guideline tables are included, each table must identify the Standard or Guideline that the criteria in that table represent.
- **Terms** – The report must list the definition of the terms used in the Conformance Level column. ITI recommends the following terms. If a vendor deviates from the ITI definitions, the vendor shall reference this change in the heading Notes section. If a term is not used it can be removed from the list. The ITI definitions are: This can only be used in WCAG 2.x Level AAA
 - **Supports:** The functionality of the product has at least one method that meets the criterion without known defects or meets with equivalent facilitation.

- **Partially Supports:** Some functionality of the product does not meet the criterion.
- **Does Not Support:** The majority of product functionality does not meet the criterion.
- **Not Applicable:** The criterion is not relevant to the product.

Note: When filling in the WCAG tables, a response may use 'Supports' where one might otherwise be inclined to use 'Not Applicable'. This is in keeping with [WCAG 2.0 Understanding Conformance](#): This means that if there is no content to which a success criterion applies, the success criterion is satisfied.

- **Not Evaluated:** The product has not been evaluated against the criterion. This can only be used in WCAG 2.x Level AAA.
- **Tables for Each Standard or Guideline** – Tables showing the responses to the criteria.
4. WCAG Conformance Information – The answers in the WCAG success criteria are based on the level of conformance being reported (Level A, AA or AAA).
- These tables are used to answer:
 - Revised Section 508:
 - Chapter 5 Software
 - Chapter 6 Support Documentation
 - The selected levels of WCAG 2.0 Guidelines.
 - If using a summary table, due to answers applying to multiple criteria, when answering for the Revised Section 508, the answers need to be clear about which individual criteria the answer applies to. It is possible to either use a summary, selecting the worst case for the criteria, or to have separate answers or even tables for software, support documentation, authoring tools, etc., so long as the methodology used is made clear.
5. Remarks and Explanations – Detailed remarks should be provided in the Remarks and Explanations column to justify your answer in the Conformance Level column.
- When the conformance level is 'Partially Supports' or 'Does Not Support', the remarks should identify:
 1. The functions or features with issues
 2. How they do not fully support
 - If the criterion does not apply, explain why.
 - If an accessible alternative is used, describe it.

6. In the Section 508 tables, when subsections of criteria do not apply to the product, the section may be summarized or removed as long as an explanation is provided explaining why a criterion does not apply. Another alternative is to leave the table and add a summary why the section does not apply. For example, in Chapter 5 the criteria in 502 and 503 will not apply to a web only application, thus those sections can be removed with a summary in the notes for the chapter, or a row in the table.

Best Practices for Authors

ITI suggests that authors adopt the following best practices when using the VPAT® to create an Accessibility Conformance Report.

- **Branding Header:** Company logo or branding information
- **Report Date Changes:** If a report is revised, change the report date and explain the revision in the Notes section. Alternately, create a new report and explain in the Notes section that it supersedes an earlier version of the report.
- **Notes:** Add any notes applicable to product or the report
 - Additional information about the product version that the document references
 - Any revisions to the document
 - Links to any related documents
 - Additional information describing the product
 - Additional information about what the document does or does not cover
 - Information suggested by the [WCAG 2.0 Conformance Claim](#)
 - Information needed to satisfy ISO/IEC 17050-1:2004, Supplier's Declaration of Conformity
- **Evaluation Methods Used** – Information to enter may include the following:
 - Testing is based on knowledge of general product functionality (Instructional note: this would mean the tester knows how to use the common uses and flows of the product in addition to accessibility)
 - Similar to another evaluated product
 - Testing with assistive technologies
 - Published test method (provide name, publisher, URL link)
 - Vendor proprietary test method
 - Other test method

- **Remarks and Explanations:** This section may include:
 - Information regarding the testing of a given criteria.
 - Information on application dependencies to support accessibility (e.g. OS, app frameworks, browsers recommended).
 - How the customer can find more information about accessibility issues. One method can be to include the bug ID where customers can call the company's customer support to get additional information.
 - Known workarounds for accessibility issues.
- **Legal Disclaimer:** Area for any legal disclaimer text required by your organization.
- **Report Size:** To reduce the size of the report it is acceptable to remove sections. Individual criteria cannot be removed, only sections at a time. Section removal is acceptable in four situations:
 - When an entire section is not being reported on because it does not apply to the product, for example:
 - Chapter 4: Hardware. Information should be included in the notes for that section why it has been removed.
 - A card reader that doesn't have sound could remove the criteria in section 413 Closed Caption Processing Technologies and just note the why the criteria doesn't apply.
 - If the product is not being evaluated for a level of the criteria (for example Level AAA) then that table may be deleted.
 - If a requesting customer has identified that a section of the standard does not apply, information should be included in the notes that the section has been removed.
- **WCAG 2.0 Tables:** The WCAG 2.0 criteria are shown in three tables, Level A, Level AA, and Level AAA.
 - If desired, these tables can be combined into one table.
 - When reporting on a level (A, AA or AAA) all criteria for that level must be answered.
- **Language:** Translation to other languages is permitted.
- **Multiple Reports:** When using the VPAT to create an Accessibility Conformance Report for complex products it may be helpful to separate answers into multiple reports. For example, when a product is an Authoring Tool that also has web content and documentation. When multiple reports are used for a complex product, it is required to explain this and how to reach the other reports in the Notes section of each report.

- **Criteria Text:** To help conserve space in the ITI template only the criteria ID number and a short title have been included. Where possible, links have been included to the standard/guideline.
 - It is acceptable to add the full text of the criteria into the cell if desired to help with understanding.
 - The links to the standards/guidelines can be removed.
- **Ordering of Tables:** The order that the standard and guideline tables appear may be changed to facilitate reading. The current order is WCAG then Section 508. You can change this order to insert the WCAG criteria into the Section 508 tables.
- **Guideline Section Heading Rows in Tables:** The tables include heading rows to facilitate understanding the context of the criteria.
 - The cells in these rows do not require answers as indicated by “Heading cell – no response required.”
 - It is optional to add a response if desired.
 - The shading of the row is also optional.
 - If removing the heading rows, edit the criteria titles so it’s clear where they apply.

Posting the Final Document

- When publishing your Accessibility Conformance Report, be sure to remove the entire first 9 pages of this document, including the table of contents, introductory information and instructions.
- Check for each required item in the VPAT® document:
 - **[Company Name] Accessibility Conformance Report** (report title)
 - **(Based on VPAT® Version 2.4Rev)**
 - **Name of Product/Version**
 - **Report Date**
 - **Product Description**
 - **Contact Information**
 - **Notes**
 - **Evaluation Methods Used**
 - **Applicable Standards/Guidelines**
 - **Terms**

- **Tables for Each Standard or Guideline**
 - Check that there is a response for each criterion for 'Conformance Level' and 'Remarks and Explanations.'
- Verify that the final document is accessible.
- Post your final document on your company's web site, or make the document available to customers upon request.

Table Information for VPAT® Readers

For each of the standards, the criteria are listed by chapter in a table. The structures of the tables are: the first column contains the criteria being evaluated, the second column describes the level of conformance of the product regarding the criteria and the third column contains any additional remarks and explanations regarding the product.

- When sections of criteria do not apply, or are deemed by the customer as not applicable, the section is noted as such and the rest of that table may be removed for that section.
- When multiple standards are being recorded in this document, the duplicative sections are noted and responded to only one time. The duplicate entry will note the cross reference to the data.

[Company] Accessibility Conformance Report

Revised Section 508 Edition

(Based on VPAT® Version 2.4Rev)

Name of Product/Version:

Report Date:

Product Description:

Contact Information:

Notes:

Evaluation Methods Used:

Applicable Standards/Guidelines

This report covers the degree of conformance for the following accessibility standard/guidelines:

| Standard/Guideline | Included In Report |
|---|---|
| Web Content Accessibility Guidelines 2.0 | Level A (Yes) Level AA (Yes) Level AAA (No) |
| Revised Section 508 standards published January 18, 2017 and corrected January 22, 2018 | (Yes) |

¹“Voluntary Product Accessibility Template” and “VPAT” are registered service marks of the Information Technology Council (ITI)

Terms

The terms used in the Conformance Level information are defined as follows:

- **Supports:** The functionality of the product has at least one method that meets the criterion without known defects or meets with equivalent facilitation.
- **Partially Supports:** Some functionality of the product does not meet the criterion.
- **Does Not Support:** The majority of product functionality does not meet the criterion.
- **Not Applicable:** The criterion is not relevant to the product.
- **Not Evaluated:** The product has not been evaluated against the criterion. This can be used only in WCAG 2.0 Level AAA.

WCAG 2.0 Report

Tables 1 and 2 also document conformance with Revised Section 508:

- Chapter 5 – 501.1 Scope, 504.2 Content Creation or Editing
- Chapter 6 – 602.3 Electronic Support Documentation

Note: When reporting on conformance with the WCAG 2.0 Success Criteria, they are scoped for full pages, complete processes, and accessibility-supported ways of using technology as documented in the [WCAG 2.0 Conformance Requirements](#).

Table 1: Success Criteria, Level A

Notes:

| Criteria | Conformance Level | Remarks and Explanations |
|--|---|---|
| <p><u>1.1.1 Non-text Content</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>1.2.1 Audio-only and Video-only (Prerecorded)</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>1.2.2 Captions (Prerecorded)</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>1.2.3 Audio Description or Media Alternative (Prerecorded)</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>1.3.1 Info and Relationships</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |

| Criteria | Conformance Level | Remarks and Explanations |
|--|--|--|
| <ul style="list-style-type: none"> 602.3 (Support Docs) <p><u>1.3.2 Meaningful Sequence</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>1.3.3 Sensory Characteristics</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>1.4.1 Use of Color</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>1.4.2 Audio Control</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>2.1.1 Keyboard</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>2.1.2 No Keyboard Trap</u> (Level A)</p> | <p>Web:</p> | <p>Web:</p> |

| Criteria | Conformance Level | Remarks and Explanations |
|---|--|--|
| <p>Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Electronic Docs: Software: Authoring Tool:</p> | <p>Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>2.2.1 Timing Adjustable</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>2.2.2 Pause, Stop, Hide</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>2.3.1 Three Flashes or Below Threshold</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>2.4.1 Bypass Blocks</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) – Does not apply to non-web software • 504.2 (Authoring Tool) • 602.3 (Support Docs) – Does not apply to non-web docs | <p>Web: Electronic Docs: Authoring Tool:</p> | <p>Web: Electronic Docs: Authoring Tool:</p> |
| <p><u>2.4.2 Page Titled</u> (Level A) Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |

| Criteria | Conformance Level | Remarks and Explanations |
|---|--|--|
| <ul style="list-style-type: none"> 504.2 (Authoring Tool) 602.3 (Support Docs) <p>2.4.3 Focus Order (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p>2.4.4 Link Purpose (In Context) (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p>3.1.1 Language of Page (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p>3.2.1 On Focus (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p>3.2.2 On Input (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |

| Criteria | Conformance Level | Remarks and Explanations |
|--|--|--|
| <p><u>3.3.1 Error Identification</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>3.3.2 Labels or Instructions</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>4.1.1 Parsing</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p><u>4.1.2 Name, Role, Value</u> (Level A)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |

Table 2: Success Criteria, Level AA

Notes:

| Criteria | Conformance Level | Remarks and Explanations |
|---|----------------------------------|----------------------------------|
| <p><u>1.2.4 Captions (Live)</u> (Level AA)</p> <p>Also applies to:</p> | <p>Web: Electronic Docs:</p> | <p>Web: Electronic Docs:</p> |

| Criteria | Conformance Level | Remarks and Explanations |
|--|--|--|
| Revised Section 508 <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | Software: Authoring Tool: | Software: Authoring Tool: |
| <u>1.2.5 Audio Description (Prerecorded)</u> (Level AA) Also applies to: Revised Section 508 <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | Web: Electronic Docs: Software: Authoring Tool: | Web: Electronic Docs: Software: Authoring Tool: |
| <u>1.4.3 Contrast (Minimum)</u> (Level AA) Also applies to: Revised Section 508 <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | Web: Electronic Docs: Software: Authoring Tool: | Web: Electronic Docs: Software: Authoring Tool: |
| <u>1.4.4 Resize text</u> (Level AA) Also applies to: Revised Section 508 <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | Web: Electronic Docs: Software: Authoring Tool: | Web: Electronic Docs: Software: Authoring Tool: |
| <u>1.4.5 Images of Text</u> (Level AA) Also applies to: Revised Section 508 <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | Web: Electronic Docs: Software: Authoring Tool: | Web: Electronic Docs: Software: Authoring Tool: |
| <u>2.4.5 Multiple Ways</u> (Level AA) Also applies to: Revised Section 508 <ul style="list-style-type: none"> • 501 (Web)(Software) – Does not apply to non-web software • 504.2 (Authoring Tool) | Web: Electronic Docs: Authoring Tool: | Web: Electronic Docs: Authoring Tool: |

| Criteria | Conformance Level | Remarks and Explanations |
|---|--|--|
| <ul style="list-style-type: none"> 602.3 (Support Docs) – Does not apply to non-web docs <p>2.4.6 Headings and Labels (Level AA)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p>2.4.7 Focus Visible (Level AA)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p>3.1.2 Language of Parts (Level AA)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) 504.2 (Authoring Tool) 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |
| <p>3.2.3 Consistent Navigation (Level AA)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) – Does not apply to non-web software 504.2 (Authoring Tool) 602.3 (Support Docs) – Does not apply to non-web docs | <p>Web: Electronic Docs: Authoring Tool:</p> | <p>Web: Electronic Docs: Authoring Tool:</p> |
| <p>3.2.4 Consistent Identification (Level AA)</p> <p>Also applies to:</p> <p>Revised Section 508</p> <ul style="list-style-type: none"> 501 (Web)(Software) – Does not apply to non-web software 504.2 (Authoring Tool) 602.3 (Support Docs) – Does not apply to non-web docs | <p>Web: Electronic Docs: Authoring Tool:</p> | <p>Web: Electronic Docs: Authoring Tool:</p> |
| <p>3.3.3 Error Suggestion (Level AA)</p> | <p>Web:</p> | <p>Web:</p> |

| Criteria | Conformance Level | Remarks and Explanations |
|--|--|--|
| <p>Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Electronic Docs: Software: Authoring Tool:</p> | <p>Electronic Docs: Software: Authoring Tool:</p> |
| <p>3.3.4 Error Prevention (Legal, Financial, Data) (Level AA)</p> <p>Also applies to: Revised Section 508</p> <ul style="list-style-type: none"> • 501 (Web)(Software) • 504.2 (Authoring Tool) • 602.3 (Support Docs) | <p>Web: Electronic Docs: Software: Authoring Tool:</p> | <p>Web: Electronic Docs: Software: Authoring Tool:</p> |

Table 3: Success Criteria, Level AAA

Notes:

| Criteria | Conformance Level | Remarks and Explanations |
|---|-------------------|--------------------------|
| <p>1.2.6 Sign Language (Prerecorded) (Level AAA) Revised Section 508 – Does not apply</p> | Web: | Web: |
| <p>1.2.7 Extended Audio Description (Prerecorded) (Level AAA) Revised Section 508 – Does not apply</p> | Web: | Web: |
| <p>1.2.8 Media Alternative (Prerecorded) (Level AAA) Revised Section 508 – Does not apply</p> | Web: | Web: |
| <p>1.2.9 Audio-only (Live) (Level AAA) Revised Section 508 – Does not apply</p> | Web: | Web: |
| <p>1.4.6 Contrast (Enhanced) (Level AAA) Revised Section 508 – Does not apply</p> | Web: | Web: |
| <p>1.4.7 Low or No Background Audio (Level AAA) Revised Section 508 – Does not apply</p> | Web: | Web: |
| <p>1.4.8 Visual Presentation (Level AAA) Revised Section 508 – Does not apply</p> | Web: | Web: |
| <p>1.4.9 Images of Text (No Exception) (Level AAA)</p> | Web: | Web: |

| Criteria | Conformance Level | Remarks and Explanations |
|--|-------------------|--------------------------|
| Revised Section 508 – Does not apply | | |
| 2.1.3 Keyboard (No Exception) (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 2.2.3 No Timing (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 2.2.4 Interruptions (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 2.2.5 Re-authenticating (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 2.3.2 Three Flashes (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 2.4.8 Location (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 2.4.9 Link Purpose (Link Only) (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 2.4.10 Section Headings (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 3.1.3 Unusual Words (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 3.1.4 Abbreviations (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 3.1.5 Reading Level (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 3.1.6 Pronunciation (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 3.2.5 Change on Request (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 3.3.5 Help (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |
| 3.3.6 Error Prevention (All) (Level AAA) Revised Section 508 – Does not apply | Web: | Web: |

Revised Section 508 Report

Notes:

Chapter 3: [Functional Performance Criteria \(FPC\)](#)

Notes:

| Criteria | Conformance Level | Remarks and Explanations |
|--|-------------------|--------------------------|
| 302.1 Without Vision | | |
| 302.2 With Limited Vision | | |
| 302.3 Without Perception of Color | | |
| 302.4 Without Hearing | | |
| 302.5 With Limited Hearing | | |
| 302.6 Without Speech | | |
| 302.7 With Limited Manipulation | | |
| 302.8 With Limited Reach and Strength | | |
| 302.9 With Limited Language, Cognitive, and Learning Abilities | | |

Chapter 4: [Hardware](#)

Notes:

| Criteria | Conformance Level | Remarks and Explanations |
|--|-------------------------------------|-------------------------------------|
| 402 Closed Functionality | Heading cell – no response required | Heading cell – no response required |
| 402.1 General | Heading cell – no response required | Heading cell – no response required |
| 402.2 Speech-Output Enabled | Heading cell – no response required | Heading cell – no response required |
| 402.2.1 Information Displayed On-Screen | | |
| 402.2.2 Transactional Outputs | | |

| Criteria | Conformance Level | Remarks and Explanations |
|--|-------------------------------------|-------------------------------------|
| 402.2.3 Speech Delivery Type and Coordination | | |
| 402.2.4 User Control | | |
| 402.2.5 Braille Instructions | | |
| 402.3 Volume | Heading cell – no response required | Heading cell – no response required |
| 402.3.1 Private Listening | | |
| 402.3.2 Non-private Listening | | |
| 402.4 Characters on Display Screens | | |
| 402.5 Characters on Variable Message Signs | | |
| <u>403 Biometrics</u> | Heading cell – no response required | Heading cell – no response required |
| 403.1 General | | |
| <u>404 Preservation of Information Provided for Accessibility</u> | Heading cell – no response required | Heading cell – no response required |
| 404.1 General | | |
| <u>405 Privacy</u> | Heading cell – no response required | Heading cell – no response required |
| 405.1 General | | |
| <u>406 Standard Connections</u> | Heading cell – no response required | Heading cell – no response required |
| 406.1 General | | |
| <u>407 Operable Parts</u> | Heading cell – no response required | Heading cell – no response required |
| 407.2 Contrast | | |
| <u>407.3 Input Controls</u> | Heading cell – no response required | Heading cell – no response required |
| 407.3.1 Tactilely Discernible | | |
| 407.3.2 Alphabetic Keys | | |
| 407.3.3 Numeric Keys | | |
| 407.4 Key Repeat | | |
| 407.5 Timed Response | | |
| 407.6 Operation | | |
| 407.7 Tickets, Fare Cards, and Keycards | | |
| <u>407.8 Reach Height and Depth</u> | Heading cell – no response required | Heading cell – no response required |
| 407.8.1 Vertical Reference Plane | | |
| 407.8.1.1 Vertical Plane for Side Reach | | |
| 407.8.1.2 Vertical Plane for Forward Reach | | |

| Criteria | Conformance Level | Remarks and Explanations |
|--|-------------------------------------|-------------------------------------|
| 407.8.2 Side Reach | | |
| 407.8.2.1 Unobstructed Side Reach | | |
| 407.8.2.2 Obstructed Side Reach | | |
| 407.8.3 Forward Reach | | |
| 407.8.3.1 Unobstructed Forward Reach | | |
| 407.8.3.2 Obstructed Forward Reach | | |
| 407.8.3.2.1 Operable Part Height for ICT with Obstructed Forward Reach | | |
| 407.8.3.2.2 Knee and Toe Space under ICT with Obstructed Forward Reach | | |
| <u>408 Display Screens</u> | Heading cell – no response required | Heading cell – no response required |
| 408.2 Visibility | | |
| 408.3 Flashing | | |
| <u>409 Status Indicators</u> | Heading cell – no response required | Heading cell – no response required |
| 409.1 General | | |
| <u>410 Color Coding</u> | Heading cell – no response required | Heading cell – no response required |
| 410.1 General | | |
| <u>411 Audible Signals</u> | Heading cell – no response required | Heading cell – no response required |
| 411.1 General | | |
| <u>412 ICT with Two-Way Voice Communication</u> | Heading cell – no response required | Heading cell – no response required |
| <u>412.2 Volume Gain</u> | Heading cell – no response required | Heading cell – no response required |
| 412.2.1 Volume Gain for Wireline Telephones | | |
| 412.2.2 Volume Gain for Non-Wireline ICT | | |
| <u>412.3 Interference Reduction and Magnetic Coupling</u> | Heading cell – no response required | Heading cell – no response required |
| 412.3.1 Wireless Handsets | | |
| 412.3.2 Wireline Handsets | | |
| 412.4 Digital Encoding of Speech | | |
| 412.5 Real-Time Text Functionality | Reserved for future | Reserved for future |
| 412.6 Caller ID | | |
| 412.7 Video Communication | | |
| <u>412.8 Legacy TTY Support</u> | Heading cell – no response required | Heading cell – no response required |
| 412.8.1 TTY Connectivity | | |

| Criteria | Conformance Level | Remarks and Explanations |
|--|-------------------------------------|-------------------------------------|
| 412.8.2 Voice and Hearing Carry Over | | |
| 412.8.3 Signal Compatibility | | |
| 412.8.4 Voice Mail and Other Messaging Systems | | |
| 413 Closed Caption Processing Technologies | Heading cell – no response required | Heading cell – no response required |
| 413.1.1 Decoding and Display of Closed Captions | | |
| 413.1.2 Pass-Through of Closed Caption Data | | |
| 414 Audio Description Processing Technologies | Heading cell – no response required | Heading cell – no response required |
| 414.1.1 Digital Television Tuners | | |
| 414.1.2 Other ICT | | |
| 415 User Controls for Captions and Audio Descriptions | Heading cell – no response required | Heading cell – no response required |
| 415.1.1 Caption Controls | | |
| 415.1.2 Audio Description Controls | | |

Chapter 5: [Software](#)

Notes:

| Criteria | Conformance Level | Remarks and Explanations |
|---|-------------------------------------|-------------------------------------|
| 501.1 Scope – Incorporation of WCAG 2.0 AA | See WCAG 2.x section | See information in WCAG 2.x section |
| 502 Interoperability with Assistive Technology | Heading cell – no response required | Heading cell – no response required |
| 502.2.1 User Control of Accessibility Features | | |
| 502.2.2 No Disruption of Accessibility Features | | |
| 502.3 Accessibility Services | Heading cell – no response required | Heading cell – no response required |
| 502.3.1 Object Information | | |
| 502.3.2 Modification of Object Information | | |
| 502.3.3 Row, Column, and Headers | | |
| 502.3.4 Values | | |
| 502.3.5 Modification of Values | | |
| 502.3.6 Label Relationships | | |
| 502.3.7 Hierarchical Relationships | | |
| 502.3.8 Text | | |

| Criteria | Conformance Level | Remarks and Explanations |
|---|--------------------------------------|-------------------------------------|
| 502.3.9 Modification of Text | | |
| 502.3.10 List of Actions | | |
| 502.3.11 Actions on Objects | | |
| 502.3.12 Focus Cursor | | |
| 502.3.13 Modification of Focus Cursor | | |
| 502.3.14 Event Notification | | |
| 502.4 Platform Accessibility Features | | |
| <u>503 Applications</u> | Heading cell – no response required | Heading cell – no response required |
| 503.2 User Preferences | | |
| 503.3 Alternative User Interfaces | | |
| <i>503.4 User Controls for Captions and Audio Description</i> | Heading cell – no response required | Heading cell – no response required |
| 503.4.1 Caption Controls | | |
| 503.4.2 Audio Description Controls | | |
| <u>504 Authoring Tools</u> | Heading cell – no response required | Heading cell – no response required |
| 504.2 Content Creation or Editing (if not authoring tool, enter “not applicable”) | See WCAG 2.x section | See information in WCAG 2.x section |
| 504.2.1 Preservation of Information Provided for Accessibility in Format Conversion | | |
| 504.2.2 PDF Export | | |
| 504.3 Prompts | | |
| 504.4 Templates | | |

Chapter 6: [Support Documentation and Services](#)

Notes:

| Criteria | Conformance Level | Remarks and Explanations |
|--|--------------------------------------|-------------------------------------|
| <i>601.1 Scope</i> | Heading cell – no response required | Heading cell – no response required |
| <u>602 Support Documentation</u> | Heading cell – no response required | Heading cell – no response required |
| 602.2 Accessibility and Compatibility Features | | |
| 602.3 Electronic Support Documentation | See WCAG 2.x section | See information in WCAG 2.x section |

| Criteria | Conformance Level | Remarks and Explanations |
|--|-------------------------------------|-------------------------------------|
| 602.4 Alternate Formats for Non-Electronic Support Documentation | | |
| 603 Support Services | Heading cell – no response required | Heading cell – no response required |
| 603.2 Information on Accessibility and Compatibility Features | | |
| 603.3 Accommodation of Communication Needs | | |

Legal Disclaimer (Company)

Include your company legal disclaimer here, if needed.

Exhibit F
RESPONDENT RELEASE OF LIABILITY

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE AND SUBMITTED WITH THE RESPONDENT'S RESPONSE

To company providing the reference:

Enter name of company providing the reference here

You are hereby requested to provide a business reference for:

Enter name of company (Respondent) or key staff person's name needing a reference

to the: Texas Department of Information Resources

Solicitation Evaluation Team

Please disclose any and all information that you deem relevant relating to the above-named parties' business relationship. By signing this document, the entity and, if applicable, individual key staff person signing below releases the above-named company providing a reference, its agents, employees, and all persons, natural or corporate, in privity with above-named company providing a reference from any and all liability, claims or causes of action arising from their disclosure of information pursuant to this request for a business reference.

Signed the _____ day of _____, 20____.

(Respondent Signature)

(Respondent Printed Name)

(Respondent Title)

Signed the _____ day of _____, 20____.

Software, Commercially Off the Shelf (COTS) and Related Services

EDGAR CERTIFICATIONS for DIR VENDORS

FOR PURCHASES FUNDED BY U.S. FEDERAL GRANT

Certain Texas Department of Information Resource (DIR) customers (Customers) need to ensure that all policies and procedures involving the expenditure of federal funds are compliant with the new Education Department General Administrative Guidelines (EDGAR). A portion of this process involves ensuring that all current vendors used by the Customer agree to comply with EDGAR. By placing this form on your DIR active contract webpage you are indicating that you are interested in providing the contracted goods and services to these Customers and comply with the necessary guidelines.

The following certifications and provisions are required and apply when certain DIR customers expend federal funds for any contract resulting from this procurement process. Pursuant to 2 C.F.R. 200.326, all contracts, contain procurement provisions of Appendix II to Part 200, as applicable.

REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200

The following provisions are required and apply when federal funds are expended by Customer for any contract resulting from this procurement process.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the Non-Federal entity including the manner by which it will be effected and the basis for settlement.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of

Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

**RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS –
2 CFR § 200.333**

When federal funds are expended by Customer for any contract resulting from this procurement process, the Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When federal funds are expended by Customer for any contract resulting from this procurement process, Vendor certifies it will comply with the mandatory standards and policies relating to energy which are contained in the state energy conservation plan issued in compliance with the Energy Policy and conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18)

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336

Vendor agrees that the Inspector General of the District or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor’s discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor’s personnel for the purpose of interview and discussion relating to such documents.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? _____ Initials of Authorized Representative of vendor _____

CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS

Vendor agrees that all contracts it awards pursuant of the Contract shall be bound by the foregoing terms and conditions.

Does vendor agree? _____ Initials of Authorized Representative of vendor

Vendor agrees to comply with the above federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Vendor's Name/Company Name: _____

Address, City, State, and Zip Code: _____

Phone Number: _____ Fax Number: _____

Printed Name and Title of Authorized Representative: _____

Email Address: _____

Signature of Authorized Representative: _____

Date: _____ Federal Tax ID # _____

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

OFFICE USE ONLY

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

Date Received

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?

Yes No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4

Signature of vendor doing business with the governmental entity

Date

Policy Driven Adoption for Accessibility (PDAA) - Vendor Self-assessment

Instructions: The PDAA is an assessment for Information and Communications Technology (ICT) accessibility (also known as Electronic and Information Resources (EIR) accessibility). Vendors should describe how they are currently implementing accessibility policy and practices within their organizations. Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment is not a substitute for other requested accessibility documentation (e.g., VPATs and VADSIRs). For questions or additional information, please contact: statewideaccessibility@dir.texas.gov.

Organization Information

Name: _____

Address: _____

Respondant Information

Name: _____

Email: _____

PDAA completion date: _____

My organization is a (choose one or more if applicable)

| | |
|--------------------------|--|
| <input type="checkbox"/> | Manufacturer: My organization develops and sells its own ICT products / services |
| <input type="checkbox"/> | Service Provider: My organization sells IT development services |
| <input type="checkbox"/> | Integrator: My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization |
| <input type="checkbox"/> | Reseller or Catalogue Supplier: Does not develop or have its own products, but offers COTS 3rd party products |

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant to your organization today.

Responses

1. Develop, implement, and maintain an ICT accessibility policy.

0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)

1a. Having an ICT accessibility policy.

- 1 My organization is developing an ICT accessibility policy.
- 2 My organization is finalizing an ICT accessibility policy.
- 3 My organization has approved an ICT accessibility policy.

1b. Having appropriate plans in place to implement and maintain the policy.

- 1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
- 2 My organization has completed planning for initial implementation and maintenance of our accessibility policy.
- 3 My organization has approved plans for accessibility policy implementation and maintenance.

1c. Establishing metrics and tracking progress towards achieving compliance to the policy.

- 1 My organization is identifying metrics that can be used to gauge policy compliance.
- 2 My organization is collecting metrics and has begun designing progress reporting based on them.
- 3 My organization is tracking progress on policy adoption and continues to refine the metrics.

Section 1 Comments (Provide any comments or additional information on this section here.)

2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.

0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)

2a. Developing an organization wide governance system.

- 1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
- 2 My organization is finalizing plans that will result in an organization wide governance system.
- 3 My organization has approved plans for an organization wide governance system.

2b. Designating one or more individuals responsible for implementation.

- 2 My organization has identified key individuals in the implementation process.
- 3 My organization has assigned implementation duties and responsibilities to appropriate individuals.

2c. Implementing reporting/decision mechanism and maintain records.

- 1 My organization is developing tools and procedures for tracking ICT accessibility issues.
- 2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
- 3 My organization uses reports to make organizational changes to improve ICT accessibility.

Section 2 Comments (Provide any comments or additional information on this section here.)

3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

Manufacturers: Address processes that pertain to your development of ICT products.

Service providers: Address processes that pertain to your development of ICT services.

Integrators: Address processes that pertain to your ICT integration services and solutions.

Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings.

0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)

3a. Identifying candidate processes for criteria integration.

- 1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
- 2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
- 3 My organization has approved plans to integrate accessibility criteria into these processes.

3b. Implementing process changes.

- 1 My organization has begun modifying its key business processes to integrate accessibility criteria.
- 2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
- 3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

3c. Integrate fully into all key processes.

- 2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings.
- 3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

Section 3 Comments (Provide any comments or additional information on this section here.)

4. Provide processes for addressing inaccessible ICT.

Manufacturers: Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d.

Service providers: Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d.

Integrators: Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d.

Catalogue Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings in 4e.

We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of this section.)

4a. Creating plans that include dates for compliance of inaccessible ICT.

- 1 We are developing plans to identify and test ICT developed and sold by our organization.
- 2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance.
- 3 We perform accessibility testing on all products / serviced developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.

4b. Providing alternate means of access until the ICT is accessible.

- 0 We do not have plans for providing alternate means of access for our organization's ICT offerings.
- 1 We are developing plans for providing alternate means of access for our organization's ICT offerings.
- 2 We are implementing methods providing alternate means of access for our organization's ICT offerings.
- 3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.

4c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects

- 1 We are developing a corrective actions process for handling accessibility technical issues and defects
- 2 We are implementing a corrective actions process for handling accessibility technical issues and defects
- 3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.

4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking.

- 1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
- 1 We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
- 2 We have a record keeping system for tracking the accessibility status of current and future products / services.
- 2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
- 3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.
- 3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.

4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Catalogue Vendor/Reseller only)

- 1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)

5a. Defining skills/job descriptions.

- 1 We have defined general skills and knowledge needs for ICT accessibility.
- 2 We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
- 3 We have mapped key accessibility skills and knowledge needs to specific fields of practice.

5b. Identifying existing resources that match up and address gaps.

- 2 We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
- 3 We have organized the gaps in order of priority.

5c. Managing progress in acquiring skills and allocating qualified resources.

- 1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.
- 1 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
- 2 We have developed a process to track resource training and augmentation.
- 3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place.

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

We do not have a plan to make our accessibility policy or other accessibility information publically available. (If selected, skip to next section or provide comments at the end of this section.)

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
- 1 Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.
- 2 Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATs

- 2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
- 3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.

6c. ICT Accessibility policy and documentation availability

- 2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
- 3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products

Section 6 Comments (Provide any comments or additional information on this section here.)

| Results | Vendor |
|------------------|--------|
| Vendor | |
| Total Points | 0 |
| Percent Complete | 0% |

| Launch | Integrate | Optimize |
|--------|-----------|----------|
| | | |

FAQs for Policy-Driven Adoption for Accessibility (PDAA)

For companies/vendors

1. What is PDAA?

Policy-driven Adoption for Accessibility (PDAA) is a tool that vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles:

- Integrating accessibility policies and practices into their business and culture enables organizations to drive themselves towards the creation of accessible offerings over the long term.
- Enabling products for accessibility requires integrating accessibility criteria into all phases of a product life cycle, and other business processes where accessibility plays a role.
- Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards. Gaps in vendor internal governance systems and leadership commitment inhibit their ability to meet these standards.
- Agency procurement organizations need assurances that vendors have the ability to produce accessible offerings and continue to improve them over time.

2. Why are buying organizations requesting information on company accessibility policy?

Making an organization's information and communications technology (ICT) offerings accessible to people with disabilities requires commitment in many areas of that organization. PDAA data helps buying organizations understand a vendor's accessibility policy, progress and commitment to accessibility holistically.

A mature accessibility policy implementation signals that the vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning consistently results in a friendlier product for all users, including those with disabilities.

3. Why is PDAA information important to the buying organization?

The requested information provides insight into vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings, which can increase the procuring organizations' confidence in the accuracy of vendor's accessibility documentation.

Current ICT accessibility reporting formats such as VPATs (Voluntary Product Assessment Templates) only apply to COTS products and services. In many cases, vendor VPATs lack credibility due to limited knowledge about their offerings' accessibility. Additionally, there is no standard reporting format for non-COTS offerings such as development services for websites, web applications, system software, etc.

4. How will this information be used?

The initial completed form will establish a baseline for where a vendor stands with regard to its ICT accessibility policy. The baseline illustrates the depth and maturity of the vendor's support for accessibility policy and practices as illustrated via the PDAA Maturity Model (Link on next line. If prompted for a password, select "cancel")

[PDAA Maturity Model \(http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx\)](http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

The questionnaire may also be included in future solicitations so that progress can be assessed. The vendor responses from the questionnaire may be considered as an element in vendor selection; however, this would be determined by the procuring organization.

Additionally, vendor companies can use the results as a roadmap for implementing their organization-wide ICT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.

5. We already submit VPATs as part of solicitation responses. Is that adequate?

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. The expectation is that organizations with mature approaches to PDAA will greatly improve the levels of accessibility in products. It should also result in well documented, accurate VPATs, improving their value in product-level assessments

6. What is the PDAA Maturity Model?

Based on the Capability Maturity Model (CMM) concept, the PDAA Maturity Model (Link on next line) provides buying organizations and vendors with a simple dashboard or matrix to track and demonstrate vendors' progress toward full system-wide support of accessibility.

[PDAA Maturity Model \(http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx\)](http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

7. Where can I obtain more information on Accessibility Policy implementation for my organization?

[Additional information can be found on the PDAA web pages. \(http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement\)](http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement)

For government organizations/agencies

8. What is PDAA?

Policy-driven Adoption for Accessibility (PDAA) is a tool that vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles:

- Integrating accessibility policies and practices into their business and culture enables organizations to drive themselves towards the creation of accessible offerings over the long term.
- Enabling products for accessibility requires the integration of accessibility criteria in all phases of a product life cycle, and other business process where accessibility plays a role.
- Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards, but gaps in internal governance and commitment by industry inhibits the adoption and implementation of these standards.
- Agency procurement organizations need assurances that vendors have the ability to produce accessible offerings and continue to improve them over time.

9. Does the PDAA replace VPATs?

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. VPATs are still a valuable tool at the product level, and the expectation is that vendors with mature approaches to PDAA will have accurate and informative VPATs.

10. Why a "maturity model" of evaluation?

Successfully enabling an organization for ICT accessibility requires implementation within various areas of an organization. As with any organization-wide initiative, implementation cannot occur all at once. The PDAA Maturity Model is used to gauge progress towards the complete implementation of PDAA core criteria. (Link on next line. If prompted for a password, select "cancel")

[PDAA Maturity Model \(http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx\)](http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

11. Why should we support vendors who have mature PDAA practices?

A mature accessibility policy implementation signals that the vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning consistently results in a friendlier product for all users, including those with disabilities.

12. How should we score PDAA information?

In general, the PDAA questionnaire is meant to ensure that the same information is collected from all bidders, and how the agency uses that information will depend on circumstances.

While scoring has not yet been established for PDAA, the responses from the questionnaire may be used as criteria in selecting offerings or vendors.

PDAA evaluation is an area that will need some practical experience, and we hope that organizations will share what they learn.

13. Where does the PDAA information fit within the procurement process?

Using consistent information in evaluating bids is a key element of open and competitive public procurements. The information given in a PDAA report can help you better judge the ability of a vendor to: complete a VPAT correctly, produce accessible custom ICT offerings (web sites, web applications, software, etc.), resolve accessibility defects when discovered, and otherwise be a partner in helping you meet your compliance obligations. The specific role of PDAA responses may be determined in part by the procurement laws, policies and practices for your organization.

14. What happens if the vendor claims the information is confidential or a trade secret?

Vendors often claim this for information required in procurements. Your organization's procurement laws, policies, or practices may already address how you handle such claims.

15. What other states are using the PDAA model?

The PDAA model is in its early stages. A coalition of states is working with several national associations to harmonize the criteria for this model, and for obtaining and evaluating PDAA information. The goal is for more states and other government entities to adopt the PDAA model in their procurement processes.

16. Where can I obtain more information on Accessibility Policy implementation for my organization?

[Additional information can be found on the PDAA web pages. \(http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement\)](http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement)

Policy Driven Adoption for Accessibility (PDAA) - Vendor Assessment

Instructions: The PDAA is an assessment for Information and Communications Technology (ICT) accessibility (also known as Electronic and Information Resources (EIR) accessibility). Vendors should describe how they are currently implementing accessibility policy and practices within their organizations. Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment is not a substitute for other requested accessibility documentation (e.g., VPATs and VADSIRs). For questions or additional information, please contact: statewideaccessibility@dir.texas.gov.

Organization Information

Name: Widgets Inc.
 Address: 111 State Blvd. Anytown, TX 78701

Respondant Information

Name: Alex Smith
 Email: myemailaddress@company.com
 PDAA completion date: 1/1/2015

My organization is a (choose one or more if applicable)

| | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | Manufacturer: My organization develops and sells its own ICT products / services |
| <input type="checkbox"/> | Service Provider: My organization sells IT development services |
| <input type="checkbox"/> | Integrator: My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization |
| <input type="checkbox"/> | Reseller or Catalogue Supplier: Does not develop or have its own products, but offers COTS 3rd party products |

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant to your organization today.

Responses

1. Develop, implement, and maintain an ICT accessibility policy.

- 0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)
- 2
 - 1a. Having an ICT accessibility policy.
 - 1 My organization is developing an ICT accessibility policy.
 - 2 My organization is finalizing an ICT accessibility policy.
 - 3 My organization has approved an ICT accessibility policy.
 - 1b. Having appropriate plans in place to implement and maintain the policy.
 - 1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
 - 2 My organization has completed planning for initial implementation and maintenance of our accessibility policy.
 - 3 My organization has approved plans for accessibility policy implementation and maintenance.
 - 1c. Establishing metrics and tracking progress towards achieving compliance to the policy.
 - 1 My organization is identifying metrics that can be used to gauge policy compliance.
 - 2 My organization is collecting metrics and has begun designing progress reporting based on them.
 - 3 My organization is tracking progress on policy adoption and continues to refine the metrics.

Section 1 Comments (Provide any comments or additional information on this section here.)

2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.

- 0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)
- 1
 - 2a. Developing an organization wide governance system.
 - 1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
 - 2 My organization is finalizing plans that will result in an organization wide governance system.
 - 3 My organization has approved plans for an organization wide governance system.
 - 2
 - 2b. Designating one or more individuals responsible for implementation.
 - 2 My organization has identified key individuals in the implementation process.
 - 3 My organization has assigned implementation duties and responsibilities to appropriate individuals.
 - 2c. Implementing reporting/decision mechanism and maintain records.
 - 1 My organization is developing tools and procedures for tracking ICT accessibility issues.
 - 2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
 - 3 My organization uses reports to make organizational changes to improve ICT accessibility.

Section 2 Comments (Provide any comments or additional information on this section here.)

3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

- Manufacturers: Address processes that pertain to your development of ICT products.**
Service providers: Address processes that pertain to your development of ICT services.
Integrators: Address processes that pertain to your ICT integration services and solutions.
Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings.
- 0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section)
 - 1
 - 3a. Identifying candidate processes for criteria integration.
 - 1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
 - 2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
 - 3 My organization has approved plans to integrate accessibility criteria into these processes.
 - 1
 - 3b. Implementing process changes.
 - 1 My organization has begun modifying its key business processes to integrate accessibility criteria.
 - 2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
 - 3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.
 - 3c. Integrate fully into all key processes.
 - 2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings.
 - 3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

Section 3 Comments (Provide any comments or additional information on this section here.)

4. Provide processes for addressing inaccessible ICT.

Manufacturers: Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d.
Service providers: Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d.
Integrators: Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d.
Catalogue Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings in 4e.

We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of this section.)

2

4a. Creating plans that include dates for compliance of inaccessible ICT.

- 1 We are developing plans to identify and test ICT developed and sold by our organization.
2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance.
3 We perform accessibility testing on all products / services developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.

2

4b. Providing alternate means of access until the ICT is accessible.

- 0 We do not have plans for providing alternate means of access for our organization's ICT offerings.
1 We are developing plans for providing alternate means of access for our organization's ICT offerings.
2 We are implementing methods providing alternate means of access for our organization's ICT offerings.
3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.

2

4c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects

- 1 We are developing a corrective actions process for handling accessibility technical issues and defects
2 We are implementing a corrective actions process for handling accessibility technical issues and defects
3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.

1

4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking.

- 1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
1 We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
2 We have a record keeping system for tracking the accessibility status of current and future products / services.
2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.
3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.

4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Catalogue Vendor/Reseller only)

- 1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

0

We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)

5a. Defining skills/job descriptions.

- 1 We have defined general skills and knowledge needs for ICT accessibility.
2 We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
3 We have mapped key accessibility skills and knowledge needs to specific fields of practice.

5b. Identifying existing resources that match up and address gaps.

- 2 We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
3 We have organized the gaps in order of priority.

5c. Managing progress in acquiring skills and allocating qualified resources.

- 1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.
1 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
2 We have developed a process to track resource training and augmentation.
3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place.

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

0

We do not have a plan to make our accessibility policy or other accessibility information publicly available. (If selected, skip to next section or provide comments at the end of this section.)

1

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
1 Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.
2 Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATs

- 2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.

6c. ICT Accessibility policy and documentation availability

- 2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Section 6 Comments (Provide any comments or additional information on this section here.)

Results Vendor Total Points 18 Percent Complete 30% Vendor Launch Integrate Optimize

**Department of Information Resources
Request for Offer DIR-CPO-TMP-570
Software, Commercially Off the Shelf (COTS) and Related Services
Exhibit I**

Certification of Off-Premises Customer Services

Respondent certifies on behalf of Respondent and its designated Order Fulfillers and Resellers that:

- Respondent’s services contracted under this Contract will not require Respondent to perform work on Customer’s premises; and
- Respondent’s services contracted under this Contract do not require use of employer vehicles (whether owned or otherwise) to conduct work on behalf of Customers.

Respondent agrees to provide notice and the required insurance if the foregoing facts change.

Respondent Legal Name: _____

Authorized By: _____

Name: _____

Title: _____

Date: _____



Department of Information Resources

Request for Offer DIR-CPO-TMP-570

Software, Commercially Off the Shelf (COTS) and Related Services

Exhibit J

Vendor References

VENDOR REFERENCES
Department of Information Resources
Request for Offer DIR-CPO-TMP-570
Software, Commercially Off the Shelf (COTS) and Related Services
Revised 3/2/2023.

REFERENCE DEADLINE TO DIR: No later than April 28, 2023, 2:00 PM

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: rfodir-cpo-tmp-570@dir.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name
Software Product/Services Category
Prime Contractor
Subcontractor(s)
Dates of Performance: Starting Date Ending Date
Total Est. Contract Dollar Amount

This portion to be completed by the Customer providing reference and returned to DIR at rfodir-cpo-tmp-570@dir.texas.gov.

Rating: (0) Unsatisfactory; (1) Marginally Satisfactory; (2) Satisfactory; (3) Exceeds Expectations; N/A. Not Applicable
Definitions for each rating category are contained on the following page.

Please provide your opinion by rating the following:

Quality of Software and Related Services

- 1. Have you purchased any Software and/or Related Services from this Vendor in the past 2 years? Yes No
2. Vendor's ability to provide the products or services in a timely manner? 0. 1. 2. 3. N/A
3. Vendor's knowledge of and ability to answer questions regarding the products? 0. 1. 2. 3. N/A
4. Vendor's ability to resolve problems? 0. 1. 2. 3. N/A

Cost

- 5. Timely, current, accurate & complete invoices 0. 1. 2. 3. N/A

Timeliness of Performance

- 6. Adherence to delivery schedule (major tasks, milestones) 0. 1. 2. 3. N/A

Business Relations & Customer Satisfaction

- 7. Effectively communicated with customer management & staff 0. 1. 2. 3. N/A
8. Vendor personnel (professional, cooperative & flexible) 0. 1. 2. 3. N/A
9. Vendor's attitude toward customer service 0. 1. 2. 3. N/A
10. Overall Satisfaction with Vendor 0. 1. 2. 3. N/A

Comments: (Please use additional page if necessary)

In your opinion, should this Vendor be used again for Software and Related Services?
Yes No

In your opinion, should this Vendor be recommended to others? Yes No

Rater's Name: Date:
Organization:
Title:
Phone Number: Fax Number: Email address:

**Vendor Reference Evaluation
Scoring**

| | | | |
|---|---|--|---|
| <p>Excellent (3) There are no quality problems.</p> | <p>There are no cost issues.</p> | <p>There are no delays.</p> | <p>Responses to inquiries, technical, service, and administrative issues are effective and responsive.</p> |
| <p>Satisfactory (2) Nonconformances do not impact achievement of contract requirements.</p> | <p>Cost issues do not impact achievement of contract requirements.</p> | <p>Delays do not impact achievement of contract requirements.</p> | <p>Response to inquiries, technical, service, and administrative issues is usually effective and responsive.</p> |
| <p>Marginal (1) Nonconformances require minor Agency resources to ensure achievement of contract requirements.</p> | <p>Cost issues require minor Agency resources to ensure achievement of contract requirements.</p> | <p>Delays require minor Agency resources to ensure achievement of contract requirements.</p> | <p>Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.</p> |
| <p>Unsatisfactory (0) Nonconformances are compromising the achievement of contract requirements.</p> | <p>Cost issues are compromising performance of contract requirements.</p> | <p>Delays are compromising the achievement of contract requirements.</p> | <p>Response to inquiries, technical, service, and administrative issues is not effective and responsive.</p> |



Vendor Accessibility Development Services Information Request

EXHIBIT K

1. Vendor Information

| | | |
|--------------|------------------|------------------|
| Vendor Name: | Submitter Name : | Date: |
| Email: | Phone: () | |
| Address: | City: | State: ZIP: |

2. Instructions

Complete this form if your company or organization is responding to a Texas Agency solicitation that includes one or more of the following Information and Communications Technologies (ICT) offering types:

- Website development services
- Web Application Development Services
- Custom development services as part of an integrated solution.
- Client based software application development services
- Other software development services containing one or more user interfaces (end user, admin, etc.)

Please direct any questions regarding this request to the DIR Procurement Office.

3. Please respond to the questions below as applicable

1. Describe or provide documentation regarding your organization’s key business processes that include the integration of ICT accessibility activities. (Examples are product development, procurement, HR, etc.):

2. Describe the skills and training resources that your organization uses (internal or third party) to develop and produce accessible ICT offerings:

3. Describe the development and test tools used within your organization to produce accessible ICT offerings. Provide examples of typical project test cases for accessibility and examples of how test results are documented:

4. Describe your organizations corrective actions process(es) or system(s) for documenting, tracking, and resolving accessibility issues / defects:

5. Describe alternate methods for ICT products that are not compliant with accessibility technical standards. (example: 24hour / 7day/week toll free phone support number):

6. Provide links to example websites or other examples of ICT work that your organization has produced that meet accessibility technical standards such as US Section 508, or WCAG 2.0 AA:

Item 20.

Exhibit L

Definitions

1. Commercial off-the-Shelf (COTS)

“Commercial off-the-Shelf” and “COTS” have the meaning assigned by CNSSI 4009-2015 from NSA/CSS Policy 3-14.

2. Software as a Services (SaaS)

“Software as a Service” has the meaning assigned by Special Publication 800-145 issued by the United States Department of Commerce National Institute of Standards and Technology, as the definition existed on January 1, 2015.

3. Platform as a Service (PaaS)

“Platform as a Service” has the meaning assigned by Special Publication 800-145 issued by the United States Department of Commerce National Institute of Standards and Technology, as the definition existed on January 1, 2015.

4. Infrastructure as Service (IaaS)

“Infrastructure as Service” has the meaning assigned by Special Publication 800-145 issued by the United States Department of Commerce National Institute of Standards and Technology, as the definition existed on January 1, 2015

5. Software Customization

Changing COTS software code to comply with customer’s special requirements. These Services are NOT INCLUDED in the Scope of this RFO.

6. Software Development

The application of technology to the production of new applications. These Services are NOT INCLUDED in the Scope of this RFO.

7. Software Configuration

Services provided by vendor to configure a software COTS product, by setting up workflow, names, reporting, field names etc. (Configuration DOES NOT require COTS software code to be modified)

8. Software Related Services

Services for the purpose of this RFO include, but are not limited to installation, configuration, and maintenance and support.

Services outside the scope of this RFO include application development and maintenance.

DIR reserves the right to determine if a service not otherwise listed above is within the scope of this RFO.

***NOTE: THIS SPREADSHEET MUST be turned in with your Response.**

Instructions

RESPONDENTS TO THIS RFO MUST ENTER THEIR PROPOSED AVERAGE BRAND DISCOUNT IN THE BIDSTAMP VENDOR INFORMATION SYSTEM (VIS). CATEGORIES MUST BE ENTERED IN BIDSTAMP AS LISTED.

TAB 1 - PRODUCTS DETAILS / DISCOUNT SHEET - The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).

Respondent will provide a MSRP price list of products being proposed

Discount range (e.g., 0% - 99%) is not allowed.

Respondent shall provide a link to Manufacturer Suggested Retail Published Pricing List.

Product detail list Pricing information is not entered in the BidStamp VIS.

Brand product detail will be entered in Brand Product Detail tab and submitted in BidStamp VIS in EXCEL spreadsheet format.

TAB 2 - BidStamp BRAND Average Discount - will be completed in accordance with Package 1 RFO Document Section 3.9.4 Pricing - Complete Tab 2 BIDSTAMP Average Discount Sheet, and entered in BIDSTAMP.

If Respondent is proposing multiple discounts for the same brand, the branded products must be listed separately with the associated discount or grouped with an associated discount. Respondent will calculate the average discount per brand in this Package. The brand average will be entered in BidStamp per instructions in Bid Package 1 RFO Document Section 3.9.4.1 For example:

Brand ABC

ABC Product Software or Hardware, Site Licenses - Customer Discount - 15% (BRAND ABC)

ABC Product Software or Hardware, Volume Licenses - Customer Discount - 25% (BRAND ABC)

ABC Product Software or Hardware, All other products - Customer Discount -10% **(Average Discount 16.67% will be entered in BidStamp)**

Discount range (e.g., 0% - 99%) is not allowed.

TAB 3 -SERVICES DETAIL / DISCOUNT SHEET - The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).

Respondent will provide a MSRP price list of services being proposed

Discount range (e.g., 0% - 99%) is not allowed.

Respondent will provide Services unit of measure

***Services Will not be entered in BidStamp**

TAB 4 - VOLUME DISCOUNT SHEET- The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP). Volume Pricing information is not entered in the BidStamp VIS. If Respondent is proposing Volume Discounts, the product must be listed on the

Volume Discount Tab with the associated type or grouped with an associated discount.

For example:

ABC Product, 1-5 Units - 10.00% - two decimals

ABC Product, 6-10 Units - 20.00% - two decimals

ABC Product, 10+ Units - 30.00% - two decimals

All Volume Discounts will be listed on the Volume Discount Tab and will be submitted in the EXCEL spreadsheet format.

For all Tabs above - Price to DIR Customer shall include all shipping and handling fees.

***DO NOT CREATE TABS BY BRAND. ALL ENTRIES WILL BE COMPLETED ON THE TABS PROVIDED IN THIS PACKAGE 2**

Department of Information Resources
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 Software, Commercially of the Shelf and Related Services
 Package 2 - ITEMIZED PRICING SHEET

Company Name: _____

IF Respondent IS PROVIDING THE ENTIRE LINE FOR A SPECIFIC BRAND, PROVIDE CATALOGUE LINK AND LIST HERE MOST SOLD PRODUCTS

* For Respondent reference: DIR CUSTOMER PRICE contains 0.75% DIR Administrative Fee and it will be AUTOMATICALLY calculated once all other cells are filled.
 For reference purposes, the formula to calculate DIR Customer Price is: DIR Customer Price = MSRP x (1-DIR Discount%) x (1+0.75%)
 DO NOT make any changes to the format of the grids. Insert additional rows as needed.

| BRAND | FUNCTION | SOFTWARE CATEGORY (Select from Dropdown) | PRODUCT DESCRIPTION | PRODUCT PART NUMBER | MSRP or LIST PRICE | DIR Customer Discount % off MSRP | DIR Customer Price* | Unit | AVERAGE BRAND DISCOUNT |
|------------|---------------------------|---|---------------------|------------------------|--------------------|-------------------------------------|---------------------|----------|---------------------------|
| Brand x | EXAMPLE: Audit Management | SaaS | | | \$ 1,000.00 | 15.00% | \$ 856.38 | p/user | |
| Brand x x | EXAMPLE: Audit Management | Software | | | \$ 2,000.00 | 25.00% | \$ 1,511.25 | p/server | |
| Brand x xx | EXAMPLE: Audit Management | Related Services | | | \$ 10,000.00 | 10.00% | \$ 9,067.50 | bundle | 16.67% |
| | | | | | | | \$ - | | |
| | | | | | | | \$ - | | |
| | | | | | | | \$ - | | |
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| | | | | | | | \$ - | | |

Add as Many lines
 as you need by
 copy and pasting
 to included
 formula

Department of Information Resources
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 Bid Package 2 - ITEMIZED PRICING SHEET

All Brands Discount Averages must be entered into DIR's Automated Pricing Form in the BidStamp VIS. Per instructions Package 1 RFO Document Section 3.9.4.1 Automated Pricing

Company Name: _____

THIS SPREADSHEET WILL BE PART OF RESPONDENT'S RESPONSE

EXAMPLES for use. Respondent must enter the Brand Name (Sample green highlight) in BidStamp VIS, exactly as written in section 3.9.4.1 of Package 1 RFO Document. Failure to do so may result in Respondent's bid not tabulating correctly.

| BRAND | FUNCTION | Average Discount per Brand |
|-----------------|---------------------------------|----------------------------|
| Brand-x | Audit Management | 15.00% |
| Brand-x | Case Management | 10.00% |
| Brand-x | Artificial Intelligence (AI) | 10.00% |
| Brand-x | Audit Management | 20.00% |
| Brand-y | Back-Up Software | 20.00% |
| Brand-y | Data Management Software | 20.00% |
| Brand-y | Design and Development Software | 15.00% |
| Brand-Z | Developer Tools Software | 20.00% |
| Microsoft (VAR) | Office 365 | 7.50% |
| Adobe (VAR) | Adobe | 10.00% |
| NOVELL (VAR) | Novell | 10.00% |
| Brand-Various | Complete Solution | 20.00% |

Add Line as needed

| | | | | |
|--|--|--|--|--|
| | | | | |
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| | | | | |
| | | | | |

Bid Package 2 -ITEMIZED PRICING SHEET

Company Name: _____

IF Respondent IS PROVIDING THE ENTIRE LINE FOR A SPECIFIC BRAND, PROVIDE CATALOGUE LINK AND LIST HERE MOST SOLD PRODUCTS

* For Respondent reference: DIR CUSTOMER PRICE contains 0.75% DIR Administrative Fee and it will be AUTOMATICALLY calculated once all other cells are filled.
 For reference purposes, the formula to calculate DIR Customer Price is: DIR Customer Price = MSRP x (1-DIR Discount%) x (1+0.75%)
 DO NOT make any changes to the format of the grids. Insert additional rows as needed.

| CATEGORY | SUBCATEGORY | BRAND Name if Applies otherwise enter N/A | SERVICE DESCRIPTION | SERVICE CATEGORY | SERVICE PART NUMBER | Service Unit | MSRP | DIR Customer Discount % off MSRP | DIR Customer Price* | AVERAGE BRAND DISCOUNT |
|---------------------------|-------------|---|---------------------|------------------|------------------------|--------------|--------------|-------------------------------------|---------------------|---------------------------|
| EXAMPLE: Audit Management | SaaS | Vista | maintenance | Software | XB-2000 | Annually | \$ 1,000.00 | 15.00% | \$ 856.38 | |
| EXAMPLE: Audit Management | Server | Vista | Project Manager | Implementation | XB-2001 | p/hour | \$ 2,000.00 | 25.00% | \$ 1,511.25 | |
| EXAMPLE: Audit Management | SaaS | Vista | Training | Suite | XB-2002 | p/day | \$ 10,000.00 | 10.00% | \$ 9,067.50 | 16.67% |
| | | | | | | | | | \$ - | |
| | | | | | | | | | \$ - | |
| | | | | | | | | | \$ - | |
| | | | | | | | | | \$ - | |
| | | | | | | | | | \$ - | |
| | | | | | | | | | \$ - | |
| | | | | | | | | | \$ - | |
| | | | | | | | | | \$ - | |

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Bid Package 2 - ITEMIZED PRICING SHEET

| | | |
|---------------------|-----------------------|----------------------------------|
| COMPANY NAME: _____ | | DIR Customer Discount % off MSRP |
| By QTY | Type of Volume | Product Category |
| | 1-99 units | |
| | 100-500 units | |
| | 500+ units | |
| | | |
| | | |
| | | |
| | | |

Additional Discount Based On Aggregate Sales

| Contract Sales Threshold | Product or Category Description | Part Number if Applicable | Original Discount | Additional Discount | Total Discount |
|--------------------------|---------------------------------|---------------------------|-------------------|---------------------|----------------|
| Example: \$50,000.00 | | | 20.00% | (+) 5.00% | 25.00% |
| | | | | | |
| | | | | | |
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| | | | | | |

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Software, Commercially of the Shelf and Related Services
Bid Package 2 -ITEMIZED PRICING SHEET

Company Name: _____

VAR Instructions:

For the purposes of this RFO, the publisher's software licensing products are categorized in the table below. Vendors must offer **ONLY** one (1) discount for each Publisher Category listed. The discount for each publisher category will be applied to all products within the publisher category to determine the net DIR Customer price. The price to all DIR Customers shall include all shipping and handling fees.

| Publisher Category | Publisher Discount Level | DIR Customer Discount (from Publisher Discount Level) |
|---|---|--|
| Adobe: | | |
| Cumulative Licensing Program (CLP) Education Membership | Level 3 Points target: 100,000+ points | |
| Cumulative Licensing Program (CLP) Government Membership | Level 2 Points target: 300,000+ points | |
| Microsoft: | | |
| Enterprise Agreement (comprised of subcategories as listed below) | | |
| Office Professional/Standard | Level D less 7.5% | |
| Windows Pro Desktop Operating System | Level D less 7.5% | |
| Core CAL/Enterprise CAL Suite (to include stand alone components) | Level D less 6% | |
| All other or additional EA licensing | Level D | |
| Enterprise Subscription Agreement | Level D less 2% | |
| Select Plus Government | Level D | |
| Select Plus Academic | Level D | |
| Novell Master License Agreement: | | |
| Education License and Value Added Service | MLA Level 5 | |
| Government License and Value Added Service | MLA Level 5 | |

PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The administrative fee = .75% x

Software, Commercially of the Shelf and Related Services

Bid Package 2 -ITEMIZED PRICING SHEET

Company Name: _____

Instructions:

A representative sample of software license products for each software publisher is provided in the tables below. Vendors must offer ONLY one (1) price for each Publisher Product listed. The price to the DIR Customer shall include all shipping and handling fees. This is a representative sample only for the purposes of this RFO and evaluation process.

PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The administrative fee = .75% x Customer Price

ADOBE ACADEMIC

| Product Description | Product Type | Product Number | List Price (Per Level Discount) | DIR Customer Price |
|--------------------------------------|------------------------|-----------------|---------------------------------|--------------------|
| Acrobat Professional v.10 | MAC Full License | 65083690AB03A00 | | \$0.00 |
| Acrobat Professional v.10 | WIN Full License | 65083691AB03A00 | | \$0.00 |
| Acrobat Professional v.10 | MAC Concurrent License | 65083801AB03A00 | | \$0.00 |
| Acrobat Professional v.10 | WIN Concurrent License | 65083800AB03A00 | | \$0.00 |
| Acrobat Suite v.1 | WIN Full License | 65086502AB03A00 | | \$0.00 |
| After Effects CS5.5 v10.5 | Full License | 65110619AB03A00 | | \$0.00 |
| Audition CS5.5 v.4 | Full License | 65106839AB03A00 | | \$0.00 |
| Captivate v5.5 | Full License | 65125060AB03A00 | | \$0.00 |
| ColdFusion Builder v.2 | Full License | 65123381AB03A00 | | \$0.00 |
| ColdFusion Ent v.9 | Full License | 65047411AB03A00 | | \$0.00 |
| ColdFusion Standard v.9 | Full License | 65047455AB03A00 | | \$0.00 |
| Contribute CS5 v.6 | MAC Full License | 65070168AB03A00 | | \$0.00 |
| Contribute CS5 v.6 | WIN Full License | 65070186AB03A00 | | \$0.00 |
| CS5.5 Design Premium 5.5 K12SITE<250 | Full License | 65112996AB03A00 | | \$0.00 |
| CS5.5 Design Premium 5.5 K12SITE>250 | Full License | 65113214AB03A00 | | \$0.00 |
| CS5.5 Design Std 5.5 K12SITE<250 | Full License | 65122118AB03A00 | | \$0.00 |
| CS5.5 Design Std 5.5 K12SITE>250 | Full License | 65122252AB03A00 | | \$0.00 |
| Dreamweaver CS5.5 v11.5 | Full License | 65105384AB03A00 | | \$0.00 |
| eLearning Suite v.2.5 | Full License | 65126518AB03A00 | | \$0.00 |
| Flash Pro CS5.5 v11.5 | Full License | 65109234AB03A00 | | \$0.00 |
| Photoshop Elements v10 | Full License | 65137861AB03A00 | | \$0.00 |

ADOBE GOVERNMENT

| Product Description | Product Type | Product Number | List Price (Per Level Discount) | DIR Customer Price |
|-------------------------------|------------------|-----------------|---------------------------------|--------------------|
| Acrobat v10 | WIN Full License | 65086303AC02A00 | | \$0.00 |
| Acrobat Professional v10 | MAC Full License | 65083690AC02A00 | | \$0.00 |
| Acrobat Professional v10 | WIN Full License | 65083691AC02A00 | | \$0.00 |
| Acrobat Suite v1 | WIN Full License | 65086502AC02A00 | | \$0.00 |
| After Effects CS5.5 v10.5 | Full License | 65110619AC02A00 | | \$0.00 |
| Audition CS5.5 v4 | Full License | 65106839AC02A00 | | \$0.00 |
| Captivate v5.5 | Full License | 65125060AC02A00 | | \$0.00 |
| ColdFusion Builder v2 | Full License | 65123381AC02A00 | | \$0.00 |
| ColdFusion Ent v8 | Full License | 54025221AC02A00 | | \$0.00 |
| ColdFusion Standard v9 | Full License | 65047455AC02A00 | | \$0.00 |
| Contribute CS5 v6 | MAC Full License | 65070168AC02A00 | | \$0.00 |
| Contribute CS5 v6 | WIN Full License | 65070186AC02A00 | | \$0.00 |
| CS5.5 Design Premium v5.5 | Full License | 65112138AC02A00 | | \$0.00 |
| CS5.5 Design Std v5.5 | Full License | 65121615AC02A00 | | \$0.00 |
| CS5.5 Master Collector v5.5 | Full License | 65117060AC02A00 | | \$0.00 |
| CS5.5 Production Premium v5.5 | Full License | 65114792AC02A00 | | \$0.00 |
| Dreamweaver CS5.5 v11.5 | Full License | 65105384AC02A00 | | \$0.00 |
| eLearning Suite v2.5 | Full License | 65126518AC02A00 | | \$0.00 |
| Flash Pro CS5.5 v11.5 | Full License | 65109234AC02A00 | | \$0.00 |
| Photoshop CS5 v12 | MAC Full License | 65048694AC02A00 | | \$0.00 |
| Photoshop CS5 v12 | WIN Full License | 65048695AC02A00 | | \$0.00 |
| Photoshop Elements v10 | Full License | 65137861AC02A00 | | \$0.00 |

MICROSOFT ENTERPRISE AGREEMENT

| Product Description | Product Type | Product Number | List Price (Per Level Discount) | DIR Customer Price |
|--|---------------------------------|----------------|---------------------------------|--------------------|
| ExchgEntCAL ALNG LicSAPk MVL DvcCAL wSrvcs | License/Software Assurance Pack | PGI-00267 | | \$0.00 |
| ExchgEntCAL ALNG LicSAPk MVL UsrCAL wSrvcs | License/Software Assurance Pack | PGI-00268 | | \$0.00 |
| ExchgStdCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | 381-01587 | | \$0.00 |
| ExchgStdCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack | 394-00520 | | \$0.00 |
| LyncSVrEnCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | 7AH-00281 | | \$0.00 |
| LyncSVrEnCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack | 7AH-00282 | | \$0.00 |
| LyncSVrStdCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | 6ZH-00395 | | \$0.00 |
| LyncSVrStdCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack | 6ZH-00396 | | \$0.00 |
| OfficeStd ALNG LicSAPk MVL | License/Software Assurance Pack | 021-05331 | | \$0.00 |
| OfficeStd ALNG LicSAPk MVL Pltfrm | License/Software Assurance Pack | 021-08255 | | \$0.00 |
| SharePointEntCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | 76N-02345 | | \$0.00 |
| SharePointEntCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack | 76N-02427 | | \$0.00 |

| | | | | |
|--|---------------------------------|-----------|--|--------|
| SharePointStdCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | H05-00176 | | \$0.00 |
| SharePointStdCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack | H05-00444 | | |
| WinSvrCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | R18-00095 | | |
| WinSvrCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack | R18-00096 | | |
| CoreCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | W06-00022 | | \$0.00 |
| CoreCAL ALNG LicSAPk MVL Pltfrm DvcCAL | License/Software Assurance Pack | W06-01063 | | \$0.00 |
| CoreCAL ALNG LicSAPk MVL Pltfrm UsrCAL | License/Software Assurance Pack | W06-01066 | | \$0.00 |
| CoreCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack | W06-00445 | | \$0.00 |
| CoreCAL ALNG SA MVL DvcCAL | Software Assurance | W06-00021 | | \$0.00 |
| CoreCAL ALNG SA MVL Pltfrm DvcCAL | Software Assurance | W06-01069 | | \$0.00 |
| CoreCAL ALNG SA MVL Pltfrm UsrCAL | Software Assurance | W06-01072 | | \$0.00 |
| CoreCAL ALNG SA MVL UsrCAL | Software Assurance | W06-00446 | | \$0.00 |
| EntCAL ALNG LicSAPk MVL DvcCAL wSrvcs | License/Software Assurance Pack | 76A-00025 | | \$0.00 |
| EntCAL ALNG LicSAPk MVL Pltfrm DvcCAL wSrvcs | License/Software Assurance Pack | 76A-00007 | | \$0.00 |
| EntCAL ALNG LicSAPk MVL Pltfrm UsrCAL wSrvcs | License/Software Assurance Pack | 76A-00010 | | \$0.00 |
| EntCAL ALNG LicSAPk MVL UsrCAL wSrvcs | License/Software Assurance Pack | 76A-00028 | | \$0.00 |
| OfficeProPlus ALNG LicSAPk MVL Pltfrm | License/Software Assurance Pack | 269-12445 | | \$0.00 |
| ProDsktpwMDOP ALNG LicSAPk MVL | License/Software Assurance Pack | M6D-00005 | | \$0.00 |

Item 20.

MICROSOFT SELECT PLUS GOVERNMENT

| Product Description | Product Type | Product Number | List Price (Per Level Discount) | DIR Customer Price |
|-----------------------------------|----------------------------|----------------|---------------------------------|--------------------|
| Access 2013 | License | 077-06705 | | \$0.00 |
| Access LIC/SA | License/Software Assurance | 077-02521 | | \$0.00 |
| Core Client Device Client License | License/Software Assurance | W06-00002 | | \$0.00 |
| Core Client User Client License | License/Software Assurance | W06-00426 | | \$0.00 |
| Excel 2013 | License | 065-08166 | | \$0.00 |
| Excel 2013 | License/Software Assurance | 065-03452 | | \$0.00 |
| Office 2013 | License | 79H-00467 | | \$0.00 |
| Office 2013 | License/Software Assurance | 79H-00042 | | \$0.00 |
| Office Pro Plus | License | 79P-04712 | | \$0.00 |
| Office Pro Plus | License/Software Assurance | 269-05557 | | \$0.00 |
| Office Std 2013 | License | 021-10293 | | \$0.00 |
| Office Std 2013 | License/Software Assurance | 021-05339 | | \$0.00 |
| Powerpoint 2013 | License | 079-06238 | | \$0.00 |
| Powerpoint 2013 | License/Software Assurance | 079-01662 | | \$0.00 |
| Project 2013 | License | 076-05292 | | \$0.00 |
| Project 2013 | License/Software Assurance | 076-01810 | | \$0.00 |
| Visio Pro 2013 | License | D87-05994 | | \$0.00 |
| Visio Pro 2013 | License/Software Assurance | D87-01099 | | \$0.00 |
| Visio Std 2013 | License | D86-05323 | | \$0.00 |
| Visio Std 2013 | License/Software Assurance | D86-01240 | | \$0.00 |
| Visual Studio Premium w/MSDN | License/Software Assurance | 9ED-00071 | | \$0.00 |
| Visual Studio Pro 2012 | License | C5E-00989 | | \$0.00 |
| Visual Studio Pro w/MSDN | License/Software Assurance | 77D-00110 | | \$0.00 |
| Word 2013 | License | 059-08670 | | \$0.00 |
| Word 2013 | License/Software Assurance | 059-03715 | | \$0.00 |

MICROSOFT SELECT PLUS ACADEMIC

| Product Description | Product Type | Product Number | List Price (Per Level Discount) | DIR Customer Price |
|---|----------------------------|----------------|---------------------------------|--------------------|
| Access 2013 | License | 077-06695 | | \$0.00 |
| Access 2013 | License/Software Assurance | 077-02570 | | \$0.00 |
| Excel 2013 | License | 065-08156 | | \$0.00 |
| Office MAC Std 2011 | License | 3YF-00294 | | \$0.00 |
| Office MAC Std 2011 | License/Software Assurance | 3YF-00292 | | \$0.00 |
| Office Pro Plus 2013 | License | 79P-04691 | | \$0.00 |
| Office Pro Plus 2013 | License/Software Assurance | 269-05623 | | \$0.00 |
| Office Std 2013 | License | 021-10282 | | \$0.00 |
| Office Std 2013 | License/Software Assurance | 021-05331 | | \$0.00 |
| Project 2013 | License | 076-05273 | | \$0.00 |
| Project 2013 | License/Software Assurance | 076-01776 | | \$0.00 |
| Project Pro 2013 | License | H30-04027 | | \$0.00 |
| Project Pro 2013 | License/Software Assurance | H30-00237 | | \$0.00 |
| Powerpoint 2013 | License | 079-06228 | | \$0.00 |
| Visio Pro 2013 | License | D87-05984 | | \$0.00 |
| Visio Pro 2013 | License/Software Assurance | D87-01057 | | \$0.00 |
| Visio Std 2013 | License | D86-05324 | | \$0.00 |
| Visio Std 2013 | License/Software Assurance | D86-01175 | | \$0.00 |
| Visual Studio Foundation Server Client Per Device | License/Software Assurance | 126-00156 | | \$0.00 |
| Visual Studio Premium w/MSDN | License/Software Assurance | 9ED-00071 | | \$0.00 |
| Visual Studio Premium w/MSDN | Software Assurance | 9ED-00073 | | \$0.00 |
| Visual Studio Pro w/MSDN | License/Software Assurance | 77D-00110 | | \$0.00 |
| Word 2013 | License | 059-08660 | | \$0.00 |
| Word MAC 2011 | License | D48-01082 | | \$0.00 |

NOVELL EDUCATION

| Product Description | Product Number | List Price (Per Level Discount) | DIR Customer Price |
|---------------------|----------------|---------------------------------|--------------------|
| | | | |

| | | | |
|--|----------------|--|--------|
| Sentinel Base Package 1-instance 1-Year Priority Maintenance | 877-001862-EDU | | \$0.00 |
| Sentinel Base Package 1-instance 3-Year Priority Maintenance | 877-001863-EDU | | |
| Novell Privileged user Mgr 2.3 1-Instance License + 1-Year Priority Maintenance | 877-005821-EDU | | |
| Novell Privileged User Manager 1-Instance 1-Year Priority Maintenance | 877-005823-EDU | | \$0.00 |
| Novell Privileged User Manager 1-Instance 3-Year Priority Maintenance | 877-005824-EDU | | \$0.00 |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 1-Year Priority Maintenance | 877-006391-EDU | | \$0.00 |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 3-Year Priority Maintenance | 877-006392-EDU | | \$0.00 |
| NetIQ Cloud Manager 1-Instance 1-Year Priority Maintenance | 877-006963-EDU | | \$0.00 |
| NetIQ Cloud Manager 1-Instance 3-Year Priority Maintenance | 877-006964-EDU | | \$0.00 |
| Self-service Password Reset 2.0 100-User 1-Year Priority Maintenance | 877-007800-EDU | | \$0.00 |
| Self-service Password Reset 2.0 100-User 3-Year Priority Maintenance | 877-007801-EDU | | \$0.00 |
| ZENworks Patch Management Patch Developer kit 6.4 Standard Edition License | 873-009056-EDU | | \$0.00 |
| ZENworks Patch Management Patch Developer kit 6.4 Premier Edition License | 873-009057-EDU | | \$0.00 |
| ZENworks Asset Management 1-Instance/User 3-Year Priority Maintenance | 877-001605-EDU | | \$0.00 |
| ZENworks Endpoint Security Management 1-Device 3-Year Priority Maintenance | 877-001621-EDU | | \$0.00 |
| SUSE Linux Enterprise Management Pack for System Center Operations Manager License + 1-Year | 877-006327-EDU | | \$0.00 |
| SUSE Linux Enterprise Management Pack for System Center Operations Manager License 1-Year F | 877-006329-EDU | | \$0.00 |
| SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Standard Subscription | 874-005050-EDU | | \$0.00 |
| SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Priority Subscription | 874-005051-EDU | | \$0.00 |
| SUSE Linux Enterprise Desktop 1-Instance 1-Year Priority Subscription | 874-005311-EDU | | \$0.00 |
| SUSE Linux Enterprise Desktop 1-Instance 3-Year Priority Subscription | 874-005312-EDU | | \$0.00 |
| SUSE Linux Enterprise Server for IBM Power (per socket) Standard Subscription 3-Year | 874-005551-EDU | | \$0.00 |
| SUSE Linux Enterprise Server for IBM Power (per socket) Priority Subscription 3-Year | 874-005577-EDU | | \$0.00 |
| SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Standard Support, 1 Phys | 874-006265-EDU | | \$0.00 |
| SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Priority Support, 1 Physic | 874-006266-EDU | | \$0.00 |

Item 20.

NOVELL GOVERNMENT

| Product Description | Product Number | List Price (Per Level Discount) | DIR Customer Price |
|--|----------------|---------------------------------|--------------------|
| Sentinel Base Package 1-instance 1-Year Priority Maintenance | 877-001862 | | |
| Sentinel Base Package 1-instance 3-Year Priority Maintenance | 877-001863 | | |
| Novell Privileged user Mgr 2.3 1-Instance License + 1-Year Priority Maintenance | 877-005821 | | |
| Novell Privileged User Manager 1-Instance 1-Year Priority Maintenance | 877-005823 | | |
| Novell Privileged User Manager 1-Instance 3-Year Priority Maintenance | 877-005824 | | |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 1-Year Priority Maintenance | 877-006391 | | |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 3-Year Priority Maintenance | 877-006392 | | |
| NetIQ Cloud Manager 1-Instance 1-Year Priority Maintenance | 877-006963 | | |
| NetIQ Cloud Manager 1-Instance 3-Year Priority Maintenance | 877-006964 | | |
| Self-service Password Reset 2.0 100-User 1-Year Priority Maintenance | 877-007800 | | |
| Self-service Password Reset 2.0 100-User 3-Year Priority Maintenance | 877-007801 | | |
| ZENworks Patch Management Patch Developer kit 6.4 Standard Edition License | 873-009056 | | |
| ZENworks Patch Management Patch Developer kit 6.4 Premier Edition License | 873-009057 | | |
| ZENworks Asset Management 1-Instance/User 3-Year Priority Maintenance | 877-001605 | | |
| ZENworks Endpoint Security Management 1-Device 3-Year Priority Maintenance | 877-001621 | | |
| SUSE Linux Enterprise Management Pack for System Center Operations Manager License + 1-Year | 877-006327 | | |
| SUSE Linux Enterprise Management Pack for System Center Operations Manager License 1-Year F | 877-006329 | | |
| SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Standard Subscription | 874-005050 | | |
| SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Priority Subscription | 874-005051 | | |
| SUSE Linux Enterprise Desktop 1-Instance 1-Year Priority Subscription | 874-005311 | | |
| SUSE Linux Enterprise Desktop 1-Instance 3-Year Priority Subscription | 874-005312 | | |
| SUSE Linux Enterprise Server for IBM Power (per socket) Standard Subscription 3-Year | 874-005551 | | |
| SUSE Linux Enterprise Server for IBM Power (per socket) Priority Subscription 3-Year | 874-005577 | | |
| SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Standard Support, 1 Phys | 874-006265 | | |
| SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Priority Support, 1 Physic | 874-006266 | | |



Department of Information Resources

Request for Offer DIR-CPO-TMP-570 Software, Commercially Off the Shelf (COTS) and Related Services

Appendix A

Standard Contract Terms and Conditions Cooperative Contracts

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The following terms and conditions shall govern the conduct of DIR and Successful Respondent during the term of the Contract.

1 CONTRACT SCOPE

Successful Respondent shall provide the products and/or services specified in the Contract for purchase by Customers. Terms used in this document shall have the meanings set forth below in Section [3 Definitions](#).

2 NO QUANTITY GUARANTEES

The Contract is not exclusive to Successful Respondent. Customers may obtain services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and/or services will be procured through the Contract.

3 DEFINITIONS

3.1 Compliance Check

An audit of Successful Respondent's compliance with the Contract which may be performed by a third-party auditor, DIR Internal Audit department, DIR contract management staff, or their designees.

3.2 Contract

The DIR Contract between DIR and Successful Respondent into which this Appendix A is incorporated.

3.3 CPA

Refers to the Texas Comptroller of Public Accounts.

3.4 Customer

Any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001:

- A. A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- B. A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- C. Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;

- D. A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- E. A local workforce development board created under Section 2308.253, Texas Government Code;
- F. A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- G. The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- H. A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- I. A nonprofit organization that provides affordable housing.

3.5 **Business day**

Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

3.6 **DIR**

Refers to the Texas Department of Information Resources.

3.7 **Effective Date**

Refers to the effective date of the Contract as set forth therein.

3.8 **Invoice**

Refers to a Customer approved instrument submitted by Successful Respondent for payment of services.

3.9 **Purchase Order**

Refers to Customer's fiscal form or format, contract with Successful Respondent, or other document used by Customer to authorize the purchase of products or services from Successful Respondent under the Contract, including but not limited to a formal written purchase order, procurement card, electronic purchase order, or another authorized instrument.

3.10 **State**

Refers to the State of Texas.

3.11 **Statement of Work (SOW)**

Means a document entered into between Customer and Successful Respondent describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Successful Respondent is to provide Customer, issued pursuant to the Contract.

3.12 **Subcontracting Plan**

Refers to **Appendix B**, Successful Respondent's Historically Underutilized Business Subcontracting Plan.

3.13 **Successful Respondent**

Refers to the party identified as either "Successful Respondent" or "Vendor" in Section 1.1 of the Contract.

3.14 **Third-Party Provider**

Refers to an agent, affiliate, subcontractor, vendor, reseller, manufacturer, publisher, distributor, order fulfiller or other person or entity designated or directed by Successful Respondent to provide products or services to a Customer in performance of, related to, or in support of a Purchase Order issued under the Contract.

4 **GENERAL PROVISIONS**

4.1 **Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and Successful Respondent. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

4.2 **Modification of Contract Terms and/or Amendments**

- A. The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Successful Respondent.
- B. DIR may amend the Contract upon thirty (30) calendar days written notice to Successful Respondent without the need for Successful Respondent's written consent: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.
- C. Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Successful Respondent may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- D. Customer(s) and Successful Respondent will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract.

4.3 **Invalid Term or Condition**

- A. To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a Contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.
- B. If one (1) or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent

jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

4.4 Assignment

- A. DIR may assign the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- B. A Customer may assign a Purchase Order issued under the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- C. Successful Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the DIR. Any attempted assignment in violation of this provision is void and without effect.

4.5 Survival

All applicable Statements of Work that were entered into between Successful Respondent and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Successful Respondent shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than three (3) years. In all instances of termination or expiration and no later than five (5) days after termination or expiration or upon DIR request, Successful Respondent shall provide a list, in accordance with the format requested by DIR (i.e., Excel, Word, etc.), of all surviving Statements of Work and Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Statements of Work and Purchase Orders. Rights and obligations under the Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee and any and all payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality; and indemnification will remain in effect.

4.6 Choice of Law

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. In any litigation where any state agency is a party, and subject to the requirements of Chapter 2260, Texas Government Code, the exclusive venue of any such suit arising under the Contract is fixed in the state courts of Travis County, Texas. If litigation does not involve any state agency, then venue is fixed in the state courts of the Texas county where the Customer is primarily situated, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency. Regardless of any provision anywhere in the Contract, no state agency or other Customer in any manner waives any defense or immunity whatsoever.

4.7 Limitation of Authority

Successful Respondent shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in the Contract; no other authority,

power or use is granted or implied. Successful Respondent may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

4.8 Proof of Financial Stability

Either DIR or Customer may require Successful Respondent to provide proof of financial stability prior to or at any time during the Contract term.

4.9 Data Location

Regardless of any other provision of the Contract or its incorporated or referenced documents, all of the data for State of Texas Customers shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise; however, Successful Respondent shall notify DIR promptly after such request is made. For all Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. **NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE CONTIGUOUS US-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.**

4.10 Independent Contractor

SUCCESSFUL RESPONDENT AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THE CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT SUCCESSFUL RESPONDENT IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR, OR THE STATE OF TEXAS.

5 INTELLECTUAL PROPERTY MATTERS

5.1 Intellectual Property Matters Definitions

5.1.1 "Work Product"

Means any and all deliverables produced by Successful Respondent for Customer under a Statement of Work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Effective Date, including but not limited to any:

- (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, configurations, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works),
- (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin,
- (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how,
- (iv) domain names,
- (v) any copies, and similar or derivative works to any of the foregoing,

- (vi) all documentation and materials related to any of the foregoing,
- (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and
- (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with the Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit:
 - a. by any Successful Respondent personnel or Customer personnel, or
 - b. any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5.1.2 "Intellectual Property Rights"

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:

- i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;
- ii) any work of authorship, including any copyrights, moral rights or neighboring rights;
- iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin;
- iv) domain name registrations; and
- v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

5.1.3 "Third Party IP"

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Order or Statement of Work issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract or a Purchase Order or Statement of Work issued under the Contract.

5.1.4 "Successful Respondent IP"

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Successful Respondent:

- i) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the services or Work Product, or

- ii) after the Effective Date if such tangible or intangible items or things were independently developed by Successful Respondent outside Successful Respondent's provision of services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5.2 Ownership

As between Successful Respondent and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Successful Respondent. Successful Respondent specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Successful Respondent hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Successful Respondent acknowledges that Successful Respondent and Customer do not intend Successful Respondent to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Successful Respondent, to all Successful Respondent materials, premises, and computer files containing the Work Product. Successful Respondent and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Successful Respondent.

5.3 Further Actions

Successful Respondent, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Successful Respondent's signature due to the dissolution of Successful Respondent or Successful Respondent's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Successful Respondent hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Successful Respondent's agent and Successful Respondent's attorney-in-fact to act for and in Successful Respondent's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Successful Respondent, provided however that no such grant of right to Customer is applicable if Successful Respondent fails to execute any document due to a good faith dispute by Successful Respondent with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Successful Respondent shall

cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

5.4 Waiver of Moral Rights

Successful Respondent hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Successful Respondent may now have or which may accrue to Successful Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Successful Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

5.5 Confidentiality

All documents, information and materials forwarded to Successful Respondent by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Successful Respondent under Section [5.8 Successful Respondent License to Use](#). Hereunder, Successful Respondent shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

5.6 Injunctive Relief

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Successful Respondent acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

5.7 Return of Materials Pertaining to Work Product

Upon the request of Customer, but in any event upon termination or expiration of the Contract, or a Statement of Work, Successful Respondent shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Successful Respondent or furnished by Customer to Successful Respondent, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Successful Respondent by Customer or by anyone else that pertain to the Work Product.

5.8 Successful Respondent License to Use

Customer hereby grants to Successful Respondent a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the services to Customer. Except as provided in this Section, neither Successful Respondent nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

5.9 Third-Party Underlying and Derivative Works

- A. To the extent that any Successful Respondent IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the services, Successful Respondent hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to
 - i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Successful Respondent IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and
 - ii) authorize others to do any or all of the foregoing. Successful Respondent agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party IP.
- B. On request, Successful Respondent shall provide Customer with documentation indicating a third party's written approval for Successful Respondent to use any Third Party IP that may be embodied or reflected in the Work Product.

5.10 Agreement with Third Party Providers

Successful Respondent agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any Third Party Providers, prior to their providing such services or Work Product pursuant to the Contract, and that Successful Respondent shall maintain such written agreements at all times during performance of the Contract, which are sufficient to support all performance and grants of rights by Successful Respondent. Copies of such agreements shall be provided to the Customer promptly upon request.

5.11 License to Customer

Successful Respondent grants to Customer, at no additional charge, a world-wide, non-exclusive, perpetual, irrevocable, royalty free right and license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Successful Respondent IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Successful Respondent IP remain in Successful Respondent.

5.12 Successful Respondent Development Rights

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in the Contract shall preclude Successful Respondent from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Successful Respondent wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Successful Respondent and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6 TERMS AND CONDITIONS APPLICABLE TO STATE AGENCY PURCHASES ONLY

- A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes 1 TAC 206, 1 TAC 213, and in the Worldwide Web Consortium WCAG 2.0 AA technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations. Successful Respondent hereby represents, certifies, and warrants that it and its products and services comply with all relevant accessibility laws and standards.
- i) Upon request, and prior to a DIR Customer purchase, Successful Respondent must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such completed ACRs already exist, and there have been no changes to the product/service since the time of the original document completion.
 - ii) If Successful Respondent claims that a proposed product or family of products is exempt from accessibility requirements, it must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.
 - iii) Upon request, and prior to a DIR customer purchase for IT development services, Successful Respondent must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Successful Respondent's capability or ability to produce accessible electronic and information resources.
 - iv) Additionally, Successful Respondent must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to

planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

- v) Upon request, and prior to a Customer purchase for COTS products, or IT development services, Successful Respondent must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.
- vi) Also upon request, Successful Respondent must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to: executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

- i) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).
- ii) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.
- iii) Successful Respondent agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Section.

7 CONTRACT FULFILLMENT AND PROMOTION

7.1 Service, Sales and Support of the Contract

Successful Respondent shall provide service, sales, and support resources to serve all Customers. It is the responsibility of Successful Respondent to sell, market, and promote products and services available under the Contract. Successful Respondent shall use best efforts to ensure that potential Customers are made aware of the existence of the Contract. All contracts for and sales to Customers for products and services available under the Contract shall be in accordance with the Contract.

7.2 Internet Access to Contract and Pricing Information

A. Successful Respondent Webpage

Within thirty (30) calendar days from the Effective Date, Successful Respondent will establish and maintain a webpage specific to the services awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Successful Respondent's website. Successful Respondent must use a web hosting service that provides a dedicated internet protocol (IP) address. Successful Respondent's website must have a Secure Sockets Layer (SSL) certificate and Customers must access Successful Respondent's website using Hyper Text Transfer Protocol Secure (HTTPS) and it will encrypt all communication between Customer browser and website. The webpage must include:

- i) a list with description of products and/or services awarded;
- ii) Successful Respondent contact information (name, telephone number and email address);
- iii) instructions for obtaining quotes and placing Purchase Orders;
- iv) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- v) a link to the DIR "Cooperative Contracts" webpage;
- vi) the DIR logo in accordance with the requirements of Section 7.9; and
- vii) any other information that the Contract indicates is required to be included on the webpage.

- B. If Successful Respondent does not meet the webpage requirements listed above, DIR may cancel the Contract without penalty.

7.3 Accurate and Timely Contract Information

Successful Respondent warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained, and displayed in an objective and timely manner. Successful Respondent, at its own expense, shall correct any non-conforming or inaccurate information posted at Successful Respondent's website within ten (10) business days after written notification by DIR.

7.4 Webpage Compliance Checks

Periodic Compliance Checks of the information posted for the Contract on Successful Respondent's website will be conducted by DIR. Upon request by DIR, Successful Respondent shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

7.5 Webpage Changes

Successful Respondent hereby consents to a link from the DIR website to Successful Respondent's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Successful Respondent with subsequent notice of link suspension, termination or removal. Successful Respondent shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

7.6 Use of Access Data Prohibited

If Successful Respondent stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Successful Respondent for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Successful Respondent shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

7.7 Responsibility for Content

Successful Respondent is solely responsible for administration, content, intellectual property rights, and all materials at Successful Respondent's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

7.8 Services Warranty and Return Policies

Successful Respondent will adhere to Successful Respondent's then-currently published policies concerning product and service warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated customers for like products and services.

7.9 DIR and Customer Logos

Successful Respondent may use a Customer's logo only upon prior written approval of such Customer. Successful Respondent may use the DIR logo in the promotion of the Contract to Customers with the following stipulations:

- A. the logo may not be modified in any way,
- B. when displayed, the size of the DIR logo must be equal to or smaller than Successful Respondent's logo,
- C. the DIR logo is only used to communicate the availability of services under the Contract to Customers, and
- D. any other use of the DIR logo requires prior written permission from DIR.

7.10 Successful Respondent Logo

If DIR receives Successful Respondent's prior written approval, DIR may use Successful Respondent's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. Use of the logo may be on the DIR website or on printed materials. Any use of Successful Respondent's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Successful Respondent's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Successful Respondent.

7.11 Trade Show Participation

At DIR's discretion, Successful Respondent may be required to participate in no more than two (2) DIR sponsored trade shows each calendar year. Successful Respondent understands and agrees that participation, at Successful Respondent's expense, includes providing a manned booth display or similar presence. DIR will provide four (4) months advance notice of any required participation. Successful Respondent must display the DIR logo at all trade shows that potential Customers will attend. DIR

reserves the right to approve or disapprove of the location or the use of the DIR logo in or on Successful Respondent's booth.

7.12 **Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Successful Respondent will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include administrative requirements for reporting and administrative fee payments. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

7.13 **Performance Review Meetings**

Successful Respondent shall attend periodic meetings to review Successful Respondent's performance under the Contract at DIR's request. The meetings will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

7.14 **DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Successful Respondent shall provide DIR with a detailed report of a representative sample of products or services sold under the Contract. The report shall contain: product or service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR Customers can procure the products or services.

8 PURCHASE ORDERS, INVOICES, AND PAYMENTS

8.1 **Purchase Orders**

All Customer Purchase Orders will be placed directly with Successful Respondent. Accurate Purchase Orders shall be effective and binding upon Successful Respondent when accepted by Successful Respondent.

8.2 **Invoices**

- A. Invoices shall be submitted by Successful Respondent directly to Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to Successful Respondent. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.
- B. Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices, and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the products and services by the Customer.
- C. The DIR Administrative Fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

8.3 Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Successful Respondent. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later.

Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.

8.4 Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under the Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under the Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Successful Respondent upon request.

8.5 Travel Expense Reimbursement

Pricing for services provided under the Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under the Contract. The DIR Administrative Fee is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

9 CONTRACT ADMINISTRATION

9.1 Contract Managers

DIR and Successful Respondent will each provide a contract manager (“Contract Manager”) to support the Contract (respectively, the “DIR Contract Manager” and “Successful Respondent Contract Manager”). Information regarding each Contract Manager will be posted on the internet website designated for the Contract. DIR reserves the right to require a change in Successful Respondent Contract Manager if Successful Respondent Contract Manager is not, in the sole opinion of DIR, adequately serving the needs of the State.

9.1.1 DIR Contract Manager

The DIR Contract Manager’s duties include but are not limited to:

- A. monitoring compliance and management of the Contract,
- B. advising DIR of Successful Respondent’s performance under the Contract, and
- C. periodic verification of pricing and monthly reports submitted by Successful Respondent.

9.1.2 Successful Respondent Contract Manager

Successful Respondent Contract Manager’s duties shall include but are not limited to:

- A. supporting the marketing and management of the Contract,
- B. facilitating dispute resolution between Successful Respondent and Customers, and
- C. advising DIR of Successful Respondent's performance under the Contract.

9.2 Reporting and Administrative Fees

9.2.1 Reporting Responsibility

- A. Each month, Successful Respondent shall report all products and services purchased under the Contract. Successful Respondent shall file monthly reports to include monthly sales reports, subcontract reports, and pay the DIR Administrative Fees in accordance with the due dates specified in this Section.
- B. DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this Section, including but not limited to, Compliance Checks of Successful Respondent's applicable Contract books. Successful Respondent will provide all required documentation at no cost.

9.2.2 Detailed Monthly Report

- A. Using the Vendor Sales Report (VSR) portal, Successful Respondent shall provide DIR with a monthly report in the format required by DIR detailing sales activity under the Contract for the previous month period. This included months in which there are no sales. Reports may be submitted between the first (1st) and the fifteenth (15th) of each month and are due no later than the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. Per transaction, the monthly report shall include, at a minimum, the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated DIR Administrative Fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to Successful Respondent for correction in accordance with this Section.
- B. Successful Respondent shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in Contract termination.

9.2.3 Historically Underutilized Businesses Subcontract Reports

- A. Successful Respondent shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- B. Reports shall be due in accordance with the CPA rules.

9.2.4 DIR Administrative Fee

- A. The DIR Administrative Fee shall be paid by Successful Respondent to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review monthly sales reports, close the sales period, and notify Successful Respondent of the amount of the DIR Administrative Fee no later than the fourteenth (14th) calendar day of the month following the date of the reported sale. Successful Respondent shall pay the amount of the DIR Administrative Fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Successful Respondent reports January sales no later than February 15th; DIR closes January sales and notifies Successful Respondent of the amount of the DIR Administrative Fee by March 14th; Successful Respondent submits payment of the DIR Administrative Fee for January sales by March 25th.
- B. DIR may change the amount of the DIR Administrative Fee upon thirty (30) calendar days written notice to Successful Respondent without the need for an amendment to the Contract.
- C. To preserve the DIR Administrative Fee in place at the time of the sale of product or service, the calculation of the DIR Administrative Fee is based on the Purchase Order date for each sale.
- D. Successful Respondent shall reference the Contract number, reporting period, and DIR Administrative Fee amount on any remittance instruments.

9.2.5 Accurate and Timely Submission of Reports

- A. Successful Respondent shall submit reports and DIR Administrative Fee payments accurately and timely in accordance with the due dates specified in this Section. Successful Respondent shall correct any inaccurate reports or DIR Administrative Fee payments within three (3) business days upon written notification by DIR. Successful Respondent shall deliver any late reports or late DIR Administrative Fee payments within three (3) business days upon written notification by DIR. If Successful Respondent is unable to correct inaccurate reports or DIR Administrative Fee payments or deliver late reports and DIR Administrative Fee payments within three (3) business days, Successful Respondent shall contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- B. Should Successful Respondent fail to correct inaccurate reports or cure the delay in timely and accurate delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right at DIR's expense to require an independent third-party audit of Successful Respondent's records as specified in Section [9.3 Records and Audit](#). DIR will select the auditor (and all payments to auditor will require DIR approval).
- C. Failure to timely submit three (3) reports or DIR Administrative Fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Successful Respondent's Contract.

9.3 Records and Audit

- A. Acceptance of funds under the Contract by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Successful Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Successful Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Successful Respondent and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- B. Successful Respondent shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract, whichever is later. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- C. Successful Respondent shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the Compliance Checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking, and/or copying such books and records.
- D. Successful Respondent shall provide copies and printouts requested by DIR without charge. DIR shall use best efforts to provide Successful Respondent ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Successful Respondent's records. Successful Respondent's records, whether paper or electronic, shall be made available during regular office hours. Successful Respondent personnel familiar with Successful Respondent's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Successful Respondent shall provide adequate office space to DIR staff during the performance of Compliance Check. If Successful Respondent is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.

- E. For procuring State Agencies whose payments are processed by the CPA, the volume of payments made to Successful Respondent through the CPA and the administrative fee based thereon shall be presumed correct unless Successful Respondent can demonstrate to DIR's satisfaction that Successful Respondent's calculation of DIR's administrative fee is correct.

9.4 Contract Administration Notification

- A. Prior to execution of the Contract, Successful Respondent shall provide DIR with written notification of the following:
 - i) Successful Respondent Contract Manager's name and contact information,
 - ii) Successful Respondent sales representative name and contact information, and
 - iii) name and contact information of Successful Respondent personnel responsible for submitting reports and payment of DIR Administrative Fees.
- B. Upon execution of the Contract, DIR shall provide Successful Respondent with written notification of the DIR Contract Manager's name and contact information.

10 SUCCESSFUL RESPONDENT RESPONSIBILITIES

10.1 Indemnification

10.1.1 Indemnities by Successful Respondent

- A. Successful Respondent shall defend, indemnify, and hold harmless DIR, the State of Texas, and Customers, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, resulting from, or related to:
 - i) any acts or omissions of Successful Respondent, its employees, or Third Party Providers in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
 - ii) any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
 - iii) any breach, disclosure, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Successful Respondent in connection with the Contract, including DIR data, Customer data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract; and
 - iv) tax liability, unemployment insurance or workers' compensation or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.
- B. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED

DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. FOR NON-STATE AGENCY CUSTOMERS, THE DEFENSE SHALL BE COORDINATED BY CUSTOMER'S LEGAL COUNSEL. SUCCESSFUL RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER AND TO DIR OF ANY SUCH CLAIM.

10.1.2 Infringements

If Successful Respondent becomes aware of an actual or potential claim of an Infringement, or Customer provides Successful Respondent with notice of an actual or potential claim of an Infringement, Successful Respondent may (or in the case of an injunction against Customer, shall), at Successful Respondent's sole expense: (i) procure for Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

10.2 Property Damage

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF SUCCESSFUL RESPONDENT, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, SUCCESSFUL RESPONDENT SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY SUCCESSFUL RESPONDENT NINETY (90) CALENDAR DAYS AFTER THE DATE OF SUCCESSFUL RESPONDENT'S RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

10.3 Taxes/Worker's Compensation/Unemployment Insurance

Successful Respondent agrees and acknowledges that during the existence of the Contract, Successful Respondent shall be entirely responsible for the liability and payment of Successful Respondent's and its employees' taxes of whatever kind, arising out of the performances in the Contract. Successful Respondent agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. Successful Respondent agrees and acknowledges that Successful Respondent and its employees, representatives, agents, and subcontractors shall not be entitled to any state benefit or benefit of another governmental entity Customer. Customer, DIR, and/or the State shall not be liable to Successful Respondent, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee or employee of another governmental entity Customer.

10.4 Successful Respondent Certifications

- A. Successful Respondent represents and warrants that, in accordance with Section 2155.005, Texas Government Code, neither Successful Respondent nor the firm, corporation, partnership, or institution represented by Successful Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Successful Respondent.
- B. Successful Respondent hereby certifies, represents, and warrants, on behalf of Successful Respondent that:
- i) it has not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
 - ii) it is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under Section 231.006, Texas Family Code, and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
 - iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
 - iv) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;
 - v) under Section 2155.004, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
 - vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Successful Respondent, which if determined adversely to Successful Respondent, will have a material adverse effect on the ability to fulfill its obligations under the Contract;
 - vii) Successful Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration, nor is Successful Respondent subject to any Federal Executive Orders issued banning certain entities or countries.
 - viii) as of the Effective Date, it is not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
 - ix) in the performance of the Contract, Successful Respondent shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Section 2155.4441, Texas Government Code;

- x) all equipment and materials to be used in fulfilling the requirements of the Contract are of high-quality and consistent with or better than applicable industry standards, if any. All works and services performed pursuant to the Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- xi) to the extent Successful Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Successful Respondent is otherwise owed under the Contract may be applied toward any debt Successful Respondent owes the State of Texas until the debt is paid in full;
- xii) it is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- xiii) the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that Successful Respondent will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify Successful Respondent shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- xiv) under Section 2155.006 and Section 2261.053, Texas Government Code, it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xv) it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Successful Respondent acknowledges the applicability of Section 2155.444 and Section 2155.4441, Texas Government Code, in fulfilling the terms of the Contract;
- xvi) Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Section 556.005 or Section 556.008, Texas Government Code;
- xvii) in accordance with Section 2271.002, Texas Government Code, by signature hereon, Successful Respondent does not boycott Israel and will not boycott Israel during the term of the Contract;
- xviii) in accordance with Section 2155.0061, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xix) in accordance with Section 2252.152, Texas Government Code, it is not identified on a list prepared and maintained under Section 2270.0201 (previously 806.051) or Section 2252.153, Texas Government Code;
- xx) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract;
- xxi) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it (A) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (B) will not discriminate during the term of the contract against a firearm entity or firearm trade association;

- xxii) under Section 161.0085, Texas Health and Safety Code, Successful Respondent is not ineligible to receive the Contract;
 - xxiii) if Successful Respondent is required to make a certification pursuant to Section 2274.0101, Texas Government Code, (A) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Respondent is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; (B) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Successful Respondent is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; and (C) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure;
 - xxiv) if the services to be provided under a Purchase Order include cloud computing services, Successful Respondent shall comply with the requirements of the Texas Risk and Authorization Management Program (“TX-RAMP”), as provided by 1 TAC §§ 202.27 and 202.77, and the TX-RAMP Program Manual (“Program Manual”). Successful Respondent shall maintain program compliance and certification throughout the term of such Purchase Order, including providing all quarterly and ongoing documentation required by the Program Manual and any other continuous monitoring documentation or artifacts required by the Customer issuing such Purchase Order. Upon request from DIR or the Customer issuing such Purchase Order, Successful Respondent shall provide all documents and information necessary to demonstrate Successful Respondent’s compliance with TX-RAMP; and
 - xxv) all information provided by Successful Respondent is current, accurate, and complete.
- C. During the term of the Contract, Successful Respondent shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Successful Respondent covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations, and warranties and any changes thereto.
- D. In addition, Successful Respondent understands and agrees that if Successful Respondent responds to certain Customer pricing requests, then, in order to contract with the Customer, Successful Respondent may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

10.5 Ability to Conduct Business in Texas

Successful Respondent shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas in accordance with Texas Business Organization Code, Title 1, Chapter 9. Upon request by DIR, Successful Respondent shall provide all

documents and other information necessary to establish Successful Respondent's authorization to do business in the State of Texas and the validity of Successful Respondent's existence under the laws of its state of organization.

10.6 Equal Opportunity Compliance

Successful Respondent agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State of Texas in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Successful Respondent agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Successful Respondent under the Contract. If Successful Respondent is found to be not in compliance with these requirements during the term of the Contract, Successful Respondent agrees to take appropriate steps to correct these deficiencies. Upon request, Successful Respondent will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

10.7 Use of Subcontractors

If Successful Respondent uses any subcontractors in the performance of the Contract, Successful Respondent must make a good faith effort in the submission of its HUB Subcontracting Plan (HSP) in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised HSP approved by DIR's HUB Office shall be required before Successful Respondent can engage additional subcontractors in the performance of the Contract. A revised HSP approved by DIR's HUB Office shall be required before Successful Respondent can remove subcontractors currently engaged in the performance of the Contract. Successful Respondent shall remain solely responsible for the performance of its obligations under the Contract.

10.8 Responsibility for Actions

- A. Successful Respondent is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Successful Respondent nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- B. Successful Respondent, for itself and on behalf of its subcontractors, shall report to the DIR Contract Manager within five (5) business days any change to the information contained in the Certification Statement of **Exhibit A** of the RFO or Section [10.4, Successful Respondent Certifications](#) of this Appendix A to the Contract. Successful Respondent covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

10.9 Confidentiality

- A. Successful Respondent acknowledges that DIR and Customers that are governmental bodies as defined by Section 552.003, Texas Government Code, are subject to the Texas Public Information Act. Successful Respondent also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

- B. Under the terms of the Contract, DIR may provide Successful Respondent with information related to Customers. Successful Respondent shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

10.10 Security of Premises, Equipment, Data and Personnel

- A. Successful Respondent or Third-Party Providers may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to a Customer. Successful Respondent and Third-Party Providers shall preserve the safety, security, and the integrity of such personnel, premises, equipment, and other property, including data, information, files, and materials belonging to Customer, in accordance with the instruction of Customer and to the degree in which Successful Respondent or such Third-Party Provider protects its own information. Successful Respondent shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by Successful Respondent or a Third-Party Provider. If Successful Respondent or Third-Party Provider fails to comply with Customer's security requirements, then Customer may immediately terminate the Purchase Order and related Service Agreement.
- B. If a Purchase Order is subject to Section 2054.138, Texas Government Code, Successful Respondent shall meet the security controls required by such Purchase Order, and shall periodically provide to the Customer evidence that Successful Respondent meets such required security controls.

10.11 Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of Successful Respondent's employees and Third-Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Successful Respondent conduct such background checks. Should any employee or Third-Party Provider of Successful Respondent who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or Third-Party Provider in question.

10.12 Limitation of Liability

- A. For any claim or cause of action arising under or related to the Contract, to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages.
- B. Successful Respondent and a Customer may include in a Purchase Order a term limiting Successful Respondent's liability for damages in any claim or cause of action arising under or related to such Purchase Order; provided that any such term may not limit Successful Respondent's liability below two-times the total value of the Purchase Order. Such value includes all amounts paid and amounts to be paid over the life of the Purchase Order to Successful Respondent by such Customer as described in the Purchase Order.
- C. Notwithstanding the foregoing or anything to the contrary herein, any limitation of Successful Respondent's liability contained herein or in a Purchase Order shall not apply to: claims of bodily

injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under the Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

10.13 **Overcharges**

Successful Respondent hereby assigns to DIR any and all of its claims for overcharges associated with the Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

10.14 **Prohibited Conduct**

Successful Respondent represents and warrants that, to the best of its knowledge as of the date of this certification, neither Successful Respondent nor any subcontractor, firm, corporation, partnership, or institution represented by Successful Respondent, nor anyone acting for Successful Respondent or such subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the RFO directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

10.15 **Required Insurance Coverage**

- A. As a condition of the Contract, Successful Respondent shall provide the listed insurance coverage within five (5) business days of execution of the Contract if Successful Respondent is awarded services which require that Successful Respondent's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, Successful Respondent shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to such Customer within five (5) business days following the execution of the Purchase Order. Successful Respondent may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. If Successful Respondent's services under the Contract will not require Successful Respondent to perform work on Customer premises, or to use vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Successful Respondent may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing the Certification of Off-Premise Customer Services in the form provided by DIR, which shall serve to meet the insurance requirements.
- B. All required insurance must be issued by companies that have an A rating and a minimum Financial Size Category Class of VII from AM Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as additional insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Successful Respondent thereunder. The minimum acceptable insurance provisions are as follows:

10.15.1 Commercial General Liability

Commercial General Liability must include \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- A. Blanket contractual liability coverage for liability assumed under the Contract;
- B. Independent Contractor coverage;
- C. State of Texas, DIR, and Customer listed as an additional insured; and
- D. Waiver of Subrogation.

10.15.2 Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code) and minimum policy limits for Employers' Liability of \$1,000,000 per accident, \$1,000,000 disease PER EMPLOYEE and \$1,000,000 per disease POLICY LIMIT.

10.15.3 Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- A. Waiver of subrogation;
- B. Additional insured.

10.16 Use of State Property

Successful Respondent is prohibited from using a Customer's equipment, location, or any other resources of a Customer, DIR, or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Successful Respondent using a Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Successful Respondent to such Customer immediately upon demand by such Customer. Such use shall constitute breach of contract and may result in termination of the Contract, the Purchase Order, and other remedies available to DIR and Customer under the Contract and applicable law.

10.17 Immigration

- A. Successful Respondent shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under the Contract.
- B. Pursuant to Chapter 673, Texas Government Code, Successful Respondent shall, as a condition of the Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- i) all persons 1) to whom the E-Verify system applies, and 2) who are hired by Successful Respondent during the term of the Contract to perform duties within Texas; and
 - ii) all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of the Contract and assigned by the subcontractor to perform work pursuant to the Contract.
- C. Successful Respondent shall require its subcontractors to comply with the requirements of this Section and Successful Respondent is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Successful Respondent and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

10.18 Public Disclosure

No public disclosures or news releases pertaining to the Contract shall be made by Successful Respondent without prior written approval of DIR.

10.19 Product and/or Services Substitutions

Substitutions are not permitted without the prior written consent of DIR or Customer.

10.20 Secure Erasure of Hard Disk Managed Services Products and/or Services

Successful Respondent agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase, destroy, or render unreadable data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Purchase Order for such products and/or services, in accordance with 1 TAC 202 or NIST 800-88.

10.21 Deceptive Trade Practices; Unfair Business Practices

- A. Successful Respondent represents and warrants that neither Successful Respondent nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- B. Successful Respondent certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

10.22 Drug Free Workplace Policy

Successful Respondent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 280, Subpart F182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.23 Public Information

- A. Pursuant to Section 2252.907, Texas Government Code, Successful Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- B. Each State government entity should supplement the provision set forth in Section A, above, with the additional terms agreed upon by the parties regarding the specific format by which Successful Respondent is required to make the information accessible by the public.
- C. Successful Respondent represents and warrants that it will comply with the requirements of Section 552.372(a), Texas Government Code, where applicable. Except as provided by Section 552.374(c), Texas Government Code, the requirements of Subsection J, Chapter 552, Texas Government Code, may apply to the Contract or certain Purchase Orders, and Successful Respondent agrees that the Contract or such Purchase Orders can be terminated if Successful Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

10.24 Successful Respondent Reporting Requirements

Successful Respondent shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109, requiring computer technicians to report images of child pornography.

10.25 Cybersecurity Training

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Successful Respondent, or a subcontractor, officer, or employee of Successful Respondent, will have access to a state computer system or database, then Successful Respondent shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency or institution of higher education. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the Contract and during any renewal period. Successful Respondent shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

11 CONTRACT ENFORCEMENT

11.1 Enforcement of Contract and Dispute Resolution

- A. Successful Respondent and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, (iii) except as provided in Sec. 2251.051 Texas Government Code, Successful Respondent shall continue performance while the dispute is being resolved, and (iv) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- B. Disputes arising between a Customer and Successful Respondent shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with the above. DIR shall not be a party to any such dispute unless DIR, Customer, and Successful Respondent agree in writing.

- C. State agencies are required by rule (34 TAC §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.00.

11.2 Termination

11.2.1 Termination for Non-Appropriation

11.2.1.1 Termination for Non-Appropriation by Customer

Customers may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Successful Respondent will be provided ten (10) calendar days written notice of intent to terminate. In the event of such termination, Customer will not be in default or breach under the Purchase Order or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

11.2.1.2 Termination for Non-Appropriation by DIR

DIR may terminate the Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Successful Respondent will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

11.2.2 Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Successful Respondent becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Successful Respondent becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Successful Respondent is found by DIR to be ineligible to hold the Contract under Subsection (b) of Section 2155.006, Texas Government Code. Successful Respondent shall be provided written notice in accordance with Section 14.1, Notices, of intent to terminate.

11.2.3 Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days' written notice.

11.2.4 Termination for Cause

11.2.4.1 Contract

Either DIR or Successful Respondent may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

11.2.4.2 Purchase Order

Customer or Successful Respondent may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Successful Respondent fails to comply with confidentiality, privacy, security requirements, environmental, or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

11.2.5 Immediate Termination or Suspension

DIR may immediately suspend or terminate the Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Successful Respondent (whether or not such potential violations directly impact the provision of goods or services under the Contract). In such case, Successful Respondent may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to Successful Respondent within five (5) business days after the suspension or termination. Successful Respondent may provide a response and request an opportunity to present its position. DIR or Customer will review Successful Respondent's presentation but is under no obligation to provide formal response.

11.2.6 Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract in accordance with Section [4.5](#).

11.2.7 Successful Respondent Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay all amounts due for products or services ordered prior to the effective expiration or termination date and ultimately accepted.

11.3 Force Majeure

DIR, Customer, or Successful Respondent may be excused from performance under the Contract or a Purchase Order for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order (each such event, an “Event of Force Majeure”), provided that the party experiencing such Event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party’s control to ensure performance and to shorten the duration or impact of the Event of Force Majeure. The party suffering an Event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this Section, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by such Customer that Successful Respondent will not be able to deliver services in a timely manner to meet the business needs of such Customer.

12 NON-SOLICITATION OF STATE EMPLOYEES

Successful Respondent shall not solicit, directly or indirectly, any employee of DIR who is associated with the Contract for a period of ninety (90) calendar days following the expiration or termination of the Contract. Further, Successful Respondent shall not solicit, directly or indirectly, any employee of a Customer who is associated with a Purchase Order for a period of ninety (90) calendar days following the expiration or termination of such Purchase Order.

13 WARRANTY

Customers may provide written notice to Successful Respondent of errors, inaccuracies, or other deficiencies in products or services provided by Successful Respondent under a Purchase Order within thirty (30) calendar days or receipt of an invoice for such products or services. Successful Respondent shall correct such error, inaccuracy, or other deficiency at no additional cost to Customer.

14 NOTIFICATION

14.1 Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals, and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three (3) business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in the Contract or to such other address as such party shall have notified the other party in writing.

14.2 Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

15 CAPTIONS

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

<END OF APPENDIX A>

<Successful Respondent Name> - <Successful Respondent EIN>

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCT, SERVICES, AND RELATED SERVICES

<Successful Respondent Name>

1 Introduction

1.1 Parties

This contract for Software, Commercial Off the Shelf (COTS), and Related Services (this “Contract”) is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and <SUCCESSFUL RESPONDENT NAME> a <STATE><ENTITY TYPE> (hereinafter “Successful Respondent”), with its principal place of business at <SUCCESSFUL RESPONDENT ADDRESS>.

1.2 Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) **DIR-CPO-TMP-570, on 02/02/2023**, for Software, Commercially Off the Shelf (COTS) and Related Services (the “RFO”). Upon execution of all Contracts, a notice of award for **DIR-CPO-TMP-570** shall be posted by DIR on the Electronic State Business Daily.

1.3 Order of Precedence

- a) For transactions under this Contract, the order of precedence shall be as follows:
 - i. this Contract;
 - ii. Appendix A, Standard Terms and Conditions;
 - iii. Appendix B, Successful Respondent’s Historically Underutilized Businesses Subcontracting Plan;
 - iv. Appendix C, Pricing Index;
 - v. **Appendix D, Service Agreement;**
 - vi. Exhibit 1, RFO **DIR-CPO-TMP-570**, including all Addenda; and
 - vii. Exhibit 2, Successful Respondent’s Response to RFO **DIR-CPO-TMP-570**, including all Addenda.
- b) Each of the foregoing documents is hereby incorporated by reference and together constitute the entire agreement between DIR and Successful Respondent governing transactions.

1.4 Definitions

Capitalized terms used but not defined herein have the meanings given to them in Appendix A, Standard Terms and Conditions.

2 Term of Contract

The initial term of this Contract shall be up to two (2) years commencing on the date of the last signature hereto (the “Initial Term”), with (1) optional two-year renewal and two (2) optional one-year renewal (each, a “Renewal Term”). Prior to expiration of the Initial Term and each Renewal Term, this Contract will renew automatically under the same terms and conditions unless either party provides written notice to the other party at least sixty (60) days in advance of the renewal date stating that the party wishes to discuss amendment or non-renewal.

3 Option to Extend

Successful Respondent agrees that DIR may require continued performance under this Contract at the rates specified in this Contract following the expiration of the Initial Term or any Renewal Term. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed ninety (90) calendar days. Such extension of services shall be subject to the requirements of this Contract, with the sole and limited exception that the term shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written notice to Successful Respondent.

4 Product and Service Offerings

4.1 Products and services available under this Contract are limited to the technology categories defined in Request for Offer DIR-CPO-TMP-570 for Software, Commercially Off the Shelf (COTS) and Related Services. At DIR’s sole discretion, Successful Respondent may incorporate changes or make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO.

5 Pricing

5.1 Pricing Index

Pricing to Customers shall be as set forth in **Appendix C, Pricing Index**, and shall include the DIR Administrative Fee (as defined below).

5.2 Customer Discount

- a) The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in **Appendix C, Pricing Index**. Successful Respondent shall not establish a List Price or

<Successful Respondent Name> - <Successful Respondent EIN>

MSRP for a particular solicitation. For purposes of this Section, "List Price" is the price for a product or service published in Successful Respondent's price catalog (or similar document) before any discounts or price allowances are applied. For purposes of this Section, "MSRP," or manufacturer's suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.

- b) Customers purchasing products or services under this Contract may negotiate additional discounts with Successful Respondent. Successful Respondent and Customer shall provide the details of such additional discounts to DIR upon request.
- c) If products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract, or (ii) to any other customer under the same terms and conditions provided for the State for the same products and services under this contract, then the price of such products and services under this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Successful Respondent for a quantity of one (1), but does not apply to volume or special pricing purchases. Successful Respondent shall notify DIR within ten (10) days of providing a lower price as described in this Section, and this Contract shall be amended within ten (10) days to reflect such lower price.

5.3 Changes to Prices

- a) Subject to the requirements of this section, Successful Respondent may change the price of any product or service upon changes to the List Price or MSRP, as applicable. Discount levels shall not be subject to such changes, and will remain consistent with the discount levels specified in this Contract.
- b) Successful Respondent may revise its pricing by publishing a revised pricing list, subject to review and approval by DIR. If DIR, in its sole discretion, finds that the price of a product or service has been increased unreasonably, DIR may request that Successful Respondent reduce the pricing for the product or service to the level published before such revision. Upon such request, Successful Respondent shall either reduce the pricing as requested, or shall remove the product or service from the pricing list for this Contract. Failure to do so will constitute an act of default by Successful Respondent.

5.4 Shipping and Handling

Prices to Customers shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees may be charged to Customers for standard shipping and handling. If a Customer requests expedited or special delivery, Customer will be responsible for any additional charges for expedited or special delivery.

5.5 Travel Expenses

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of such services. Travel expense reimbursement may include

<Successful Respondent Name> - <Successful Respondent EIN>

personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services provided under this Contract. The DIR Administrative Fee is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

6 DIR Administrative Fee

- a) Successful Respondent shall pay an administrative fee to DIR based on the dollar value of all sales to Customers pursuant to this Contract (the "DIR Administrative Fee"). The amount of the DIR Administrative Fee shall be seventy-five hundredths of a percent (0.75%) of all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.
- b) All prices quoted to Customers shall include the DIR Administrative Fee. DIR reserves the right to increase or decrease the DIR Administrative Fee during the term of this Contract, upon written notice to Successful Respondent without amending this Contract. Any increase or decrease in the DIR Administrative Fee shall be incorporated in the price to Customers.

7 Internet Access to Contract and Pricing Information

In addition to the requirements listed in Appendix A, Section 7.2, Internet Access to Contract and Pricing Information, Successful Respondent shall include the following with its webpage:

- a) A current price list or mechanism to obtain specific contract pricing;
- b) MSRP/list price or DIR Customer price;
- c) Discount percentage (%) off MSRP or List Price;
- d) Warranty policies;
- e) Return policies;
- f) A link to DIR's list of TX-RAMP certified Cloud Products; and
- g) Service Level Agreements for each SaaS product awarded, including metrics and method for calculating and reporting results, for:
 - i. service availability.
 - ii. recovery time objectives; and
 - iii. data loss tolerance levels (also known as recovery point objectives).

8 Use of Order Fulfillers

8.1 Authorization to Use Order Fulfillers

Subject to the conditions in this Section 8, DIR agrees to permit Successful Respondent to utilize designated order fulfillers to provide products, services, and support resources to Customers under this Contract (“Order Fulfillers”).

8.2 Designation of Order Fulfillers

- a) Successful Respondent may designate Order Fulfillers to act as the distributors for products and services available under this Contract. In designating Order Fulfillers, Successful Respondent must be in compliance with the State’s Policy on Utilization of Historically Underutilized Businesses. DIR and Successful Respondent will agree on the number of Order Fulfillers that are Historically Underutilized Businesses as defined by the CPA.
- b) In addition to the required Subcontracting Plan, Successful Respondent shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
- c) DIR reserves the right to require Successful Respondent to rescind any Order Fulfiller participation or request that Successful Respondent name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- d) Successful Respondent shall be fully liable for its Order Fulfillers’ performance under and compliance with the terms and conditions of this Contract. Successful Respondent shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of this Contract.
- e) Successful Respondent may qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Successful Respondent’s established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the criteria.
- f) Successful Respondent shall not prohibit any Order Fulfiller from participating in other procurement opportunities offered through DIR.

8.3 Changes in Order Fulfiller

Successful Respondent may add or remove Order Fulfillers throughout the term of this Contract upon written authorization by DIR. Prior to adding or removing Order Fulfillers, Successful Respondent must make a good faith effort to revise its Subcontracting Plan in accordance with the State’s Policy on Utilization of Historically Underutilized Businesses. Successful Respondent shall provide DIR with its updated Subcontracting Plan and the Order Fulfillers information listed above.

<Successful Respondent Name> - <Successful Respondent EIN>

8.4 Order Fulfiler Pricing to Customer

Order Fulfiler pricing to the Customer shall be in accordance with Section 5.

9 Notification

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

If sent to the State:

Hershel Becker or Successor in Office
Chief Procurement Officer
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Email: hershel.becker@dir.texas.gov

If sent to Successful Respondent:

Successful Respondent Representative
Company Name
Address
City, State Zip
Phone: () -
Email:

10 Software License, Lease and Service Agreements

10.1 Software License Agreement

- a) Customers acquiring software licenses under this Contract shall hold, use, and operate such software subject to compliance with the Software License Agreement. Customer and Successful Respondent may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Successful Respondent. Successful Respondent shall make the Software License Agreement terms and conditions available to all Customers at all times.
- b) Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer’s compliance with the Software License Agreement.

10.2 Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in **Appendix D** of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Successful Respondent and DIR. Successful Respondent and Customer may agree to terms and conditions that do not diminish or lessen the rights or protections of the Customer or the responsibilities or liabilities of Successful Respondent.

11 Conflicting or Additional Terms

- a) The terms and conditions of this Contract shall supersede any additional conflicting or additional terms in any additional service agreements, statement of work, and any other provisions, terms, conditions, and license agreements, including those which may be affixed to or accompany software upon delivery (sometimes called shrink-wrap or click-wrap agreements), and any linked or supplemental documents, which may be proposed, issued, or accepted by Successful Respondent and Customer in addition to this Contract (such additional agreements, “Additional Agreements”), regardless of when such Additional Agreements are proposed, issued, or accepted by Customer. Notwithstanding the foregoing, it is Customer’s responsibility to review any Additional Agreements to determine if Customer accepts such Additional Agreement. If Customer does not accept such Additional Agreement, Customer shall be responsible for negotiating any changes thereto.
- b) Any update or amendment to an Additional Agreement shall only apply to Purchase Orders for the associated product or service offering after the effective date of such update or amendment; provided that, if Successful Respondent has responded to a Customer’s solicitation or request for pricing, any subsequent update or amendment to an Additional Agreement may only apply to a resulting Purchase Order if Successful Respondent directly informs such Customer of such update or amendment before the Purchase Order is executed.
- c) Successful Respondent shall not require any Additional Agreement that: i) diminishes the rights, benefits, or protections of Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of Customer; or ii) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.
- d) If Successful Respondent attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to this Contract or the Purchase Order between Successful Respondent and Customer, and Successful Respondent will nonetheless be obligated to perform such Purchase Order without regard to the prohibited documents, unless

<Successful Respondent Name> - <Successful Respondent EIN>

Customer elects instead to terminate such Purchase Order, which in such case may be identified as a termination for cause against Successful Respondent.

12 Authorized Exceptions to Appendix A, Standard Terms and Conditions

No exceptions have been agreed to by DIR and Successful Respondent.

(Remainder of this page intentionally left blank.)

<Successful Respondent Name> - <Successful Respondent EIN>

This Contract is executed to be effective as of the date of last signature.

<SUCCESSFUL RESPONDENT NAME>

Authorized By: _____

Name: _____

Title: _____

Date: _____

The State of Texas, acting by and through the Department of Information Resources

Authorized By: _____

Name: Hershel Becker

Title: Chief Procurement Officer

Date: _____

Office of General Counsel: _____

Date: _____

DIR-CPO-XXXX APPENDIX D
SERVICE AGREEMENT
ENGAGEMENT CONTRACT ORDER FORM

Customer Name:

Customer Address:

This Order Form (“OF”) shall be governed by the terms of the STATE OF TEXAS DEPARTMENT OF INFORMATION RESOURCES CONTRACT (CONTRACT NUMBER DIR-CPO-XXXX) dated _____ (the “Contract”) between the State of Texas, acting by and through the Department of Information Resources and <Successful Respondent Name> (“Successful Respondent”). In the event of any conflicts between this **Appendix D Service Agreement** and the Contract, the Contract will prevail. Capitalized terms used but not defined herein have the meanings given to them in **Appendix A, Standard Contract Terms and Conditions**.

1 SERVICES

1.1 Successful Respondent’s Obligations

1.1.1 Scope of Services

Successful Respondent will provide the following services to Customer (“Services”):

<(Describe Services including schedule)>

2 RATES AND PAYMENTS

2.1 Labor Rates

Services shall be provided under this Order Form in accordance with **Contract** Section 4 Product and Service Offerings.

<(List Technician Level(s), Rate (Rates are inclusive of the Department of Information Resources Administrative Fee) Hours, and Total Labor Fee.)>

2.2 Travel, Meals, and Lodging Reimbursement

Rates for Services do not include travel, meals, and lodging.

2.3 Payment Type

To the extent allowable by the Contract the Services are provided on a time and materials (“T&M”) basis; that is, Customer shall pay Successful Respondent for all of the time spent performing such Services. Successful Respondent will bill for time and materials no more often than once every thirty (30) days. Successful Respondent acknowledges that Customer is an entity exempt from the imposition and collection of Texas sales taxes under Section 151.309 Texas Tax Code. Any estimate related to the Services performed under this Order Form is intended only to be an estimate for Customer’s budgeting and Successful Respondent’s resource scheduling purposes. Once fees for Services reach this estimate, Successful Respondent will cooperate with Customer to provide continuing Services on a T&M basis.

2.4 Purchase Order

The purchase order will reference **CONTRACT NUMBER DIR-CPO-XXXX**.

2.5 Purchase Order Number

Purchase Order number. _____ has been provided to Successful Respondent as of execution date of this Order Form.

2.6 Invoicing

All fees will be invoiced monthly and will be payable within thirty (30) days of the receipt of invoice, and in accordance with Chapter 2251, Texas Government Code.

2.7 Customer Billing Accounts Payable Contact/Mail Invoices To:

Name:

Address:

Telephone:

Fax:

E-mail:

3 PROJECT INFORMATION

3.1 Customer Facility Location

Name:

Address:

3.2 Successful Respondent Contact Information

Name:

Address:

Telephone:

Fax:

E-mail:

3.3 Customer Project Manager/Contact Information

Name:

Address:

Telephone:

Fax:

E-mail:

3.4 Successful Respondent Contract Manager/Contact Information

Name:

Address:

Telephone:

Fax:

E-mail:

(Insert Customer Name:)

By: _____

Name (Print): _____

Title: _____

Effective Date: _____

<Successful Respondent Name>

By: _____

Name (Print): _____

Title: _____



Addendum 1

| | |
|-----------------------------|-----------------|
| SOLICITATION NUMBER: | DIR-CPO-TMP-570 |
| ADDENDUM NUMBER: | 1 |

Addendum Date: March 10, 2023

If you should have any questions regarding this Addendum, please contact:

Vania Ramaekers
 Department of Information Resources
 300 W. 15th Street, Suite 1300
 Austin, Texas 78701
 Email: vania.ramaekers@dir.texas.gov

Notice is given to Respondents desiring to submit a response to the above referenced solicitation that additional information is required:

This Addendum modifies the solicitation for Software (COTS) and Related Services, Solicitation No. DIR-CPO-TMP-570, released February 2, 2023.

1. It contains, the RFO Pre-Solicitation Conference Slides (Attachment A), Pre-Proposal Conference Attendee List (Attachment B), and the Pre-Proposal Conference Video link: <https://youtu.be/bxqqLhloBeM>
2. Replaces Exhibit J, and Package 2 Itemized Pricing Sheet as revised per Addendum 1.
3. The Solicitation Schedule has been modified as follows:

| Activity | Date/Time (CST) |
|---|------------------------------|
| Publish RFO on Electronic State Business Daily | 2/2/2023 |
| Deadline for submitting Pre-Proposal Conference questions | 02/24/2023 05:00 PM (CT) |
| Pre-Proposal Conference (Optional) | 03/01/2023 01:00 PM (CT) |
| Deadline for submitting all RFO Questions | 03/21/2023 05:00 PM (CT) |
| Deadline to Post Q&A Addendum to ESBD | 04/03/2023 05:00 PM (CT) |
| Deadline for submitting Response to RFO | 04/28/2023 02:00 PM (CT) |
| Deadline for DIR to receive Respondent References | 04/28/2023 02:00 PM (CT) |
| Evaluations, Clarifications, and Amended Responses | 05/01/2023 – 5/30/2023 |
| Negotiations and Awards | 06/01/2023 – until completed |

4. DIR is here by removing the submission requirements for End User License Agreements (EULA), Software Service Level Agreements and any other type of software agreement currently listed under the RFO as part of required response documentation.

In the submission of its response to this solicitation, Respondents shall submit this signed “page” of the Addendum, acknowledging receipt of the Addendum.

Respondent Acknowledgment of Receipt

(Printed entity name)

(Printed name of authorized representative)

(Signature of authorized representative)

(Date)

Addendum 1 Attachment Documents:

- 1. Attachment A – Pre-Solicitation Conference Slides
- 2. Attachment B – Pre-Solicitation Conference Attendees List
- 3. Attachment – Exhibit J Reference Form
- 4. Attachment – Itemized Pricing Sheet

Software (COTS) and Related Services

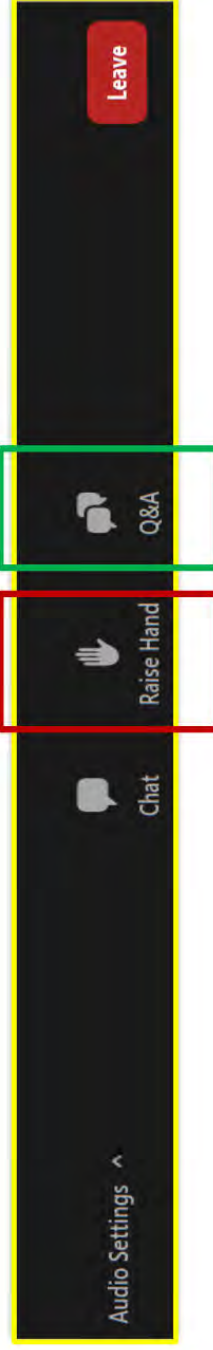
Vendor Pre-Solicitation Conference
Wednesday, March 1, 2023
1:00 PM (CT)



dir.texas.gov | @TexasDIR | #DIRisIT

Welcome & Zoom Webinar Notes

- Change Audio by switching between Computer Audio and Phone Call.
- Attendees are **Muted**
- Click the **Raise Hand** icon to confirm audio levels
- Submit all questions via the **Q&A** in the Meeting Controls, Chat may be disabled
- **HANDOUT:** Will be made available in addendums



Introduction of Speakers and Staff



**Tom Hay,
Outreach & Training
Coordinator**



**Vania Ramaekers,
Procurement Lead**



**Stephanie Harrison,
Director
Cooperative Procurements**



**Marie Cohan,
Statewide Digital Accessibility
Program Manager**



**Brianna Ballenger,
HUB Coordinator**

Agenda

Request for Offer (RFO)

- RFO Overview
- RFO Contents
- RFO Scope
- Evaluation Criteria
- Term of Contracts
- Schedule
- HUB
- EIR - Accessibility

General Information

BidStamp Vendor Information System Portal (VIS) Overview

***Pricing Sheet**

Mandatory Submissions

Break

Questions

Conference Closing



RFO Overview

- The objective of this Request for Offer (RFO) is to solicit Responses from potential Respondents to provide Software, Commercial Off-the-Shelf (COTS) and Related Services, in addition DIR will be soliciting responses for Value Added Software from authorized resellers for software publishers with which DIR has established publisher agreements for **volume license** programs to DIR Customers, acting by and through the Department of Information Resources (DIR).
- Re-Soliciting Multiple RFO's
- DIR may make multiple awards from this RFO



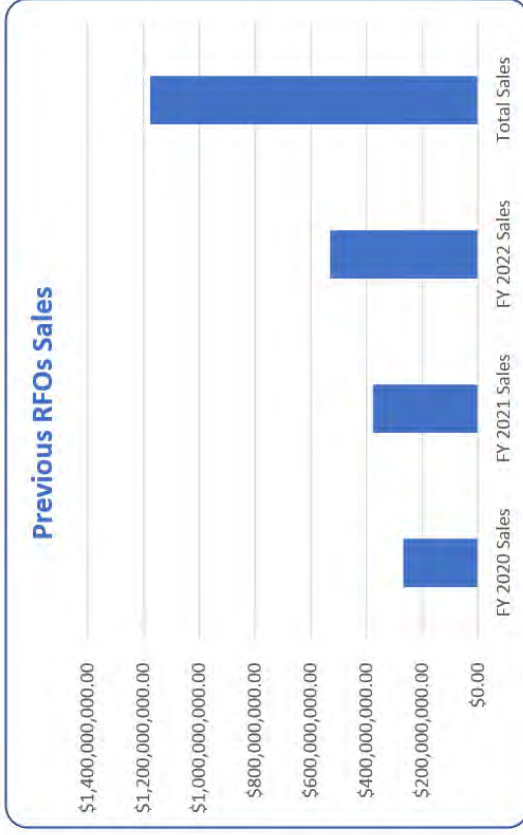
RFO Overview Cont'd: Historical Sales

DIR Cooperative Contract Program Sales:

| | 2019 | 2020 | 2021 | 2022 |
|-------------------------|-----------------|-----------------|-----------------|-----------------|
| Assistance Org | \$3,160,000 | \$7,470,000 | \$5,980,000 | \$4,660,000 |
| Higher Ed | \$347,330,000 | \$347,820,000 | \$398,930,000 | \$446,820,000 |
| K-12 | \$645,820,000 | \$851,820,000 | \$920,490,000 | \$891,630,000 |
| Local Government | \$556,640,000 | \$687,950,000 | \$731,240,000 | \$783,360,000 |
| Out of State | \$36,910,000 | \$59,450,000 | \$74,970,000 | \$84,600,000 |
| State Agency | \$455,480,000 | \$606,910,000 | \$645,990,000 | \$839,580,000 |
| Total: | \$2,045,000,000 | \$2,588,000,000 | \$2,778,000,000 | \$3,050,650,000 |

Software (COTS), Case Management, VAR and Related Services Sales Volume by DIR Fiscal Year:

| FY 2020 Sales | FY 2021 Sales | FY 2022 Sales | Total Sales |
|-------------------------|-------------------------|-------------------------|---------------------------|
| \$268,325,331.28 | \$377,273,633.18 | \$530,092,683.99 | \$1,175,691,648.45 |



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RFO Contents

DIR-CPO-TMP-570 Package 1

- Exhibit A: Respondent Information
- Exhibit A1: Exceptions
- Exhibit B: Respondent History and Experience
- Exhibit C: Contract Marketing and Support Plan
- Exhibit D: HUB Subcontracting Plan (HSP) Sample Form
- Exhibit E: VPAT (for COTS)
- Exhibit F: Respondent Release of Liability



DIR-CPO-TMP-570 Package 1

- Exhibit G: EDGAR Certification Form
- Exhibit H: Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment
- Exhibit I: Certification of OFF-Premises Customer Services
- Exhibit J: Reference Forms
- Exhibit K: Vendor Accessibility Development Services Information Request (VADSIR)
- Exhibit L: Definitions



DIR-CPO-TMP-570 Package 2

- Itemized Pricing Spreadsheet

DIR-CPO-TMP-570 Package 3

- Attachment 1: Sample Contract
- Attachment 2: Appendix A Terms and Conditions
- Attachment 3: Service Agreement Template



Exhibits A, A1 & B

Exhibit A, Respondent Information

- This form must be **filled out in its entirety** and **signed by an officer or agent empowered to contractually bind the Respondent**. Complete cancelled contract references if applicable.

Exhibit A1: Exceptions

- Under Exhibit A Item 13 – Respondent will indicate weather or not it has any exceptions **if yes, the respondent will fill out this form as instructed in Exhibit A** (items 13a through 13g)

Exhibit B, Respondent History and Experience

- Respondent must provide a detailed response to each question detailing the Respondent's history and experience in providing the products and services proposed.



Exhibits C, D, & E

Exhibit C, Contract Marketing and Customer Support Plan

- Respondent must provide a plan that describes the Respondent's ability and strategy for promoting and supporting the contract, if awarded.

Exhibit D, Historically Underutilized Business (HSP) Form sample

- Respondents must provide HSP Form as instructed in Section 3.4.1, Hub Subcontracting Plan. (vendors must download the latest form using the link provided under this section)

Exhibit E, VPAT

- Respondent must provide a completed Voluntary Product Accessibility Template (VPAT) for all commercial off-the-shelf (COTS) products.



Exhibits F, G, & H

Exhibit F, Respondent Release of Liability for References

- Form is required for all canceled contracts and must be provided to DIR with Respondent's proposal.

Exhibit G, EDGAR Certification Form

- Respondents must provide the EDGAR Certification Form as requested in Section 3.6.1, Federal Requirements, of the RFO.

Exhibit H, PDAA

- Respondent must complete the Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.



Exhibit I, J, & K

Exhibit I Certification of OFF-Premises Customer Services

- Form is required in case Respondent takes exception to the Auto Insurance Requirements, as services contracted under this Contract will not require Respondent to perform work on Customer's premises and services contracted under this Contract do not require use of employer vehicles (whether owned or otherwise) to conduct work on behalf of Customers

Exhibit J, Vendor References

- Respondent must send the Exhibit E Reference Form to a minimum of three (3) companies or government agencies. References must respond to DIR on the form provided by the due date in order to be considered for evaluation. Respondent may **not** submit the Reference Form to DIR.

Exhibit K, Vendor Accessibility Development Services Information Request (VADSIR) (for non-COTS)

- Respondent must provide a completed VADSIR for all proposed development services. (if it applies)



RFO Scope

Scope

NOTE: Under this RFO, DIR is combining scope from previously solicited RFOs.

- DIR-TSO-TMP-225 Software, Including Software as a Service Products and Related Services
- DIR-TSO-TMP-416 Software Products, Software as a Service and Enterprise Resource Planning Software Modules Products and Services
- DIR-CPO-TMP-449 Software Solutions
- DIR-TSO-TMP-401 Case Management Software and Related Services
- **DIR-CPO-TMP-404 Value Added Software Reseller Products and Related Services**



RFO Scope

Section 2.1 Scope

DIR intends to contract with the Successful Respondent(s) to provide Software, Commercial Off the Shelf (COTS), including, but not limited to, the following Categories/Functionalities.

DIR provided a list of Categories/Functionalities under this section of the RFO; however, it is important to **note** that this list is not all inclusive. Respondents may propose all types and all delivery methods of (COTS) software

It is the responsibility of the Respondent to ensure the products and/or services proposed are within the scope of this RFO.

RFO Scope

Section 2.2 VAR

DIR enters into Master License Agreements (MLA) with the software publishers named in this RFO to establish statewide pricing level/band or discount levels for software that is available through each of the software publisher's volume license program. DIR intends to contract with an authorized reseller or authorized resellers for these software publishers with which DIR has existing publisher agreements. The authorized Resellers will provide the software and related services for **Adobe, Microsoft, and Novell ONLY**. DIR reserves the right to make a single award for all the software publishers or multiple awards for each software publisher.



RFO Scope

Section 2.3 Out of Scope Products

- Custom application development products
- Products that require customization of the COTS core code; and
- Standalone hardware products (hardware is allowed when it is part of a complete software solution system)

***NOTE: Out of Scope Products includes** The State of Texas Prohibited Software / Applications/Developers (manufacturers) list posted at <https://dir.texas.gov/information-security/prohibited-technologies>

RFO Scope

Section 2.4.1 Related Services

Related software services include but are not limited to installation; product configuration; maintenance and technical support; project management; licensing management services; managed services, licensing compliance services; and product training.

Section 2.4.2 VAR Authorized Resellers

In Addition to items listed in 2.4.1 will provide, at no additional cost, reseller management services to include, but not be limited to, providing price quotes, tracking licenses (new and existing), management of licenses, monitoring volume levels and opportunities for cost savings, training, installation/de-installation/implementation support, and software advisement to DIR and/or DIR Customers. The VAR authorized Resellers would be expected to provide, at no additional cost, assistive and support services regarding the software that is representative of the State's interest and best value.



RFO Scope

Section 2.3 Out of Scope Services

Services only (installation, configuration, interfacing, migration, maintenance, support, etc.) without also providing any associated software or SaaS product

Custom application development services

Deliverables-Based Information Technology Services (DBITS)

Infrastructure as a Service (IaaS)

Cloud Broker Services

Cloud Assessment Services

Professional or Consulting services as defined in Chapter 2254 of the Texas Government Code



Evaluation Criteria

Evaluation Criteria

Pass/Fail Criteria

- Administrative Review
 - Exhibit A – Completed & **Signed**
 - Missing or blank PDAA self-assessment
 - Hub Subcontracting Plan Completed and Signed

Financial Review

- Respondent shall provide an accurate DUNS number online item 3 of **Exhibit A Respondent**

Information

- Respondent's financial stability as reported by Dun and Bradstreet

***Note:** Dun and Bradstreet corporate address needs to match the address on Exhibit A item 6 Principal place of Business



Evaluation Criteria

RFO Section 4.2.1 – Evaluation of Responses

- Incomplete response package will be rejected
- The financial review and HSP review are on a pass/fail basis.
- Failure to provide a DUNs number may result in your response being disqualified.
- Only responses that receive the passing grade will proceed to the next evaluation phase.

RFO Section 4.2.2 – Weighted Evaluation Criteria

- **Package 2-Itemized Pricing Sheet – 40%**
- Exhibit B-History and Experience – 30%
- Exhibit C-Contract Marketing and Customer Support Plan – 30%



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The Contract

Term of The Contract

- Section 2.9 Term of Contract
DIR anticipates that the initial term of the Contract will be up to two (2) years with one (1) optional two-year renewal and two (2) optional one-year renewal (each, a "Renewal Term") to be exercised by DIR at its discretion.
- Section 2.10 Option to Extend
The Successful Respondent agrees that DIR may require continued performance, beyond the initial or any renewal Contract term, of any of the within described services at the rates specified in the Contract.

Contract Web Site Requirements

Section 7 of the Contract Document: In addition to the requirements listed in Appendix A, Section 7.2, Internet Access to Contract and Pricing Information, Successful Respondent shall include the following with its webpage:

- A current price list or mechanism to obtain specific contract pricing;
- MSRP/list price or DIR Customer price;
- Discount percentage (%) off MSRP or List Price;
- Warranty policies;
- Return policies;
- **A link to DIR's list of TX-RAMP certified Cloud Products;**
- **Software License Agreements (EULA); and**
- **Service Level Agreements for each SaaS product awarded, including metrics and method for calculating and reporting results, for:**
 - service availability.
 - recovery time objectives; and
 - data loss tolerance levels (also known as recovery point objectives).



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RFO Schedule

Solicitation Schedule

| Activity | Date/Time (CST) |
|---|-------------------------------|
| Publish RFO on Electronic State Business Daily | 2/2/2023 |
| Deadline for submitting Pre-Proposal Conference questions | 02/24/2023 05:00 PM (CT) |
| Pre-Proposal Conference (Optional) | 03/01/2023 01:00 PM (CT) |
| Deadline for submitting all RFO Questions | 03/21/2023 05:00 PM (CT) |
| *Deadline to Post Q&A Addendum to ESBD | 4/3/2023 05:00 PM (CT) |
| Deadline for submitting Response to RFO | 04/28/2023 02:00 PM (CT) |
| Deadline for DIR to receive Respondent References | 04/28/2023 02:00 PM (CT) |
| Evaluations, Clarifications, and Amended Responses | 05/01/2023 – 5/30/2023 |
| Negotiations and Awards | 06/01/2023 – until completed |

*This will be part of Addendum 1 to be posted shortly after this meeting.



HUB Subcontracting Plan (HSP)

Brianna Ballenger
HUB Coordinator



Attachment 3 - HUB Subcontracting Plan

Vendors will complete the form at the Comptroller's website, print, sign, and upload the signed HSP in the VIS portal.

<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>

Attachment 3 – HUB Subcontracting Plan

Attachment 3 – HUB Subcontracting Plan

DIR encourages all respondents to seek Historically Underutilized Business (HUB) subcontractors and maximize HUB participation in their bids.

- Responses submitted without a current HUB Subcontracting Plan (HSP) provided in the RFO, will **be disqualified per TAC Rule §20.285**
- All respondents, **HUBs and Non-HUBs**, are required to submit a completed HSP
- The HSP form includes specific instructions for meeting the Good Faith Effort requirements
- Vendors must complete a **new** HUB Subcontracting Plan and a good faith effort for this procurement



Attachment 3 – HUB Subcontracting Plan

The HUB Goal for this RFO is 21.1%

- METHOD A (Attachment A) - If you are subcontracting and you are meeting or exceeding the HUB Goal for this RFO, you will complete Method A.
- Include all VID numbers for each vendor, all estimated dollar amounts and percentages for each vendor.



Attachment 3 – HUB Subcontracting Plan

METHOD B (Attachment B) - If you are subcontracting, and are not going to meet the HUB Goal of 21.1% you will complete Method B.

- **Provide written notification** of subcontracting opportunity listed to at least three State of Texas certified HUBs
- **Provide written notification** of subcontracting opportunity to at least (2) minority or women’s trade organization or development center
- Allow no less than seven (7) working days from their receipt of notice for HUBs to respond (keep delivery receipt emails).
- **Note:** Attach supporting documentation (letters, fax transmittals, email, etc.) demonstrating evidence of the good faith effort performed with RFO submittal

Attachment 3 – HUB Subcontracting Plan

If not subcontracting, your response must contain a detailed explanation demonstrating HOW your company will fulfill the entire contract with its own resources

- Self-Performance Justification must be provided in the space provided in SECTION 3, do not reference sections in the RFO

HUB Subcontracting Plan

You may contact DIR's HUB Department for assistance in completing your HUB Subcontracting Plan (HSP) up to seven (7) working days before the RFO submittal.

Brianna Ballenger

HUB Coordinator

Texas Department of Information Resources

DIR HUB Mailbox:

dir.hub@dir.texas.gov

Electronic and Information Resources (EIR) Accessibility Forms

Marie Cohan,
Statewide Digital Accessibility
Program Administrator

Exhibits E, H, and K



EIR Accessibility Background

- Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR's state agency and Institution of Higher Education customers must procure EIR that complies with the accessibility standards defined in Texas Administrative Codes [1 TAC 206](#) and [1 TAC 213](#), in the [Worldwide Web Consortium WCAG 2.0 AA](#) technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations.
- Accordingly, all vendors must provide accessibility documentation.

EIR Accessibility Required Document Types

- **Accessibility Conformance Report (ACR)**
 - Required for all commercial products which includes Software (SaaS), Platform (PaaS), Infrastructure (IaaS), and other managed services, and products that contain ANY user interface.
 - The ACR is a completed Voluntary Product Accessibility Template (VPAT)
- **Policy Driven Adoption for Accessibility (PDAA)**
 - Self-assessment of organization's accessibility maturity
 - Required for all respondents

Supporting information may be requested by DIR.

Exhibit E: Voluntary Product Accessibility Template (VPAT)

- Required for commercial products such as SaaS, IaaS, PaaS, managed services, and ANY user interface products and services documenting accessibility compliance to US Section 508 technical standards
- ITIC VPAT 2.3 or higher template form must be used to create the ACR
- VPAT 1.0 forms are obsolete, but acceptable for unchanged products released on or before January 1, 2019
- Completion instructions included in template; instruction pages (1-9) should be deleted from the forms prior to submission
- Completed by individuals with relevant knowledge of product accessibility.
- VPATs are completed by manufacturer for products / product family specific
- Resellers should obtain a completed VPAT from the manufacturer
- Should be based on accessibility testing results and supported by documentation (on request)

Exhibit E: Voluntary Product Accessibility Template (VPAT) Cont.

- Completed VPAT is an Accessibility Conformance Report (ACR) and this is what should be submitted with the response.
- * For vendors with a high number of VPAT Documents, may submit all documents in a zip file, through the RFO email rfodir-cpo-tmp-570@dir.texas.gov prior to the RFO closing date and time, DIR will move these files to the response folder after the RFO opens.

Exhibit H: Policy Driven Adoption for Accessibility (PDAA)

- Addresses the maturity of accessibility programs at the organization level
 - Self-assessment with results mapped to the PDAA Maturity Model
 - Accessibility policy maturity provides insight into vendors' ability to develop accessible commercial products and service offerings
- Vendors can use the results as a roadmap for implementing their organization-wide IT accessibility initiatives
 - Helps ensure that programs and processes are in place to facilitate the development of future accessible offerings.
 - Gaps in vendor internal governance systems and leadership commitment inhibit the ability to meet these standards for their products / services.

Note: Form should be completed and returned in its original format (Excel file).

EIR Accessibility Resources

- **EIR Accessibility Website**
 - <https://dir.texas.gov/electronic-information-resources-eir-accessibility/eir-accessibility-procurement-vendor-information>
- **VPAT template**
 - <http://www.itic.org/public-policy/accessibility>
- **VADSIR template**
 - <https://dir.texas.gov/sites/default/files/Vendor%20Accessibility%20Dev%20Services%20Info%20Reque%20st.docx>
- **PDAA template**
 - <https://dir.texas.gov/sites/default/files/2021-10/Policy%20Driven%20Adoption%20for%20Accessibility%20-%20Vendor%20Assessment.xlsx>
- **Additional Information**
 - <https://dir.texas.gov/electronic-information-resources-eir-accessibility/eir-accessibility-procurement-vendor-information>

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Electronic and Information Resources (EIR) Accessibility

Questions

CONTACT:

Marie Cohan, Statewide Digital Accessibility
Technology Planning, Policy, and Governance
Chief Technology Office

(512) 463-6186 | marie.cohan@dir.texas.gov

NOTE: DIR is now offering Accessibility
Training for vendors; you can register by
emailing statewideaccessibility@dir.texas.gov



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General Information

General Information

- Reference the RFO page number and section number when submitting questions.
- **Webinar participants may submit questions electronically at anytime during the webinar, please use the question tab.**
- Questions answered today are unofficial until posted on the ESD in the form of an Addendum.
- Check the ESD often for updates
- All questions regarding this RFO must be **submitted in writing through the BidStamp Vendor Information System Portal (VIS) by March 21, 2023, 5:00 P.M. (CT).**



General Information (cont'd)

- **Disqualification of Offers**
 - Failure to sign Respondent Information Form (Exhibit A)
 - Failure to complete Financial Information (DUNS Number)
 - Failure to complete a Historically Underutilized Business (HUB) Subcontracting Plan (HSP)
 - Failure to complete and submit Exhibit D, Itemized Pricing Sheet
 - Failure to Complete and submit Exhibit H, Policy Driven Adoption for Accessibility (PDAA)
 - Failure to submit on or before due date and time
 - **Contact with DIR employees regarding this RFO other than designated contacts**
- **Delivery of Offers**
 - **Any Vendor responding to this RFO must submit their response through the BidStamp VIS.**



General Information (cont'd)

Respondents and all respondent representatives shall not attempt to discuss the contents of this RFO with any employees or representatives of DIR other than designated contacts. Failure to observe this restriction may result in disqualification of any related Response.

General Information (cont'd)

Contacts for inquiries regarding this RFO:

Vania Ramaekers CTCD, CTCM – vania.ramaekers@dir.texas.gov

Contacts for the following related topics:

Vendor Information Systems (VIS) Portal - BidStamp:

Stephanie Harrison CTCD, CTCM – stephanie.harrison@dir.texas.gov

HUB Subcontracting Plan:

Theresa Williamson – theresa.williamson@dir.texas.gov, or dir.hub@dir.texas.gov



Vendor Information Systems (VIS) Portal - BidStamp

Stephanie Harrison CTCD, CTCM
Director of Cooperative
Procurements



Bid Submittal

- Any Respondent responding to this RFO must submit their response through the BidStamp Vendor Information System (VIS)
- Before users can access any of the BidStamp VIS portal functionality, they will be required to provide login credentials to access a new or existing account. Vendors will access the BidStamp VIS Portal via <http://dircommunity.force.com/BidStamp> and enter in their access credentials.
- If a Vendor does not yet have login credentials, Vendor will request one by clicking on “Are you a vendor and need to request an account?” button that is located on the login page.
- You may view a video on how to set up your BidStamp account at this link: <https://dir.texas.gov/outreach-and-training>.



Bid Submittal

Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact DIR at the point of contact in section 3.1 of this solicitation. Please allow at least five business days for response.



Information For Vendors



How to navigate to the BidStamp Vendor login from DIR's home web page.

Cost-effective solutions for all levels of government.

Find IT products and services through DIR's Shared Technology Services, or buy directly from vendors through our Cooperative Contracts.



Note: Scroll down on web page for further information.



Information for Vendors – Cont.



Home > IT Solutions and Services

INFORMATION FOR

Selling Through DIR

Vendors are an important partner in the success of DIR's core mission to serve Texas. Our vendors provide the IT products and services that are vital to our customer's technology needs. Find out more about the steps and processes to becoming a DIR partner and which responsibilities each vendor has to fulfill.

Learn more about being a valued Vendor with DIR

- Doing Business with DIR**
Start here to find out more about partnering with DIR as a Vendor
- Schedule of Solicitation Opportunities**
Discover current and upcoming solicitation opportunities. This is the first step on how to bid and secure a DIR contract
- Historically Underutilized Business (HUB) Program**
Our HUB program has a dual role of increasing HUB participation through DIR Internal Procurement and all DIR Contracts

Note: Scroll down on web page for further information.



Information for Vendors – Cont.

Posting Phase

These Solicitations are currently active. Vendors are able to submit responses until the deadline. Pre-Solicitation conferences are posted on the DIR calendar.

BidStamp Application

The BidStamp application is DIR's e-procurement system that supports solicitations and contracts throughout the procurement lifecycle by automating the procurement processes, e.g., solicitation creation and posting, collecting vendor responses, evaluation of responses and recommendations, and contract creation, award, and management.

[BidStamp Online Solicitation Portal](#)

[Request Credentials for BidStamp Access](#)

The Vendor BidStamp Guide is posted on DIR's website on the Schedule of Solicitation Opportunities Page.

<https://dir.texas.gov/it-solutions-and-services/selling-through-dir/schedule-of-solicitation-opportunities>



PDF (2.06 MB)

BidStamp VIS Training Guide - Vendor Version 1.0

Note: Scroll down on web page for further information.

Responding to a Solicitation

After Vendor account is enabled, Vendor will submit and manage RFO responses from the BidStamp VIS portal.



<https://dircommunity.force.com/BidStamp>

BidStamp Vendor Login

Internet Explorer is not supported

| | |
|----------|--------------------------------------|
| Username | <input type="text"/> |
| Password | <input type="password"/> |
| | <input type="button" value="Login"/> |

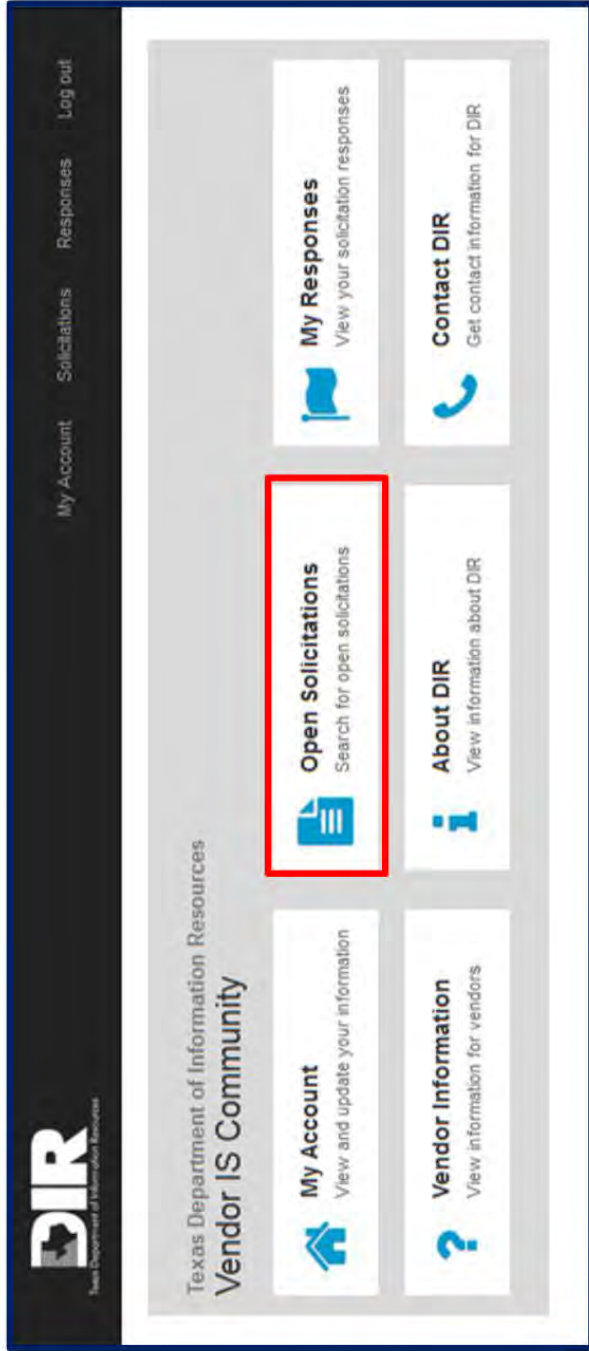
Are you a vendor and need to request an account?
Forgot your password?

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300 W. 15th Street, Suite 1300
Austin, TX 78701 | 512.475.4700



Responding to a Solicitation

After Vendor account is enabled, Vendor will submit and manage RFO responses from the BidStamp VIS portal.



Creating a New Response

To create a new response:

1. Log in to the VIS portal and select the "Open Solicitations" tile
2. Click on the "RFO Number" (**DIR-CPO-TMP-570**) of the solicitation you want to respond to
3. You will be navigated to the "RFO Number" detail page

| RFO Number * | RFO Description | Solicitation Status | Phase | Type | Date/Time Resp... | Question Submi... |
|------------------------|----------------------|---------------------|--------------|-------------|--------------------|--------------------|
| DIR-TSO-TMP-266 | testMadan | Posted | RFI - Posted | Cooperative | 5/24/2017 9:18 AM | 4/30/2017 9:18 AM |
| DIR-TSO-TMP-267 | test | Posted | Posting | Cooperative | 11/8/2017 9:49 AM | 1/9/2017 6:13 AM |
| DIR-TSO-TMP-293 | Request for Widg... | Posted | Posting | Cooperative | 3/31/2017 10:24 AM | 3/15/2017 9:52 PM |
| DIR-TSO-TMP-295 | Test RFO Title | Draft | Posting | Cooperative | 3/31/2017 2:11 PM | 3/13/2017 2:13 PM |
| DIR-TSO-TMP-296 | Dell-branded Prod... | Posted | Posting | Cooperative | 4/30/2017 1:47 PM | 3/17/2017 10:01 AM |
| DIR-TSO-TMP-297 | RFO | | Posting | Cooperative | 3/15/2018 6:32 AM | |

Creating a New Response (cont'd)

DIR
Texas Department of Transportation Services

RFO Number
DIR-TSO-TMP-473

[Respond To Solicitation](#) [Ask A Question](#) [Subscribe to Solicitation](#) [View Solicitation Documents](#)

| RFO Number Detail | Vendor Conference Date | RFO Answers to Questions Deadline Date | Actual Start Date Evaluation |
|-----------------------------------|------------------------|--|------------------------------|
| Actual Start Date Posting | 5/15/2017 | 5/31/2017 2:00 PM | 6/15/2018 2:00 PM |
| Question Submission Deadline Date | 5/31/2017 2:00 PM | 6/7/2017 5:00 PM | |
| Date/Time Responses Due | 6/15/2018 2:00 PM | | 6/16/2017 |

New Fields

| Solicitation Status | Posted | Type |
|---------------------|--------|-------------|
| | | Cooperative |

RFO Questions
No records to display

This page will display important deadlines for the solicitation and list any questions Vendor has submitted.

Buttons discussed on the next slide. 

Creating a New Response (cont'd)

RFO Number Detail Button Description:

- **Respond to a Solicitation (or View Response):** Create a new response or view a response that is in-progress. If a response has already been created or started, this button will read as “**View Response**” and allow you to resume your progress on an existing RFO response.
- **Ask a Question:** Submit a question to be reviewed by a DIR resource. Questions can be submitted up until the “Question Submission Deadline date” indicated in the RFO document and on the detail page.
- **Subscribe to Solicitation:** Subscribe to a solicitation if you would like to receive addendum notifications. To subscribe to the solicitation, you must select the “Subscribe to Solicitation” button AND have enabled your contact to “Receive Notifications”.
- **View Solicitation Documents:** Navigate to the ESDD posting for a solicitation and view the solicitation’s documents.



Respond to a Solicitation

DIR
Texas Department of Information Resources

RFP Response
R0006029

Add your documents below (400MB max size). Click the "Submit" button once all documents have been added.

Please review the ESBID posting to ensure you have provided all the necessary documents in your submission. Also, please verify the information on the page is correct before submitting. Once submitting your response, you will be unable to make changes unless you withdraw your response completely and restart the submission process.

RFP Response Detail

| | | | |
|--|-------------------|-------------------------|-------------------|
| RFP Number | DIR-TSO-18-000 | Vendor | Tech Widgets-R-US |
| Submission Date | 5/15/2017 | Posting | 5/15/2017 |
| Submitted By | | Question Submission | 5/31/2017 2:00 PM |
| Vendor Conference Date | 5/25/2017 2:00 PM | Deadline Date | |
| RFP Answers to Questions Deadline Date | 6/7/2017 5:00 PM | Date/Time Responses Due | 6/15/2018 2:00 PM |
| Actual Start Date Evaluation | 6/16/2017 | | |

RFP Response Documents
No records to display

Vendor References
No records to display

"RFO Response Page" buttons:

- **Delete:** Delete all information that has been uploaded and the response record before the response has been submitted. **Note:** Once the response is submitted, Vendor must use the **Withdraw** button that will appear upon solicitation submission.
- **Submit:** Submits the response record and all associated information. (reference *Vendor Guide Section 5.7*)
- **Ask A Question:** Questions can be submitted up until the "Question Submission Deadline date" indicated in the RFO document and on the detail page. (reference *Vendor Guide Section 5.6*)
- **Create Pricing Form:** Create a pricing form to submit pricing information for your response (reference *Vendor Guide Section 5.5*)
- **New (RFO Response Documents):** Upload required files indicated in the RFO posted on the ESBID (reference *Vendor Guide Section 5.2*)
- **New (Vendor References):** Submit a new reference's email address and opt to send the vendor a reference (reference *Vendor Guide Section 5.3*)

Package 2 Itemized Pricing

Package 2 – Itemized Pricing Spreadsheet

- RFO Section 3.9.4.2 of the RFO goes over the requirements for Package 2 of the RFO, read carefully
- Tab 0 Instructions
- Tab 1 Products Detail
 - Do not create individual tabs by brand
 - Do not change formulas
 - Make sure to copy and paste formula when adding lines
 - Double check your formulas
 - Do not change the spreadsheet format
 - Make sure to carry the brand name and Average Discount to Tab 2 in order to facilitate the data entry in BidStamp.
- ***Tab 2 BidStamp Brand Average Discount** – this is the form you will use to enter pricing into BidStamp pricing form.



Package 2 – Itemized Pricing Spreadsheet Cont.

- Tab 1 Product Detail

| BRAND | FUNCTION | SOFTWARE CATEGORY (Select from Dropdown) | PRODUCT DESCRIPTION | PRODUCT PART NUMBER | MSRP or LIST PRICE | DIR Customer Discount % off MSRP | * DIR Customer Price* | Unit | AVERAGE BRAND DISCOUNT |
|---------|---------------------------|--|---------------------|---------------------|--------------------|----------------------------------|-----------------------|----------|------------------------|
| Brand x | EXAMPLE: Audit Management | SaaS | | | \$ 1,000.00 | 15.00% | \$ 856.38 | p/user | |
| Brand x | EXAMPLE: Audit Management | Software | | | \$ 2,000.00 | 25.00% | \$ 1,511.25 | p/server | |
| Brand x | EXAMPLE: Audit Management | Related Services | | | \$ 10,000.00 | 10.00% | \$ 9,067.50 | bundle | 16.67% |

*Formula Column



Package 2 – Itemized Pricing Spreadsheet Cont.

- Tab 2 BidStamp Brand Average

| BRAND | CATEGORY/FUNCTION | Average Discount per Brand |
|-----------------|---------------------------------|----------------------------|
| Brand-x | Audit Management | 15.00% |
| Brand-x | Case Management | 10.00% |
| Brand-x | Artificial Intelligence (AI) | 10.00% |
| Brand-x | Audit Management | 20.00% |
| Brand-y | Back-Up Software | 20.00% |
| Brand-y | Data Management Software | 20.00% |
| Brand-y | Design and Development Software | 15.00% |
| Brand-Z | Developer Tools Software | 20.00% |
| Microsoft (VAR) | Office 365 | 7.50% |
| Adobe (VAR) | Adobe | 10.00% |
| NOVELL (VAR) | Novell | 10.00% |
| Brand-Various | Complete Solution | 20.00% |



BidStamp Pricing Screen print

Pricing Form
Edit Pricing Form

Back

| Product | | Action | Category | Brand | Product Description | Product Number | Manufacturer | Reseller | Discount off MSRP |
|---------|--|--------------------------------------|----------|---------|---------------------|----------------|-------------------------------------|-------------------------------------|-------------------|
| | | Edit Del Duplicate software | | Adobe | case management | N/A | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| | | <u>Edit</u> Del Duplicate stamps | | forever | forever heart stamp | 123 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 15.00% |
| | | Save Cancel | | | | | <input type="checkbox"/> | <input type="checkbox"/> | |

New Row

First Page Prev Page Next Page Last Page



Package 2 – Itemized Pricing Spreadsheet

- Tab 3 Service Detail *this is not entered into BidStamp
- Tab 4 Volume Discount *is also not entered into BidStamp
- Tab 5a VAR Products Volume Discount *note the average discount for these items will be entered in tab 2.
 - The VAR instructions is at the top of the tab
 - When entering these items in BidStamp. Vendor will identify each brand as VAR. to the brand name as some vendors may bid these brands without being part of the VAR program.

| Publisher Category | Publisher Discount Level | DIR Customer Discount (from Publisher Discount Level) |
|---|--|---|
| Adobe: | | |
| Cumulative Licensing Program (CLP) Education Membership | Level 3 100,000+ points Points target: | |
| Cumulative Licensing Program (CLP) Government Membership | Level 2 300,000+ points Points target: | |
| Microsoft: | | |
| Enterprise Agreement (comprised of subcategories as listed below) | | |
| Office Professional/Standard | Level D less 7.5% | |
| Windows Pro Desktop Operating System | Level D less 7.5% | |
| Core CAL/Enterprise CAL Suite (to include standalone components) | Level D less 6% | |
| All other or additional EA licensing | Level D | |
| Enterprise Subscription Agreement | Level D less 2% | |
| Select Plus Government | Level D | |
| Select Plus Academic | Level D | |
| Novell Master License Agreement: | | |
| Education License and Value-Added Service | MLA Level 5 | |
| Government License and Value-Added Service | MLA Level 5 | |

PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The administrative fee = .75% x Customer Price



Package 2 – Itemized Pricing Spreadsheet

- Tab5b VAR Products Pricing Sheet
 - Vendors should update the product list according to the current volume program
 - Do not create individual tabs by brand
 - Double check your formulas
 - Do not change the spreadsheet format
 - Make sure to carry the brand name and discount to Tab 2 in order to facilitate the data entry in BidStamp.

| ADOBE ACADEMIC | | | | | | |
|----------------------------|------------------------|-----------------------|--|---|---------------------------|---------------------------|
| Product Description | Product Type | Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price | DIR Customer Price |
| Acrobat Professional v.10 | MAC Full License | 65083690AB03A00 | \$200.00 | 5.00% | \$ | 191.43 |
| Acrobat Professional v.10 | WIN Full License | 65083691AB03A00 | | | \$ | - |
| Acrobat Professional v.10 | MAC Concurrent License | 65083801AB03A00 | | | \$ | - |
| Acrobat Professional v.10 | WIN Concurrent License | 65083800AB03A00 | | | \$ | - |
| Acrobat Suite v.1 | WIN Full License | 65086502AB03A00 | | | \$ | - |
| After Effects CS5.5 v10.5 | Full License | 65110619AB03A00 | | | \$ | - |
| Audition CS5.5 v.4 | Full License | 65106839AB03A00 | | | \$ | - |
| Captivate v5.5 | Full License | 65125060AB03A00 | | | \$ | - |



| MICROSOFT ENTERPRISE AGREEMENT | | | | | |
|---|---------------------------------|-----------------------|--|---|---------------------------|
| Product Description | Product Type | Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
| ExchgEntCAL ALNG LicSAPk MVL DvcCAL wSrvcs | License/Software Assurance Pack | PGI-00267 | | | \$ - |
| ExchgEntCAL ALNG LicSAPk MVL UstrCAL wSrvcs | License/Software Assurance Pack | PGI-00268 | | | \$ - |
| ExchgStdCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | 381-01587 | | | \$ - |
| ExchgStdCAL ALNG LicSAPk MVL UstrCAL | License/Software Assurance Pack | 394-00520 | | | \$ - |
| LyncSVrEnCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | 7AH-00281 | | | \$ - |
| LyncSVrEnCAL ALNG LicSAPk MVL UstrCAL | License/Software Assurance Pack | 7AH-00282 | | | \$ - |
| LyncSvrStdCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack | 6ZH-00395 | | | \$ - |
| LyncSvrStdCAL ALNG LicSAPk MVL UstrCAL | License/Software Assurance Pack | 6ZH-00396 | | | \$ - |
| OfficeStd ALNG LicSAPk MVL | License/Software Assurance Pack | 021-05331 | | | \$ - |



NOVELL EDUCATION

| Product Description | | Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
|---|--|-----------------------|--|---|---------------------------|
| Sentinel Base Package 1-instance 1-Year Priority Maintenance | | 877-001862-EDU | | | \$ - |
| Sentinel Base Package 1-instance 3-Year Priority Maintenance | | 877-001863-EDU | | | \$ - |
| Novell Privileged user Mgr 2.3 1-Instance License + 1-Year Priority Maintenance | | 877-005821-EDU | | | \$ - |
| Novell Privileged User Manager 1-Instance 1-Year Priority Maintenance | | 877-005823-EDU | | | \$ - |
| Novell Privileged User Manager 1-Instance 3-Year Priority Maintenance | | 877-005824-EDU | | | \$ - |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 1-Year Priority Maintenance | | 877-006391-EDU | | | \$ - |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 3-Year Priority Maintenance | | 877-006392-EDU | | | \$ - |
| NetIQ Cloud Manager 1-Instance 1-Year Priority Maintenance | | 877-006963-EDU | | | \$ - |
| NetIQ Cloud Manager 1-Instance 3-Year Priority Maintenance | | 877-006964-EDU | | | \$ - |
| Self-service Password Reset 2.0 100-User 1-Year Priority Maintenance | | 877-007800-EDU | | | \$ - |
| Self-service Password Reset 2.0 100-User 3-Year Priority Maintenance | | 877-007801-EDU | | | \$ - |



Mandatory Submissions

Response Content

RFO Section 3.9.7 – Response Files

RESPONDENT MUST PROVIDE THE ITEMS LISTED BELOW.

- Exhibit A – Respondent Information (**SIGNED**)
- Exhibit A – **Canceled Contracts** – Attachment 1 (if applicable)
- Exhibit A1 –Any Exceptions Requested or Affirmative Statement the Respondent takes no Exceptions
- Exhibit B – Respondent History and Experience
- Exhibit C – Contract Marketing and Customer Support Plan
- Exhibit D – Historically Underutilized Business (HUB) Subcontracting Plan (HSP)
- Exhibit E – Voluntary Product Accessibility Template (VPAT)
- Exhibit F – Respondent Release of Liability for Reference
- Exhibit G – EDGAR Certification Form

Response Content Cont'd

- Exhibit H – Vendor Accessibility Policy Assessment (PDAA)
- Exhibit I – Certification of OFF Premise Customer Services (if applicable)
- Exhibit K – Vendor Accessibility Development Services Information Request (VADSIR) (if applicable)
- Manufacturer Letters for all brands proposed – (must be signed)
- Signed Addenda to RFO
- ***Package 2 - Itemized Price Sheet**
- Exhibit J Reference Form - Vendor References should be submitted by customers through the RFO email provided

Response Content Cont.

- For Vendors with a high volume of documents to be submitted here are 3 options to facilitate the issues with loading individual documents to BidStamp and the fact that BidStamp does not allow for Zip Files to be uploaded.
1. Embed the VPAT and LOA files in Package 2 itemized pricing loading only one document to BidStamp.
 2. Create a separate spreadsheet to embed the documents in alphabetical order by brand name loading only one document to BidStamp.
 3. Combine the documents into zip files and submit via the RFO email. Make sure files do not exceed 25MB per email. In Bidstamp vendors will upload a file with a list of zip files submitted for verification purposes. The RFO email rfodir-cpo-tmp-570@dir.texas.gov. Emails will be received up to the RFO closing date and time, DIR will move these files to the response folder after the RFO opens.

Authorized Resellers/Order Fulfillers

- Any Respondent who is not the manufacturer or publisher of a product included in its Response must supply a signed letter from the manufacturer or publisher certifying that Respondent is an authorized reseller of the manufacturers or publisher's products to the agencies and political subdivisions of the State, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Respondent's proposal. **Signed letters of authorization must be submitted with Respondent's proposal.**
- Any Respondent who is an authorized VAR Resellers must supply a letter from the publisher applicable to their response certifying that **Vendor is an authorized volume licensing reseller of publisher's** products to the agencies and political subdivisions of the State of Texas as described in **Section 2. Scope of this RFO. Failure to supply all letters of authorization will result in elimination of the related product or the entire proposal from the solicitation process.**

EULA, Licenses and Service Agreements

- DIR is **removing all requirements for** vendors to provide software EULAs, licenses, and or service level agreements documents under this RFO.
- Vendors **may be required** on a case-by-case bases to provide these documents during the negotiation phase of this solicitation.
- Please note that any additional agreements may not conflict with the DIR Contract, including DIR's Standard Terms and Conditions.

Rejection of Responses

Section 3.10 of the RFO states:

DIR has sole discretionary authority and reserves the right to reject any and all Responses received as a result of this RFO. Responses that do not comply with the mandatory submission requirements may be rejected. In addition, DIR reserves the right to accept or reject, in whole or in part, any Responses submitted, and to waive minor technicalities when in the best interest of the State.



Questions

- Break (10 minutes)
- **Reference the RFO Section Number and Page Number with your submitted question.**
- Questions answered today are unofficial until posted on the ESD.
- Submit additional questions through BidStamp VIS.

Reminder

- Questions answered today are unofficial until posted on the Electronic State Business Daily (ESBD) in the form of an Addendum.
- Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-CPO-TMP-570 on the ESBD: <http://esbd.cpa.state.tx.us/>
- It is the responsibility of Vendors to monitor the EBSD web site for addenda.

Solicitation Schedule

| Activity | Date/Time (CST) |
|---|-------------------------------|
| Publish RFO on Electronic State Business Daily | 2/2/2023 |
| Deadline for submitting Pre-Proposal Conference questions | 02/24/2023 05:00 PM (CT) |
| Pre-Proposal Conference (Optional) | 03/01/2023 01:00 PM (CT) |
| Deadline for submitting all RFO Questions | 03/21/2023 05:00 PM (CT) |
| *Deadline for Posting Q&A Addendum to the ESBD | 4/3/2023 05:00 PM (CT) |
| Deadline for submitting Response to RFO | 04/28/2023 02:00 PM (CT) |
| Deadline for DIR to receive Respondent References | 04/28/2023 02:00 PM (CT) |
| Evaluations, Clarifications, and Amended Responses | 05/01/2023 – 5/30/2023 |
| Negotiations and Awards | 06/01/2023 – until completed |

*This will be part of Addendum 1 to be posted shortly after this meeting.



Conference Closing

All questions, inquiries **must** be directed to:

Vania Ramaekers

Email: Vania.Ramaekers@dir.texas.gov



DocuSign Envelope ID: C60E0299-0276-4666-92C3-3736F-45968A3

Thank You

DIR CPO Team



Transforming How
Texas Government
Serves Texans

Texas Department of Information Resources

dir.texas.gov | @TexasDIR | #DIRisIT

Item 20.

Software, Commercial Off the Shelf (COTS) and Related Services, DIR-CPO-TMP-570 - Pre-Proposal Conference Attendees 03/01/2023

| Host Details | | Host Name | Email |
|------------------|------------------------|--------------------------------------|---|
| Attended | Yes | Chief Procurement Office, DIR | cpo@dir.texas.gov |
| Panelist Details | | | |
| Attended | Panelist Name | Email | |
| Yes | Vania Ramaekers | vania.ramaekers@dir.texas.gov | DIR Procurement Lead and Single Point of Contact for RFO DIR-CPO-TMP-570 |
| Yes | Kyle Gavit | Kyle.Gavit@dir.texas.gov | DIR |
| Yes | Marie Cohan | Marie.Cohan@dir.texas.gov | DIR |
| Yes | Tom Hay | tom.hay@dir.texas.gov | DIR |
| Attendee Details | Attendee Name | Email | Organization |
| Yes | Richard Turk | richard.turk@ansarada.com | Ansarada |
| Yes | Robert Armstrong | robert.armstrong01@sap.com | SAP Ariba |
| Yes | Lilly Chadwick | lilly.chadwick@rubicon.com | Rubicon |
| Yes | Robert Husain | rhusain@sunsetlearning.com | Sunset Learning Institute |
| Yes | Kerry Mungo | knungo@presidio.com | Presidio Networked Solutions |
| Yes | Terri Gober | tgober@comsoftx.com | Great South Texas Corporation dba Computer Solutions |
| Yes | Margarita Apodaca | Margarita.Apodaca@softwareone.com | Software One, Inc. |
| Yes | Jaspreet Singh Monga | jaspreet.monga@softchoice.com | Softchoice |
| Yes | Andy Smetana | Smetana@PMCServices.com | PMCS Services |
| Yes | Dave Tomke | dave.tomke@softchoice.com | Softchoice |
| Yes | Kindra Allen | kindraallen@deloitte.com | Deloitte |
| Yes | Michele Strickhouser | michele.strickhouser@hyland.com | Hyland Software |
| Yes | Steph Gowin | steph.gowin@hyland.com | Hyland Software |
| Yes | Lisa Black | lisa_black@shi.com | SHI GS |
| Yes | Steve Jellison | steve.jellison@aurigo.com | Aurigo Software Technologies, Inc. |
| Yes | Dustin Brinkman | dustin@gworks.com | gWorks |
| Yes | Kelli Conine | kconine@pcgus.com | Public Cpsulting Group |
| Yes | Debbie Nesdale | debbie.nesdale@aurigo.com | Aurigo Software Technologies, Inc. |
| Yes | Jeffrey Haag | jeff.haag@mdfcommerce.com | Periscope |
| Yes | Shawn Birch | sbirch@911inform.com | 911inform |
| Yes | Alex Betancourth | abetancourth@udtonline.com | United Data Technologies Inc. dba UDT |
| Yes | Himanshi Garg | himanshi.garg@mdfcommerce.com | Periscope |
| Yes | Jimmy Williams | jwilliams@ironscapes.com | IRONSCALES |
| Yes | Neer Patel | neer.patel@ironscapes.com | IRONSCALES |
| Yes | Dulari von Christerson | dulari@freitdata.com | Freit Data Solutions, Inc. |
| Yes | Ryan Grant | GTSSales@gts-ts.com | GTS Technology Solutions, Inc. |
| Yes | Oraios Ward | oraioaward@gmail.com | Abundans Information Technology LLC |
| Yes | Sarah Haddock | shaddock@mccinnovations.com | MCCI, LLC |
| Yes | Kelley Jacob | kelley.jacob@ttecdigital.com | TTEC Digital |
| Yes | Julie Roche | julie.roche@highstreetit.com | Highstreet IT Solutions, LLC |
| Yes | Tom Lynch | tlynch@rfdinc.com | www.rfdinc.com |
| Yes | Henry Tran | henry.tran@highstreetit.com | Highstreet IT Solutions |
| Yes | Josh Ezring | josh.ezring@highstreetit.com | Highstreet |
| Yes | John Eagles | rfpteam@phoenixteam.com | Phoenix Business inc. |

| | | | | |
|-----|---------------------|---|--|---|
| Yes | Thomas Becher | tbecher@averhealth.com | Averhealth | Marketing Content Writer |
| Yes | Justin Manni | jmanni@averhealth.com | Averhealth | Director |
| Yes | Melissa Proctor | melissa.proctor@sas.com | SAS | Proposal Manager |
| Yes | Paul Graeber | paul.graeber@sas.com | SAS | Account Executive |
| Yes | Sabrina Marquez | smarquez@cyclomedia.com | Cyclomedia Technology, Inc. | Sales Operations Manager |
| Yes | Matt Thomas | mthomas@cyclomedia.com | Cyclomedia Technology, Inc. | Sales Manager |
| Yes | Matt Wierman | matt.wierman@softwareone.com | Software One, Inc. | Account Manager |
| Yes | Eric Fultz | ericf@saltustech.com | Saltus Technologies, LLC | National CEO |
| Yes | GARY MASSEY | gary.massey@government-business-partners.com | GOVERNMENT BUSINESS PARTNERS LLC (GBP) | National Director, State & Local Government |
| Yes | Michel Nerrant | mnerrant@veridas.com | Veridas | SVP North America |
| Yes | Jennifer Brickhill | jennifer.brickhill@insight.com | Insight Public Sector | SLED Capture Manager |
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| Yes | Naveen Kumar Pillai | govt@paramountsoft.net | Paramount Software Solutions Inc | Sr. Proposal Writer |
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| Yes | Amanda Wolosz | amanda@indigov.com | Indigov Corporation | Proposal Manager |
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| Yes | Kenneth Moon | kenneth.moon@gmail.com | Veoci | VP Marketing |
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| Yes | Chet Hayes | chet@vertosoft.com | Vertosoft | CTO |
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| Yes | Tim Johnson | tim@urbanlogiq.com | UrbanLogiq | Proposal Manager |
| Yes | Michelle Ray | mray@absolute-fs.com | Absolute Facility Solutions, LLC | CEO |
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| Yes | Joe Haynes | joe.haynes@caso.com | CASO Document Management, Inc. | Business Development Executive |
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| Yes | Joe Wisby | joseph.wisby@gep.com | GEP Worldwide | Senior Manager |

| | | | | |
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| Yes | Amelia Balderrama | ameliab@idocket.com | iDocket | CEO |
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| Yes | Brad Cranford | brad.cranford@tylertech.com | Tyler Technologies | Sr. Director Growth and Opportunity |
| Yes | George Hazelton | tom.hazelton@intelliconnectllc.net | Intelliconnect, LLC | Managing Partner |
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| Yes | David Houliston | dhouliston@doc2e-file.com | Doc2e-file | I. T. Specialist |
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| Yes | Sherri Leflay | sleflay@imagetrend.com | ImageTrend, LLC | Director of Contracts & Proposals |
| Yes | Dominica Council | dcouncil@proofpoint.com | Proofpoint | Sr Regional Director - Public Sector SLED |
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| Yes | Adam Friedrich | adamfri@cdwg.com | CDW Government LLC | Proposal Specialist |
| Yes | Irene Chaves | irene.chaves@thentia.com | Thentia Cloud | Proposal Specialist |
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| Yes | Davids Achonu | davids.achonu@alineds.com | http://www.alineds.com | CEO |
| Yes | Scott Roth | scott.roth@nomihealth.com | Nomi Health | VP, Sales |
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Department of Information Resources

Request for Offer DIR-CPO-TMP-570

Software, Commercially Off the Shelf (COTS) and Related Services

Exhibit J

Vendor References

VENDOR REFERENCES
Department of Information Resources
Request for Offer DIR-CPO-TMP-570
Software, Commercially Off the Shelf (COTS) and Related Services
Revised 3/2/2023.

REFERENCE DEADLINE TO DIR: No later than April 28, 2023, 2:00 PM

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: rfodir-cpo-tmp-570@dir.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name _____
 Software Product/Services Category _____
 Prime Contractor _____
 Subcontractor(s) _____
 Dates of Performance: Starting Date _____ Ending Date _____
 Total Est. Contract Dollar Amount _____

This portion to be completed by the Customer providing reference and returned to DIR at rfodir-cpo-tmp-570@dir.texas.gov.

Rating: (0) Unsatisfactory; (1) Marginally Satisfactory; (2) Satisfactory; (3) Exceeds Expectations; N/A. Not Applicable
 Definitions for each rating category are contained on the following page.

Please provide your opinion by rating the following:

Quality of Software and Related Services

1. Have you purchased any Software and/or Related Services from this Vendor in the past 2 years? Yes ___ No ___
2. Vendor's ability to provide the products or services in a timely manner? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
3. Vendor's knowledge of and ability to answer questions regarding the products? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
4. Vendor's ability to resolve problems? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Cost

5. Timely, current, accurate & complete invoices 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Timeliness of Performance

6. Adherence to delivery schedule (major tasks, milestones) 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Business Relations & Customer Satisfaction

7. Effectively communicated with customer management & staff 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
8. Vendor personnel (professional, cooperative & flexible) 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
9. Vendor's attitude toward customer service 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
10. Overall Satisfaction with Vendor 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Comments: (Please use additional page if necessary)

In your opinion, should this Vendor be used again for Software and Related Services?

Yes ___ No ___

In your opinion, should this Vendor be recommended to others? Yes ___ No ___

Rater's Name: _____ Date: _____

Organization: _____

Title: _____

Phone Number: _____ Fax Number: _____ Email address: _____

Vendor Reference Evaluation Scoring

| | | |
|---|---|--|
| <p>Excellent (3) There are no quality problems. There are no cost issues.</p> | <p>There are no delays.</p> | <p>Responses to inquiries, technical, service, and administrative issues are effective and responsive.</p> |
| <p>Satisfactory (2) Nonconformances do not impact achievement of contract requirements.</p> | <p>Cost issues do not impact achievement of contract requirements.</p> | <p>Delays do not impact achievement of contract requirements.</p> <p>Response to inquiries, technical, service, and administrative issues is usually effective and responsive.</p> |
| <p>Marginal (1) Nonconformances require minor Agency resources to ensure achievement of contract requirements.</p> | <p>Cost issues require minor Agency resources to ensure achievement of contract requirements.</p> | <p>Delays require minor Agency resources to ensure achievement of contract requirements.</p> <p>Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.</p> |
| <p>Unsatisfactory (0) Nonconformances are compromising the achievement of contract requirements.</p> | <p>Cost issues are compromising performance of contract requirements.</p> | <p>Delays are compromising the achievement of contract requirements.</p> <p>Response to inquiries, technical, service, and administrative issues is not effective and responsive.</p> |

***NOTE: THIS SPREADSHEET MUST be turned in with your Response.**

Instructions

RESPONDENTS TO THIS RFO MUST ENTER THEIR PROPOSED AVERAGE BRAND DISCOUNT IN THE BIDSTAMP VENDOR INFORMATION SYSTEM (VIS). CATEGORIES MUST BE ENTERED IN BIDSTAMP AS LISTED.

TAB 1 - PRODUCTS DETAILS / DISCOUNT SHEET - The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).

Respondent will provide a MSRP price list of products being proposed
Discount range (e.g., 0% - 99%) is not allowed.

Product detail list Pricing information is not entered in the BidStamp VIS.

Brand product detail will be entered in Brand Product Detail tab and submitted in BidStamp VIS in EXCEL spreadsheet format.

TAB 2 - BidStamp BRAND Average Discount - will be completed in accordance with Package 1 RFO Document Section 3.9.4 Pricing - Complete Tab 2 BIDSTAMP Average Discount Sheet, and entered in BIDSTAMP.

If Respondent is proposing multiple discounts for the same brand, the branded products must be listed separately with the associated discount or grouped with an associated discount. Respondent will calculate the average discount per brand in this Package. The brand average will be entered in BidStamp per instructions in Bid Package 1 RFO Document Section 3.9.4.1 For example:

Brand ABC

Department of Information Resources
 Request for Offer DIR-CPO-TMP-5:
 Software, Commercially of the Shelf and Related
 Bid Package 2 - ITEMIZED PRICING SCHEDULE

**All Brands Discount Averages must be entered into DIR
 in the BidStamp VIS. Per instructions Package 1 RFO Document
 Pricing**

Company Name: _____

THIS SPREADSHEET WILL BE PART OF RESPONSE

**EXAMPLES for use. Respondent must enter the Brand Name
 BidStamp VIS, exactly as written in section 3.9.4.1 of Package
 so may result in Respondent's bid not tabulating**

| BRAND | FUNCTION |
|-----------------|---------------------------------|
| Brand-x | Audit Management |
| Brand-x | Case Management |
| Brand-x | Artificial Intelligence (AI) |
| Brand-x | Audit Management |
| Brand-y | Back-Up Software |
| Brand-y | Data Management Software |
| Brand-y | Design and Development Software |
| Brand-Z | Developer Tools Software |
| Microsoft (VAR) | Office 365 |
| Adobe (VAR) | Adobe |
| NOVELL (VAR) | Novell |

| <i>Brand-Variious</i> | <i>Complete Solution</i> |
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Company Name: _____

IF Respondent IS PROVIDING

* For Respondent reference: DIR CUSTOMER

For reference purposes, t

DO

| CATEGORY | SUBCATEGORY | BRAND Name if Applies otherwise enter N/A |
|----------------------------------|---------------|---|
| <i>EXAMPLE: Audit Management</i> | <i>SaaS</i> | <i>Vista</i> |
| <i>EXAMPLE: Audit Management</i> | <i>Server</i> | <i>Vista</i> |
| <i>EXAMPLE: Audit Management</i> | <i>SaaS</i> | <i>Vista</i> |
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Department of Information Resources
Request for Offer DIR-CPO-TMP-570
Software, Commercially of the Shelf and Related Services
Bid Package 2 -ITEMIZED PRICING SHEET

THE ENTIRE LINE FOR A SPECIFIC BRAND, PROVIDE CATALOGUE LINK AND LIST PRICE.
MSRP PRICE contains 0.75% DIR Administrative Fee and it will be AUTOMATICALLY ADJUSTED.
The formula to calculate DIR Customer Price is: DIR Customer Price = MSRP x (1-DIR Fee %)
DO NOT make any changes to the format of the grids. Insert additional rows as needed.

| SERVICE DESCRIPTION | SERVICE CATEGORY | SERVICE PART NUMBER | Service Unit |
|------------------------|-----------------------|---------------------|-----------------|
| <i>maintenance</i> | <i>Software</i> | <i>XB-2000</i> | <i>Annually</i> |
| <i>Project Manager</i> | <i>Implementation</i> | <i>XB-2001</i> | <i>P/hour</i> |
| <i>Training</i> | <i>Suite</i> | <i>XB-2002</i> | <i>p/day</i> |
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HERE MOST SOLD PRODUCTS

calculated once all other cells are filled.

DIR Discount%) x (1+0.75%)

led.

| MSRP | DIR Customer Discount % off MSRP | DIR Customer Price* | AVERAGE BRAND DISCOUNT |
|--------------|----------------------------------|---------------------|------------------------|
| \$ 1,000.00 | 15.00% | \$ 856.38 | |
| \$ 2,000.00 | 25.00% | \$ 1,511.25 | |
| \$ 10,000.00 | 10.00% | \$ 9,067.50 | 16.67% |
| | | \$ - | |
| | | \$ - | |
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| Department of Information Resources Request for Offer DIR-CPO-TMP-570 Software, Commercially of the Shelf and Related Services Bid Package 2 - ITEMIZED PRICING SHEET | | | |
|--|----------------|------------------|----------------------------------|
| COMPANY NAME: | Type of Volume | Product Category | DIR Customer Discount % off MSRP |
| By QTY | 1-99 units | | |
| | 100-500 units | | |
| | 500+ units | | |
| | | | |
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Additional Discount Based On Aggregate Sales

| Contract Sales Threshold | Product or Category Description | Part Number if Applicable | Original Discount | Additional Discount | Total Discount |
|--------------------------|---------------------------------|---------------------------|-------------------|---------------------|----------------|
| Example: \$50,000.00 | | | 20.00% | (+) 5.00% | 25.00% |
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Department of Information Resources
Request for Offer DIR-CPO-TMP-570
Software, Commercially of the Shelf and Related Service
Bid Package 2 -ITEMIZED PRICING SHEET

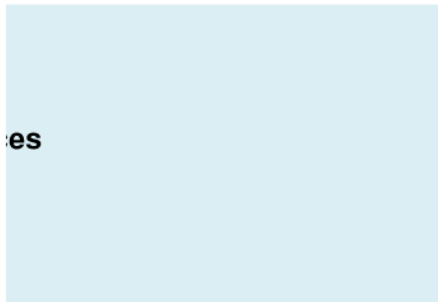
Company Name: _____

VAR Instructions:

For the purposes of this RFO, the publisher's software licensing products are categorized i offer ONLY one (1) discount for each Publisher Category listed. The discount for each publ all products within the publisher category to determine the net DIR Customer price. The pri include all shipping and handling fees.

| Publisher Category | Publisher Discount Level |
|---|---|
| Adobe: | |
| Cumulative Licensing Program (CLP) Education Membership | Level 3 Points target: 100,000+ points |
| Cumulative Licensing Program (CLP) Government Membership | Level 2 Points target: 300,000+ points |
| Microsoft: | |
| Enterprise Agreement (comprised of subcategories as listed below) | |
| Office Professional/Standard | Level D less 7.5% |
| Windows Pro Desktop Operating System | Level D less 7.5% |
| Core CAL/Enterprise CAL Suite (to include stand alone components) | Level D less 6% |
| All other or additional EA licensing | Level D |
| Enterprise Subscription Agreement | Level D less 2% |
| Select Plus Government | Level D |
| Select Plus Academic | Level D |
| Novell Master License Agreement: | |
| Education License and Value Added Service | MLA Level 5 |
| Government License and Value Added Service | MLA Level 5 |

PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The a



in the table below. Vendors must
publisher category will be applied to
ce to all DIR Customers shall

| DIR Customer Discount (from Publisher Discount Level) |
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Administrative fee = .75% x

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Department of Informat
Request for Offer DIR-
Software, Commercially of the Sh
Bid Package 2 -ITEMIZED

Company Name: _____

Instructions:

A representative sample of software license products for each software publisher is provided in the Product listed. The price to the DIR Customer shall include all shipping and handling fees. The process.

PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The ac

ADOBE ACADEMIC

| Product Description | Product Type |
|--------------------------------------|------------------------|
| Acrobat Professional v.10 | MAC Full License |
| Acrobat Professional v.10 | WIN Full License |
| Acrobat Professional v.10 | MAC Concurrent License |
| Acrobat Professional v.10 | WIN Concurrent License |
| Acrobat Suite v.1 | WIN Full License |
| After Effects CS5.5 v10.5 | Full License |
| Audition CS5.5 v.4 | Full License |
| Captivate v5.5 | Full License |
| Coldfusion Builder v.2 | Full License |
| ColdFusion Ent v.9 | Full License |
| ColdFusion Standard v.9 | Full License |
| Contribute CS5 v.6 | MAC Full License |
| Contribute CS5 v.6 | WIN Full License |
| CS5.5 Design Premium 5.5 K12SITE<250 | Full License |
| CS5.5 Design Premium 5.5 K12SITE>250 | Full License |
| CS5.5 Design Std 5.5 K12SITE<250 | Full License |
| CS5.5 Design Std 5.5 K12SITE>250 | Full License |
| Dreamweaver CS5.5 v11.5 | Full License |
| eLearning Suite v.2.5 | Full License |
| Flash Pro CS5.5 v11.5 | Full License |
| Photoshop Elements v10 | Full License |

ADOBE GOVERNMENT

| Product Description | Product Type |
|----------------------------|---------------------|
| Acrobat v10 | WIN Full License |
| Acrobat Professional v10 | MAC Full License |

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|-------------------------------|------------------|
| Acrobat Professional v10 | WIN Full License |
| Acrobat Suite v1 | WIN Full License |
| After Effects CS5.5 v10.5 | Full License |
| Audition CS5.5 v4 | Full License |
| Captivate v5.5 | Full License |
| Coldfusion Builder v2 | Full License |
| ColdFusion Ent v8 | Full License |
| ColdFusion Standard v9 | Full License |
| Contribute CS5 v6 | MAC Full License |
| Contribute CS5 v6 | WIN Full License |
| CS5.5 Design Premium v5.5 | Full License |
| CS5.5 Design Std v5.5 | Full License |
| CS5.5 Master Collector v5.5 | Full License |
| CS5.5 Production Premium v5.5 | Full License |
| Dreamweaver CS5.5 v11.5 | Full License |
| eLearning Suite v2.5 | Full License |
| Flash Pro CS5.5 v11.5 | Full License |
| Photoshop CS5 v12 | MAC Full License |
| Photoshop CS5 v12 | WIN Full License |
| Photoshop Elements v10 | Full License |

MICROSOFT ENTERPRISE AGREEMENT

Product Description

Product Type

| | |
|--|---------------------------------|
| ExchgEntCAL ALNG LicSAPk MVL DvcCAL wSrvcs | License/Software Assurance Pack |
| ExchgEntCAL ALNG LicSAPk MVL UsrCAL wSrvcs | License/Software Assurance Pack |
| ExchgStdCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack |
| ExchgStdCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack |
| LyncSVrEnCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack |
| LyncSVrEnCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack |
| LyncSvrStdCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack |
| LyncSvrStdCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack |
| OfficeStd ALNG LicSAPk MVL | License/Software Assurance Pack |
| OfficeStd ALNG LicSAPk MVL Pltfrm | License/Software Assurance Pack |
| SharePointEntCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack |
| SharePointEntCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack |
| SharePointStdCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack |
| SharePointStdCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack |
| WinSvrCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack |
| WinSvrCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack |
| CoreCAL ALNG LicSAPk MVL DvcCAL | License/Software Assurance Pack |
| CoreCAL ALNG LicSAPk MVL Pltfrm DvcCAL | License/Software Assurance Pack |
| CoreCAL ALNG LicSAPk MVL Pltfrm UsrCAL | License/Software Assurance Pack |
| CoreCAL ALNG LicSAPk MVL UsrCAL | License/Software Assurance Pack |
| CoreCAL ALNG SA MVL DvcCAL | Software Assurance |
| CoreCAL ALNG SA MVL Pltfrm DvcCAL | Software Assurance |

| | |
|---|---------------------------------|
| CoreCAL ALNG SA MVL Pltfrm UstrCAL | Software Assurance |
| CoreCAL ALNG SA MVL UstrCAL | Software Assurance |
| EntCAL ALNG LicSAPk MVL DvcCAL wSrvcs | License/Software Assurance Pack |
| EntCAL ALNG LicSAPk MVL Pltfrm DvcCAL wSrvcs | License/Software Assurance Pack |
| EntCAL ALNG LicSAPk MVL Pltfrm UstrCAL wSrvcs | License/Software Assurance Pack |
| EntCAL ALNG LicSAPk MVL UstrCAL wSrvcs | License/Software Assurance Pack |
| OfficeProPlus ALNG LicSAPk MVL Pltfrm | License/Software Assurance Pack |
| ProDsktpwMDOP ALNG LicSAPk MVL | License/Software Assurance Pack |

MICROSOFT SELECT PLUS GOVERNMENT

| Product Description | Product Type |
|-----------------------------------|----------------------------|
| Access 2013 | License |
| Access LIC/SA | License/Software Assurance |
| Core Client Device Client License | License/Software Assurance |
| Core Client User Client License | License/Software Assurance |
| Excel 2013 | License |
| Excel 2013 | License/Software Assurance |
| Office 2013 | License |
| Office 2013 | License/Software Assurance |
| Office Pro Plus | License |
| Office Pro Plus | License/Software Assurance |
| Office Std 2013 | License |
| Office Std 2013 | License/Software Assurance |
| Powerpoint 2013 | License |
| Powerpoint 2013 | License/Software Assurance |
| Project 2013 | License |
| Project 2013 | License/Software Assurance |
| Visio Pro 2013 | License |
| Visio Pro 2013 | License/Software Assurance |
| Visio Std 2013 | License |
| Visio Std 2013 | License/Software Assurance |
| Visual Studio Premium w/MSDN | License/Software Assurance |
| Visual Studio Pro 2012 | License |
| Visual Studio Pro w/MSDN | License/Software Assurance |
| Word 2013 | License |
| Word 2013 | License/Software Assurance |

MICROSOFT SELECT PLUS ACADEMIC

| Product Description | Product Type |
|---------------------|--------------|
| Access 2013 | License |

| | |
|---|----------------------------|
| Access 2013 | License/Software Assurance |
| Excel 2013 | License |
| Office MAC Std 2011 | License |
| Office MAC Std 2011 | License/Software Assurance |
| Office Pro Plus 2013 | License |
| Office Pro Plus 2013 | License/Software Assurance |
| Office Std 2013 | License |
| Office Std 2013 | License/Software Assurance |
| Project 2013 | License |
| Project 2013 | License/Software Assurance |
| Project Pro 2013 | License |
| Project Pro 2013 | License/Software Assurance |
| Powerpoint 2013 | License |
| Visio Pro 2013 | License |
| Visio Pro 2013 | License/Software Assurance |
| Visio Std 2013 | License |
| Visio Std 2013 | License/Software Assurance |
| Visual Studio Foundation Server Client Per Device | License/Software Assurance |
| Visual Studio Premium w/MSDN | License/Software Assurance |
| Visual Studio Premium w/MSDN | Software Assurance |
| Visual Studio Pro w/MSDN | License/Software Assurance |
| Word 2013 | License |
| Word MAC 2011 | License |

NOVELL EDUCATION

Product Description

| |
|---|
| Sentinel Base Package 1-instance 1-Year Priority Maintenance |
| Sentinel Base Package 1-instance 3-Year Priority Maintenance |
| Novell Privileged user Mgr 2.3 1-Instance License + 1-Year Priority Maintenance |
| Novell Privileged User Manager 1-Instance 1-Year Priority Maintenance |
| Novell Privileged User Manager 1-Instance 3-Year Priority Maintenance |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 1-Year Priority Maintenance |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 3-Year Priority Maintenance |
| NetIQ Cloud Manager 1-Instance 1-Year Priority Maintenance |
| NetIQ Cloud Manager 1-Instance 3-Year Priority Maintenance |
| Self-service Password Reset 2.0 100-User 1-Year Priority Maintenance |
| Self-service Password Reset 2.0 100-User 3-Year Priority Maintenance |
| ZENworks Patch Management Patch Developer kit 6.4 Standard Edition License |
| ZENworks Patch Management Patch Developer kit 6.4 Premier Edition License |
| ZENworks Asset Management 1-Instance/User 3-Year Priority Maintenance |
| ZENworks Endpoint Security Management 1-Device 3-Year Priority Maintenance |
| SUSE Linux Enterprise Management Pack for System Center Operations Manager License + 1-Year |
| SUSE Linux Enterprise Management Pack for System Center Operations Manager License 1-Year |
| SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Standard Subscription |

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| SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Priority Subscription |
| SUSE Linux Enterprise Desktop 1-Instance 1-Year Priority Subscription |
| SUSE Linux Enterprise Desktop 1-Instance 3-Year Priority Subscription |
| SUSE Linux Enterprise Server for IBM Power (per socket) Standard Subscription 3-Year |
| SUSE Linux Enterprise Server for IBM Power (per socket) Priority Subscription 3-Year |
| SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Standard Support, 1 Ph |
| SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Priority Support, 1 Phys |

NOVELL GOVERNMENT

Product Description

| |
|--|
| Sentinel Base Package 1-instance 1-Year Priority Maintenance |
| Sentinel Base Package 1-instance 3-Year Priority Maintenance |
| Novell Privileged user Mgr 2.3 1-Instance License + 1-Year Priority Maintenance |
| Novell Privileged User Manager 1-Instance 1-Year Priority Maintenance |
| Novell Privileged User Manager 1-Instance 3-Year Priority Maintenance |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 1-Year Priority Maintenance |
| Novell Sentinel Log Manager 2500 EPS 1-Instance 3-Year Priority Maintenance |
| NetIQ Cloud Manager 1-Instance 1-Year Priority Maintenance |
| NetIQ Cloud Manager 1-Instance 3-Year Priority Maintenance |
| Self-service Password Reset 2.0 100-User 1-Year Priority Maintenance |
| Self-service Password Reset 2.0 100-User 3-Year Priority Maintenance |
| ZENworks Patch Management Patch Developer kit 6.4 Standard Edition License |
| ZENworks Patch Management Patch Developer kit 6.4 Premier Edition License |
| ZENworks Asset Management 1-Instance/User 3-Year Priority Maintenance |
| ZENworks Endpoint Security Management 1-Device 3-Year Priority Maintenance |
| SUSE Linux Enterprise Management Pack for System Center Operations Manager License + 1-Year |
| SUSE Linux Enterprise Management Pack for System Center Operations Manager License 1-Year |
| SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Standard Subscription |
| SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Priority Subscription |
| SUSE Linux Enterprise Desktop 1-Instance 1-Year Priority Subscription |
| SUSE Linux Enterprise Desktop 1-Instance 3-Year Priority Subscription |
| SUSE Linux Enterprise Server for IBM Power (per socket) Standard Subscription 3-Year |
| SUSE Linux Enterprise Server for IBM Power (per socket) Priority Subscription 3-Year |
| SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Standard Support, 1 Ph |
| SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Priority Support, 1 Phys |

ion Resources

CPO-TMP-570

elf and Related Services

PRICING SHEET

ed in the tables below. Vendors must offer ONLY one (1) price for each Publisher
This is a representative sample only for the purposes of this RFO and evaluation

Administrative fee = .75% x Customer Price

| Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
|-----------------|---------------------------------|----------------------------------|--------------------|
| 65083690AB03A00 | \$200.00 | 5.00% | \$ 191.43 |
| 65083691AB03A00 | | | \$ - |
| 65083801AB03A00 | | | \$ - |
| 65083800AB03A00 | | | \$ - |
| 65086502AB03A00 | | | \$ - |
| 65110619AB03A00 | | | \$ - |
| 65106839AB03A00 | | | \$ - |
| 65125060AB03A00 | | | \$ - |
| 65123381AB03A00 | | | \$ - |
| 65047411AB03A00 | | | \$ - |
| 65047455AB03A00 | | | \$ - |
| 65070168AB03A00 | | | \$ - |
| 65070186AB03A00 | | | \$ - |
| 65112996AB03A00 | | | \$ - |
| 65113214AB03A00 | | | \$ - |
| 65122118AB03A00 | | | \$ - |
| 65122252AB03A00 | | | \$ - |
| 65105384AB03A00 | | | \$ - |
| 65126518AB03A00 | | | \$ - |
| 65109234AB03A00 | | | \$ - |
| 65137861AB03A00 | | | \$ - |

Example

| Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
|-----------------|---------------------------------|----------------------------------|--------------------|
| 65086303AC02A00 | | | \$ - |
| 65083690AC02A00 | | | \$ - |

| | | | |
|-----------------|--|--|------|
| 65083691AC02A00 | | | \$ - |
| 65086502AC02A00 | | | \$ - |
| 65110619AC02A00 | | | \$ - |
| 65106839AC02A00 | | | \$ - |
| 65125060AC02A00 | | | \$ - |
| 65123381AC02A00 | | | \$ - |
| 54025221AC02A00 | | | \$ - |
| 65047455AC02A00 | | | \$ - |
| 65070168AC02A00 | | | \$ - |
| 65070186AC02A00 | | | \$ - |
| 65112138AC02A00 | | | \$ - |
| 65121615AC02A00 | | | \$ - |
| 65117060AC02A00 | | | \$ - |
| 65114792AC02A00 | | | \$ - |
| 65105384AC02A00 | | | \$ - |
| 65126518AC02A00 | | | \$ - |
| 65109234AC02A00 | | | \$ - |
| 65048694AC02A00 | | | \$ - |
| 65048695AC02A00 | | | \$ - |
| 65137861AC02A00 | | | \$ - |

| Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
|----------------|---------------------------------|----------------------------------|--------------------|
| PGI-00267 | | | \$ - |
| PGI-00268 | | | \$ - |
| 381-01587 | | | \$ - |
| 394-00520 | | | \$ - |
| 7AH-00281 | | | \$ - |
| 7AH-00282 | | | \$ - |
| 6ZH-00395 | | | \$ - |
| 6ZH-00396 | | | \$ - |
| 021-05331 | | | \$ - |
| 021-08255 | | | \$ - |
| 76N-02345 | | | \$ - |
| 76N-02427 | | | \$ - |
| H05-00176 | | | \$ - |
| H05-00444 | | | \$ - |
| R18-00095 | | | \$ - |
| R18-00096 | | | \$ - |
| W06-00022 | | | \$ - |
| W06-01063 | | | \$ - |
| W06-01066 | | | \$ - |
| W06-00445 | | | \$ - |
| W06-00021 | | | \$ - |
| W06-01069 | | | \$ - |

| | | | |
|-----------|--|--|------|
| W06-01072 | | | \$ - |
| W06-00446 | | | \$ - |
| 76A-00025 | | | \$ - |
| 76A-00007 | | | \$ - |
| 76A-00010 | | | \$ - |
| 76A-00028 | | | \$ - |
| 269-12445 | | | \$ - |
| M6D-00005 | | | \$ - |

| Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
|----------------|---------------------------------|----------------------------------|--------------------|
| 077-06705 | | | \$ - |
| 077-02521 | | | \$ - |
| W06-00002 | | | \$ - |
| W06-00426 | | | \$ - |
| 065-08166 | | | \$ - |
| 065-03452 | | | \$ - |
| 79H-00467 | | | \$ - |
| 79H-00042 | | | \$ - |
| 79P-04712 | | | \$ - |
| 269-05557 | | | \$ - |
| 021-10293 | | | \$ - |
| 021-05339 | | | \$ - |
| 079-06238 | | | \$ - |
| 079-01662 | | | \$ - |
| 076-05292 | | | \$ - |
| 076-01810 | | | \$ - |
| D87-05994 | | | \$ - |
| D87-01099 | | | \$ - |
| D86-05323 | | | \$ - |
| D86-01240 | | | \$ - |
| 9ED-00071 | | | \$ - |
| C5E-00989 | | | \$ - |
| 77D-00110 | | | \$ - |
| 059-08670 | | | \$ - |
| 059-03715 | | | \$ - |

| Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
|----------------|---------------------------------|----------------------------------|--------------------|
| 077-06695 | | | \$ - |

| | | | |
|-----------|--|--|------|
| 077-02570 | | | \$ - |
| 065-08156 | | | \$ - |
| 3YF-00294 | | | \$ - |
| 3YF-00292 | | | \$ - |
| 79P-04691 | | | \$ - |
| 269-05623 | | | \$ - |
| 021-10282 | | | \$ - |
| 021-05331 | | | \$ - |
| 076-05273 | | | \$ - |
| 076-01776 | | | \$ - |
| H30-04027 | | | \$ - |
| H30-00237 | | | \$ - |
| 079-06228 | | | \$ - |
| D87-05984 | | | \$ - |
| D87-01057 | | | \$ - |
| D86-05324 | | | \$ - |
| D86-01175 | | | \$ - |
| 126-00156 | | | \$ - |
| 9ED-00071 | | | \$ - |
| 9ED-00073 | | | \$ - |
| 77D-00110 | | | \$ - |
| 059-08660 | | | \$ - |
| D48-01082 | | | \$ - |

| Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
|----------------|---------------------------------|----------------------------------|--------------------|
| 877-001862-EDU | | | \$ - |
| 877-001863-EDU | | | \$ - |
| 877-005821-EDU | | | \$ - |
| 877-005823-EDU | | | \$ - |
| 877-005824-EDU | | | \$ - |
| 877-006391-EDU | | | \$ - |
| 877-006392-EDU | | | \$ - |
| 877-006963-EDU | | | \$ - |
| 877-006964-EDU | | | \$ - |
| 877-007800-EDU | | | \$ - |
| 877-007801-EDU | | | \$ - |
| 873-009056-EDU | | | \$ - |
| 873-009057-EDU | | | \$ - |
| 877-001605-EDU | | | \$ - |
| 877-001621-EDU | | | \$ - |
| 877-006327-EDU | | | \$ - |
| 877-006329-EDU | | | \$ - |
| 874-005050-EDU | | | \$ - |

| | | | |
|----------------|--|--|------|
| 874-005051-EDU | | | \$ - |
| 874-005311-EDU | | | \$ - |
| 874-005312-EDU | | | \$ - |
| 874-005551-EDU | | | \$ - |
| 874-005577-EDU | | | \$ - |
| 874-006265-EDU | | | \$ - |
| 874-006266-EDU | | | \$ - |

| Product Number | List Price (Per Level Discount) | DIR Customer Discount % off MSRP | DIR Customer Price |
|----------------|---------------------------------|----------------------------------|--------------------|
| 877-001862 | | | \$ - |
| 877-001863 | | | \$ - |
| 877-005821 | | | \$ - |
| 877-005823 | | | \$ - |
| 877-005824 | | | \$ - |
| 877-006391 | | | \$ - |
| 877-006392 | | | \$ - |
| 877-006963 | | | \$ - |
| 877-006964 | | | \$ - |
| 877-007800 | | | \$ - |
| 877-007801 | | | \$ - |
| 873-009056 | | | \$ - |
| 873-009057 | | | \$ - |
| 877-001605 | | | \$ - |
| 877-001621 | | | \$ - |
| 877-006327 | | | \$ - |
| 877-006329 | | | \$ - |
| 874-005050 | | | \$ - |
| 874-005051 | | | \$ - |
| 874-005311 | | | \$ - |
| 874-005312 | | | \$ - |
| 874-005551 | | | \$ - |
| 874-005577 | | | \$ - |
| 874-006265 | | | \$ - |
| 874-006266 | | | \$ - |

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TEXAS DEPARTMENT OF INFORMATION RESOURCES

Addendum

| | |
|-----------------------------|-----------------|
| SOLICITATION NUMBER: | DIR-CPO-TMP-570 |
| ADDENDUM NUMBER: | 2 |

Addendum Date: March 27, 2023

If you should have any questions regarding this Addendum, please contact:

Vania Ramaekers
 Department of Information Resources
 300 W. 15th Street, Suite 1300
 Austin, Texas 78701
 Email: vania.ramaekers@dir.texas.gov

Notice is given to Respondents desiring to submit a response to the above referenced solicitation that additional information is required:

This Addendum modifies the solicitation for Software (COTS) and Related Services, Solicitation No. DIR-CPO-TMP-570, released February 2, 2023. It contains the answers to vendor questions received by March 3, 2023.

In the submission of its response to this solicitation, Respondents shall submit this signed “page one” of the Addendum, acknowledging receipt of the Addendum.

Respondent Acknowledgment of Receipt

(Printed entity name)

(Printed name of authorized representative)

(Signature of authorized representative)

(Date)

Question and Answer Document

The following table outlines vendor questions, references Request for Offer (RFO) sections and page numbers, and the Department of Information Resources (DIR) response to questions (question are organized in order received):

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|----|-------------|--------|---|---|
| 1. | 3.3 | NA | The Pre-Proposal Conference is listed as being on 03/01/2023 at 01:00 PM (CT), however in the same document's 3.3.1 it says the Pre-Proposal Conference is listed as being on 03/01/2023 at 10:00 AM (CT). Can you please clarify which of these provided times is correct? | The ESBD and the DIR Notice announcements was updated to correct the meeting scheduled for March 1, 2023, at 1:00 PM. |
| 2. | NA | NA | I am not able to download the documents. I have tried numerous browsers. This is for Solicitation number CPO-TMP-570. | Please contact the Comptroller's office for assistance. Sent files in 4 different emails due to size. |
| 3. | NA | NA | In the Pre-solicitation Notice Executive Summary Asset Management is listed, however there is no Class Code for Asset Management Software. Will responses that propose Asset Management COTS solutions be accepted? | Yes, all COTS software will be accepted, regardless of its function, or class/code. |
| 4. | NA | NA | After reviewing the RFO, we did not find anything that spoke to call center platforms, either cloud or on-prem. Are we able to respond with our call center software offerings and COTS services as well? | COTS Call Center Software is part of this RFO. It is unclear what is meant by COTS (Commercial Off the Shelf) services. |
| 5. | 3.3.1 | NA | What is the recommended process for responding with more than one solution? Do you want us to submit a separate response for every solution or only pricing for each one? | Respondents will be able to respond to as many solutions as they want under the RFO Package 2. Respondents will need to provide pricing for all proposed solutions. |
| 6. | NA | NA | If a solution for a brand would require hardware to utilize the COTS or SaaS solution, can we include pricing for Bundles? | Please use the Turnkey Solution Section of the RFO Package 2 to respond. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------|--------|--|---|
| 7. | Marketing Engagement | 19 | The response to question #19 in the Marketing Engagement Questions and Answers document prompts another question. If we are providing a URL link to a Brand's ACR - how will that be done in BidStamp? Do we need to create a document with all the applicable links? And to be clear, it is either an ACR or a VPAT, correct? | Links can be provided under Package number 2 of the RFO response documents, next to the product list; or you may create a document and name it ACR/VPAT links either way it will be accepted. An ACR or Accessibility Conformance Report is the completed VPAT (template). DIR requires the ACR or a link to the ACR. NOTE: DIR will not be responsible for links that do not work, and strongly encourages respondents to print ACRs and submit them to be sure. |
| 8. | 3.9.4.2 | 24 | Response to Question #44 in the Marketing Engagement Questions and Answers seems to contradict page 24, Section 3.9.4.2 paragraph 3 of the RFP. Please advise. | Question #44 references the ability to print the pricing list once the respondent has entered it in BidStamp for review and correction, Section 3.9.4.2 reference the respondents' requirements to enter the pricing in BidStamp once Package 2 pricing spreadsheet is completed. These are 2 different subjects all together. |
| 9. | RFO | 26 | Package 1 RFO Document Final page 26 Manufacture Letters of Authorization-Form of response titleABC_570_LOA_Brand.docx. is missing. We are unable to locate the document referred to in the bid documents. | Each brand will have its own letter of Authorization (LOA) and these letters are provided by the Manufacturer to the reseller. LOA is not a template document provided to respondents under this RFO. |
| 10. | RFO | NA | Does the VAR have to create the document on their own and add all the letter of authorizations for different manufacturers or is the template document referred missing? | No, there are no template documents missing, if you are a VAR authorized volume resellers for Novell, Microsoft, or Adobe you will provide one VAR LOA form for each product. Resellers that are responding as VAR, must already have the agreements in place with Novell, Microsoft, or Adobe prior to submitting a response to this RFO. If a Reseller does not have a VAR agreement, you may not respond under the VAR offering. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|---|
| 11. | 3.6.5 | 16 | Also, in section 3.6.5 pg. 16 it says all VARs should certify that Vendor is an authorized volume licensing reseller of the publisher's products to the agencies and political subdivisions of the State of Texas. As a reseller of 2000+ manufacturing partners, we have generic wording on the LOA that indicates we are authorized sellers. Would it suffice your requirement, or does it have to specifically say authorized reseller for the State of Texas? | Under this RFO the VAR volume resellers will only be submitting responses for 3 products (Novell, Microsoft, or Adobe) all other brands will be part of your regular response. If a Respondent is a reseller for 2000 different COTS software brands, it will be required to provide a LOA for each brand being proposed. |
| 12. | NA | NA | Bid Documents: How do we receive the curtesy documents from BidStamp? Is there a department or person to request them from? | BidStamp is the response submission portal only. Bid Stamp does not provide curtesy documents, all RFO documents must be downloaded from the ESBD official posting. |
| 13. | 3.3.1 | NA | In 01-RFO-DIR-CPO-TMP-570 Package 1 RFO Document - Final section 3.3, the Pre-Proposal Conference is listed as being on 03/01/2023 at 01:00 PM (CT), however in the same document's 3.3.1 it says the Pre-Proposal Conference is listed as being on 03/01/2023 at 10:00 AM (CT). Can you please clarify which of these provided times is correct? | The ESBD and the DIR notice announcements were updated to correct the meeting scheduled for March 1, 2023, at 1:00 PM. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|---|
| 14. | | | <p>It is my understanding that the RFO is a replacement for the current DIR-TSO-TMP-416 contracts, which we currently hold as a VAR for multiple products. Reading through "01-RFO-DIR-CPO-TMP-570 Package 1 RFO Document – Final.docx" it sounds like this is not for VARs to respond to, but instead intended for the software publisher / manufacturer to respond and then include their VARs, which is a major change from the existing contracts. Can a VAR bid on this with software they resell even if the software publisher/manufacturer does not bid?</p> | <p>A respondent may respond to this RFO for all COTS software. The package number 2 Pricing has a special tab for VAR these are respondents that currently have a master reseller agreement for the special volume license programs with (Microsoft, Adobe, and NOVELL) All other software being provided will be submitted under the correct tab. Appendix A, B and C are general and applies to all respondents no matter what they are selling. Respondents with Volume Reseller agreements will provide additional information and the correct reseller agreement for the software they are proposing. Respondents may propose all types of COTS software and all brands of software there are no exclusions. If you are reseller for adobe, Microsoft and or Novell but not a VOLUME program reseller you may propose these brands under the regular software tabs. See Section 2.2 of the RFO document.</p> |
| 15. | 3.3.1 | NA | <p>Regarding the DIR-CPO-TMP-570 Pre-Proposal Conference / Pre-Solicitation Webinar on March 1, 2023: On page 12 of the DIR-CPO-TMP-570 RFO document, the time of the Pre-Proposal conference on March 1, 2023, is listed as 1:00 PM CT in the Section 3.3 Schedule of Events table. On page 12 of the RFO, Section 3.3.1 Optional Webinar states that a Pre-Solicitation Webinar will be held on Zoom / Interactive Webcast on March 1, 2023 at 10:00 AM (no time zone stated). The ESB page states a Pre-Solicitation Conference on March 1, 2023, at 1:00 PM Can TX DIR please clarify: Are these three listings about the same event? If so, which time is correct on March 1, 2023 – 1:00 PM Central or 10:00 AM (Central?)</p> | <p>The ESB and the DIR Notice announcements were updated to correct the meeting scheduled for March 1, 2023, at 1:00 PM.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|---|
| 16. | Exhibit J | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit J Reference Form - How many references would you like provided for this procurement? | Reference Section 3.9.3.7 of the RFO. DIR requires a minimum 3 references. |
| 17. | Exhibit E | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit E VPAT (for COTS) -Is there a minimum compliance score on the VPAT required to receive an award? | No. ACRs (completed VPATs) are not evaluated for a "score". ACRs are evaluated for product-tested conformance to WCAG 2.0 AA success criteria. |
| 18. | Exhibit A | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit A Respondent Information / Question 14 - Does a current or former employee's employment by a city/county in Texas apply? Does this require full time employment or do internships apply as well? | This question is about State of Texas Employees not City or County. The time spend on this contract is not relevant to requirement of discloser of state employees in this form. |
| 19. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan / Question 7 - Adding list price to a non-password protected page may hinder abilities to negotiate with customers not on DIR and allow competitors an advantage, is it possible to not list the price but provide a mechanism to obtain DIR pricing? | DIR respondents are required to create a DIR contract Web page and that is what cannot be password protect. Question 7 is about the <u>staff in your company</u> responsible for maintaining the DIR Contract web page. |
| 20. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan / Question 7 - Adding list price to a non-password protected page may hinder abilities to negotiate with customers not on DIR and allow competitors an advantage, is it possible to not list the price but provide a mechanism to obtain DIR pricing? | This question seems to be a duplicate from the question above. However, in regard to posting price lists, please review the Contract Sample in package # 3 section 7 it states that vendors will have a. MSRP/list price or DIR Customer price; and Discount percentage (%) off MSRP or List Price. |
| 21. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan / Question 7 - Is it possible to list the discounts for DIR contracts on the webpage with DIR products without the MSRP listed? | This question seems to be a duplicate from the question above. However, in regard to posting price lists, please review the Contract Sample in package # 3 section 7 it states that vendors will have a. MSRP/list price or DIR Customer price; and Discount percentage (%) off MSRP or List Price. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|--|--|
| 22. | Exhibit H | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit H Policy Driven Adoption for Accessibility (PDAA) Vendor Assessment - Is there a minimum percentage complete on the PDAA required to receive an award? | Respondents will need to answer every question on their PDAA for 100% completion. |
| 23. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan / Question 9(a) - What type of reporting is requested by DIR? Is it possible to provide an example? | Monthly Sales Report - See attached example. |
| 24. | Package 2 Itemized Pricing Sheet | NA | RFO-DIR-CPO-TMP-570 Package 2 Itemized Pricing Sheet - Will DIR publish successful awardee's MSRP or only discounted DIR pricing? | Reference Package 3 A – Standard Terms and Conditions - Section 10.23 Public Information Act. DIR does not publish respondents' package 2 itemized pricing sheets as part of the solicitation process. |
| 25. | Package 2 Itemized Pricing Sheet | NA | RFO-DIR-CPO-TMP-570 Package 2 Itemized Pricing Sheet - Do successful awardee's can provide additional discounts off DIR pricing at their discretion? | DIR does not prohibit respondents from providing additional discounts during negotiations with customers. |
| 26. | Exhibit J | NA | The Exhibit J Reference Form asks the customer/vendor to provide feedback on "Quality of Comprehensive Web Development Services". I assume this should be changed and be generic to all responders' offerings, vs that specific?? | The reference form has been updated and posted with Addendum 1 - Changed Web Development for Software and Related Services |
| 27. | Exhibit A | NA | Exhibit A, Attachment 1, List of Respondent's Cancelled Contract. Can you more clearly define "Cancelled Contract"? Is this referring to a cancelation "with cause" (due to lack of or poor performance by the responder) or any type of cancelation (such as due to lack of budget or purchase of a competitor's solution)? | This section does not require disclosure of contracts that expired after a customer declined to exercise an optional contract renewal. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|--|
| 28. | HUB | 14 | Document 01-RFO-DIR-CPO-TMP-570 Package 1 RFO Document - Final Pg 14 Under HUB Subcontracting Plan: Is it necessary for a reseller/vendor to be a hub vendor to participate in this solicitation? Can a NON-HUB vendor participate in this solicitation and state in the HUB SUBCONTRACTING PLAN(HSP) that they do not intend to subcontract? Are you able to confirm that it is only mandatory to fill out an HSP and not to become a HUB vendor or to have a HUB Plan in order to qualify for participation? | No, it is not necessary to be a HUB vendor to participate. Yes, a non-hub vendor can participate in this solicitation, and they will need to fill out the HUB subcontracting plan as required and fill out the correct section on self-performing. |
| 29. | NA | NA | Could you please confirm if all required forms can be signed electronically by the authorized representative OR is it mandatory to get these forms manually signed in wet ink and scanned forms are then uploaded to BidStamp? | A DocuSign or other electronically verifiable signature will be accepted. A typed name in the required signature location will not be accepted as a "signed". |
| 30. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan: In Exhibit C, Contract Marketing and Customer Support Plan, please confirm if the page limit of 5 is non-exclusive of the questions/statements. In the template, total number of questions/statements are over two pages. | The page limit of 5 includes the questions and answers sections. |
| 31. | 2.2 | 6 | Can DIR confirm that DIR-CPO-TMP-570 is for the ability to sell COTS software (and related software) other than Adobe, Microsoft, and Novell? I just want to make sure that I am understanding section 2.2 starting on pg. 6 correctly. | This RFO is for all types of software COTS and Related Services, the VAR portion of the RFO is just for Adobe, Microsoft, and Novell. Please see Package 2 Itemized pricing Tab 1 is for all software, Tab 5a and 5b is for VAR only. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|---|--|
| 32. | 2.1 | 5 & 6 | <p>RE: Software, Commercial Off-The-Shelf (COTS) RFO DIR-CPO-TMP-570 579, RFO document, Section 2.1 Products, pages 5-6.</p> <p>QUESTION: If a company proposes several products via their response to this RFO, is it possible that TX DIR would select some of those products and not others within a single respondent's proposal? Or if one or more products offered is not of interest to TX DIR, would the company's entire proposal be ineligible for award?</p> | Responses are evaluated based on the evaluation criteria set forth in the RFO, not based on the number of products being proposed. |
| 33. | 2.1 | 5 & 6 | <p>RE: Software, Commercial Off-The-Shelf (COTS) RFO DIR-CPO-TMP-570 579, RFO document, Section 2.1 Products, pages 5-6.</p> <p>QUESTION: Is a Respondent's proposal including multiple software products selected for award on an all-or-nothing basis? Or can TX DIR choose to award a contract for only some of the Respondent's software product offerings, and not others?</p> | <p>NO, DIR will not be determining award on an all or nothing basis.</p> <p>RFO Section 1.2 states: DIR reserves the right to make a single award or multiple awards from this RFO. All contract(s) awarded shall be indefinite quantity contracts with no minimum guarantees of any purchases. For administrative efficiency for DIR and its Customers, DIR reasonably anticipates that it will award a finite number of Contracts as determined by the competitive breaks created through evaluation of Responses.</p> |
| 34. | Package 2 Itemized Pricing Sheet | NA | RFO-DIR-CPO-TMP-570 Package 2 Itemized Pricing Sheet - Will DIR publish successful awardee's MSRP or only discounted DIR pricing? | Reference Package 3 A – Standard Terms and Conditions - Section 10.23 Public Information Act. DIR does not publish respondents' package 2 itemized pricing sheet as part of the solicitation process. |
| 35. | 2.11 | 10 | After award of a TX DIR contract via this RFO, may vendors add COTS software products (that are within the scope of this RFO) to our offerings under this contract vehicle? | Yes, respondents may request to add products to an awarded contract. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|---|
| 36. | 2.11 | 10 | RE: RFO Document, Section 2.11, Products and Services Offerings, page 10. QUESTION: If the selected vendors are allowed to add COTS software products to their offerings after award (within the scope of this RFO), what are the vendors' options for doing so? | Reference Contract Sample package # 3 of the RFO section 4.1 Product and Service Offerings. Products and services available under this Contract are limited to the technology categories defined in Request for Offer DIR-CPO-TMP-570 for Software, Commercially Off the Shelf (COTS) and Related Services. At DIR's sole discretion, Successful Respondent may incorporate changes or make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO. |
| 37. | 3.7.1 | 8 & 9 | RE: RFO Document, Section 2.7, Electronic and Information Resources (EIR) Accessibility, pages 8-9; and Section 3.7.1, ACR Submission and Review, pages 17-18. QUESTION: We have been advised that ACRs/VPATs for our products should be completed by a third-party vendor. If ACRs/VPATs for any of our products are still in progress, and we submit an Accessibility Statement letter, as mentioned in section 3.7.1 of the RFO, will our proposal receive a lower evaluation score? | VPATs can be completed by anyone with knowledge of how the product tested against (conforms with) WCAG 2.0 AA success criteria. For VPATs in progress, an Accessibility Statement will suffice for a reasonable amount of time until the ACR is available. Evaluation is based on credibility of the accessibility documentation. The Accessibility Statement should be comprehensive included expected completion date, potential gaps in compliance, and how the vendor will accommodate the gaps in accessibility. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|--|
| 38. | 2.2 | NA | We are an Oracle Partner. We resell Oracle software and perform "Related Services" for Oracle products. In the RFO Section 2.2 VAR, it states, "The authorized Resellers will provide the software and Related Services for Adobe, Microsoft, and Novell ONLY." By your definition in Exhibit L – Definitions of RFO, Related Services is defined as: "Services for the purpose of this RFO include, but are not limited to installation, configuration, maintenance and support." 1. Are related services to Oracle software unacceptable to this response? 2. How do we respond to the Related Services category for Oracle software? 3. Did you intend to exclude other software, like Oracle? | This is a software COTS solicitation, do not confuse the VAR section of the RFO with another section, Oracle is not part of the VAR product section, however Oracle is a COTS software and can be part of the regular section of the RFO response. Please see Package 2 Itemized pricing Tab 1 which is for all software, Tab 5a and 5b is for VAR only. |
| 39. | NA | NA | Is the VPAT necessary because we take video in moving vehicles and drivers cannot be; blind or deaf. | The camera hardware does not need a VPAT because there is no user interaction (they are installed by vendor), but the software that captures the video should be accessible. |
| 40. | NA | NA | We have an old VPAT for our product that is on another DIR contract. I read that we don't have to submit a new one. Is that correct? | If your product has not been versioned and the code affecting the interface has not changed, then an old ACR can be used. If there has been any change at all that affects the interface, a new VPAT is needed. |
| 41. | NA | NA | How do I complete the VPAT? | The VPAT is a template that lists performance criteria for websites and applications. The product is tested against the success criteria for the corresponding function and conformance is measured as follows: Supports, Partially Supports, Does Not Support, and Not Applicable. Someone knowledgeable of how the product tested against WCAG 2.0 AA success criteria should complete the VPAT. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|--|---|
| 42. | NA | NA | How do we test our product? Do we do that internally or do we hire someone? | Testing can be done internally or by hiring a third-party tester. It is preferred that a person with a disability test the product. |
| 43. | 2.6 | NA | Is an Online E-Commerce Store / Portal required to support the DIR COTS Contract in the case of an award? | No |
| 44. | Package 2 Itemized Pricing Sheet | NA | Is Volume Licensing Pricing required to participate in this RFO? | NO |
| 45. | 3.9.3.5 | NA | Exhibit D HUB Subcontracting Plan (HSP) - Will there need to be a HSP Notification sent out to notify potential Subcontractors for Each proposed COTS Brand? Clarification Provided: I am preparing to propose five (5) COTS Software Brands. Will I be required to provide proof of HSP Notifications for each of 5 COTS Software Brands? | Vendors responding to this RFO will be completing the HSP, the notification requirements are for prime vendors to communicate with HUB vendors or potential resellers for Method B. The HUB plan requirements is not based on each individual product being proposed. |
| 46. | 3.9.3.7 | NA | Exhibit J Respondent References - Are there alternative submission options for Respondent References due to State Agency and Local Government Customers not being allowed to provide Customer References? | Yes, DIR will require the reference form to be submitted via email. To the extent a customer prefers to answer the questions orally, we ask that they indicate that preference on the form, along with other information they are willing to provide in writing to be contacted. |
| 47. | Exhibit B | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit B Respondent Experience - Question 4 - Can you please define "Market Segment"? | Market segments are defined as part of a larger market, often lumping individuals together based on one or more similar characteristics. Corporations and their marketing teams use various criteria to develop a target market for their products and services. For Question 4 the market segment is whatever market your company sales the products and services your company is proposing to sale to the State of Texas Customers. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|--|
| 48. | Exhibit B | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit B Respondent Experience - Question 5 - Does "Local Governments" refer only to local governments within Texas or any and all local governments? | Texas Local Governments (City, County, etc..) |
| 49. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan / Question 9 - Can you please provide additional detail regarding the following: Reporting to be provided to DIR and when; On-boarding times; Order Tracking communications; and Follow-up process and timeline | Does your company currently have a "Service Level Agreement" for the products and services your company is proposing to sale to the State of Texas? If so, just attach your response as directed in Question 9. The bullet items listed are simply examples. |
| 50. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan / Question 9 - Can you provide details on the DIR order process? For example, does the vendor submit an order on behalf of the DIR customer or does the customer submit directly to DIR? | DIR Cooperative Contract Program, is a self-service program, where our customers order directly from vendors based on Cooperative Contracts awarded. |
| 51. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan / Question 9 - When referencing "on-boarding" does this reference from contract signature to go-live or is there another definition? | No, the on boarding plus the other items listed under Question 9 are simply examples of items that a service level agreement may cover. Please attach your company Service Level Agreement or simply answer that you do not have one. |
| 52. | Exhibit C | NA | RFO-DIR-CPO-TMP-570 Package 1 Exhibit C Customer Marketing and Support Plan / Question 9 - Does "follow up process and timeline" refer to following up on an order? | No, the follow up process and timeline plus the other items listed under Question 9 are simply examples of items that a service level agreement may cover. Please attach your company Service Level Agreement or simply answer that you do not have one. |
| 53. | NA | NA | Is DIR holding a conference next week? Also, the link to solicitation files herein needs updating. | Conference is March 1, 2023, at 1PM - ESBD was down but it is back up again. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|--|
| 54. | 2.2 | 6 | Package 1, Section 2.2, Value Added Resellers (VAR) [page 6] of the RFO Document specifically calls out Adobe, Microsoft, and Novell. Please confirm that Respondents can propose additional publishers beyond just those three. | For the VAR program DIR can only accept responses for the 3 brands we currently have volume Agreements with manufacturers. The RFO package 2 Tabs 1, 2,3 and 4 are for all other COTS. |
| 55. | Exhibit J | NA | Package 1, Exhibit J, Reference Form references "Comprehensive Web Development and/or Managed Services". Can you please provide an updated form that asks the reference to evaluate the Vendor on the scope of this RFO? | The reference form has been updated and posted under Addendum 1 - Changed Web Development for Software and Related Services |
| 56. | 3.9.4.1 | NA | Requirement: RFO 3.9.4.1 Automated Pricing Form in BidStamp Vendor Information System (VIS) Respondents must offer only one discount for each brand, product family or whatever group of Respondent's choice proposed. The discount shall be applied to all products within that brand, product family or whatever group of Vendor's choice. Question: Per RFO package 2 worksheet 5a. VAR product volume discount, Vendors must offer ONLY one (1) discount for each Publisher Category listed. This conflicts with section 3.9.4.1. Please provide detailed clarification. | Due to the addition of VAR to this Solicitation the volume discount can be confusing, however if you read the instruction on Package 2 Itemized Pricing the directions in the RFO document will make sense. Also, the Pre-Solicitation Conference video provides additional information that would be helpful when completing this form. |
| 57. | 3.6.2 | NA | Section 3.6.2 appears to permit a Reseller to submit "links to the manufacturer accessibility documentation" in lieu of a completed ACR. Please confirm that a link to a software manufacturer's existing VPAT is acceptable in lieu of the reseller submitting a VPAT in the form of Exhibit E, Accurate Product VPATs. | Yes, a link to current ACRs on the manufacturer's website will be accepted, however DIR will not be responsible for links that do not work, and strongly encourages vendors to print ACRs and submit them to be sure. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|---|
| 58. | NA | NA | If a Successful Respondent has Authorized Resellers/Order Fulfillers under their DIR Contract, are the Authorized Resellers/Order Fulfillers permitted to perform services in connection with the resale of the software under the Successful Respondent's DIR Contract? | Each reseller must submit a LOA for each brand being proposed under this RFO, no previous links to current contracts or previous RFO's submissions will be accepted. If the respondent is proposing related services (installation, maintenance, etc.) To the software the respondent is authorized to resell, the respondent must include the related services in the Tab 3 of Bid Package 2. Services only are out of scope for this RFO. |

| | | | | |
|-----|----|----|--|--|
| 59. | NA | NA | <p>The RFO currently prohibits "Services only (installation, configuration, interfacing, migration, maintenance, support, etc.) without also providing any associated software or SaaS product." Would DIR consider amending the RFO to permit "Services only" so long as the services are related to the brand of software or SaaS product that was awarded under the Successful Respondent's DIR Contract? Alternatively, would DIR consider amending the RFO to permit "Services only" so long as the services are related to the brand of software or SaaS product and previously sold by the Successful Respondent to the Customer from a previous DIR Contract? DIR Customers who purchased software from a Successful Respondent through an expired DIR contract may require standalone services (post implementation services, configuration, interfacing, migration, maintenance, support, etc.) and would not be able to obtain these services under the proposed terms of the RFP. DBITS contracts may not be friendly to configuration, post-implementation and simple maintenance due to these services generally being hourly services. ITSAC contracts are more oriented to staffing services rather than software technical/professional services, and as such, the rates for ITSAC, to be competitive for staffing, are much lower than the software-related technical/professional services. It would be helpful for these customers to acquire these services for a software-related contract designed for these types of services.</p> | <p><u>No, this RFO will not be awarded for vendors providing services only.</u> Only Related Services. DIR customers know that they can purchase services from any DIR Contracts for any previously purchased software. If the brand of software is on the current contract approved list the services can be purchased. the requirement that only software sold by a specific contract could be sale related services is no longer a valid requirement.</p> |
|-----|----|----|--|--|

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|--|
| 60. | NA | NA | Would DIR consider amending the term of the proposed awarded contract? Many customers seeking enterprise related software seek a long-term purchase, which equates to lower pricing. Customers may be hesitant to purchase off of a two-year contract. We suggest at least a four-year or longer base term of the contract with subsequent one-year renewals. | DIR anticipates the award of a 5-year contract (2 initial term, with 2 year renewal and a (2) 1 year optional extension. In addition, the contract has a Survivability Clause that customers may utilize as needed. |
| 61. | Exhibit B | NA | -RFO-DIR-CPO-TMP-570 Package 1 Exhibit B Respondent Experience - Question 6 - Are you looking for a list of all state/local accounts outside of Texas that a respondent has a contract with? | DIR is requesting a list of Current Active Contracts a respondent has with any other entity in or out of the State of Texas. DIR is not looking for respondents Account information. |
| 62. | NA | NA | Hi, we are planning on bidding on this. We are also currently engaged in providing services with several entities who wish to conduct purchases from us in the near term. Our question: Is it possible to submit our response early, since this isn't a single award but rather a selection process, and could it be reviewed prior to the 6/1 date indicated in the Solicitation? Thank you for your response. | DIR follows the State of Texas Procurement Laws and a solicitation response cannot be accepted, evaluated or opened prior to established solicitation opening date and time of 4/28/2023 2PM. No contract will be awarded outside of the process prior to evaluation and recommendation for negotiation. |
| 63. | Exhibit J | NA | # RFO/Document Location/Cell Reference Question 1 Exhibit J Respondent References Form Question 1 Question 1 asks the customer's opinion re: "Comprehensive Web Development and/or Managed Services." Should we modify the form based on the category or categories the reference can provide feedback? | The reference form has been updated and posted with Addendum 1 - Changed Web Development for Software and Related Services |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|---|
| 64. | 3.9.3.7 | NA | RFO 3.9.3.7 page 21 re: Exhibit J Respondent References We assume the same reference may be provided for multiple categories if the reference fits those categories. Is this correct? | The Reference form may be submitted for as many products and services as the respondent and customer agree to submit. The reference form has been updated and it will be posted with Addendum 1 - Changed Web Development for Software and Related Services. |
| 65. | 2.2 | NA | RFO section 2.2 Value Added Resellers (VAR) pages 6-7 "DIR enters into Master License Agreements (MLA) with the software publishers named in this RFO to establish statewide pricing level/band or discount levels for software that is available through each of the software publisher's volume license program. DIR intends to contract with an authorized reseller or authorized resellers for these software publishers with which DIR has existing publisher agreements. The authorized Resellers will provide the software and related services for Adobe, Microsoft, and Novell ONLY. DIR reserves the right to make a single award for all the software publishers or multiple awards for each software publisher." Please confirm "ONLY" should be removed from the third sentence. | No, DIR can only enter VAR contracts for brands in which DIR currently has a master volume program agreement with the manufacturer. DIR is only requesting responses for VAR products as listed (NOVELL, ADOBE, and Microsoft) No other brands will be accepted for the VAR program. |
| 66. | NA | NA | Regarding Microsoft Scope and its pricing: Q1) Is this bid intended to replace DIR-TSO-4061 and DIR-TSO-4092 for Microsoft used by the State of Texas? | DIR does not replace contracts, however the vendors that currently have contracts related to any of the RFOs being combined by this solicitation are encouraged to respond for the opportunity to receive new contracts. |
| 67. | NA | NA | Regarding Microsoft Scope and its pricing: Q2) Is this an additional contract to add more vendors to sell Microsoft? | The Microsoft under the VAR program is a current volume program agreement DIR has with Microsoft. This solicitation is for DIR to award new VAR contracts. However, vendors not part of the VAR program with Microsoft may propose Microsoft products under the regular software section. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|--|
| 68. | NA | NA | Regarding Microsoft Scope and its pricing: Q3) Can the State provide more information about the amount Microsoft spent on this contract in previous years? | The RFO Document Section 1.3.6 table 2 shows the total amount spent by DIR for Software. If you need detail information for specific sales, you may request an open records request via the DIR portal. |
| 69. | NA | NA | Regarding Microsoft Scope and its pricing: Q4) The products requested in package 2 Itemized pricing bid template 5b are either no longer available or at end of life; does State want us to provide wider catalog pricing for all the MS products or some of the major ones such as M365/O365/EMS/ Windows? | DIR expects the VAR vendors to update this list to show the current volume program products. |
| 70. | NA | NA | Regarding Microsoft Scope and its pricing: 5a-VAR Product Volume Discount, it has mentioned under publisher discount level as Level d less 7.5% & 2%, is this 7.5% & 2% discount on the cost charged to a reseller or is it the discount on retail price? Shall our price be over that 7.5% and 2%? For example, if M365 E5 retail price to the reseller is 62.8 per user per month and the cost price to the reseller is 50.54 per user per month, so shall we quote our discount on (62.8-2%) or (50.54-2%)? | VAR - Volume discount is determined by the DIR volume agreement with the publisher, currently the discounts shown under TAB 5a, is the volume discount, vendors will provide additional discounts, which will be added to the DIR customer discount prices. Example DIR discount is 7.5% VAR vendor proposed an additional 2% discount = 8.5% is the discount DIR customers expect to receive from the product MSRP price when purchasing through the VAR program. |
| 71. | NA | NA | Regarding Adobe Scope and its pricing: Q1) Is this bid intended to replace DIR-TSO-4052 for Adobe currently used by the State of Texas? | DIR does not replace contracts, however the vendors that currently have contracts related to any of the RFO's being combined by solicitation are encourages to respond for the opportunity to receive new contracts. |
| 72. | NA | NA | In regards to Adobe Scope and its pricing: Q2) Is this an additional contract to add more vendors to purchase Adobe? | The Adobe under the VAR program is a current volume program agreement DIR has with Adobe. This solicitation is for DIR to award new VAR contracts. However, respondents not part of the VAR program with Adobe may proposed Adobe products under the regular software section. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|--|---|
| 73. | NA | NA | In regards to Adobe Scope and its pricing: Q3) Can the State provide more information about the amount Adobe spent on this contract in previous years? | The RFO Document Section 1.3.6 table 2 shows the total amount spent by DIR for Software. If you need detail information for specific sales, you may request an open records request via the DIR portal. |
| 74. | NA | NA | In regards to Adobe Scope and its pricing: Q4) The products requested in package 2 Itemized pricing bid template 5b are either no longer available or at end of life; does State want us to provide wider catalog pricing for all the Adobe products? | DIR expects the VAR respondents to update this list to show the current volume program products. |
| 75. | NA | NA | In regard to Adobe Scope and its pricing: Q5) 5a-VAR Product Volume Discount, it has mentioned under publisher discount level as Points target: 100,000 + and 300,000+ points? It's hard to quote one single discount percentage level on all products, can we provide a cost-plus/ minus percentage model rather than discount percentage on retail price? Similarly for Microsoft, can we provide a cost plus/minus margin rather than a discount percentage? This is because cost of every product is different so it's hard to quote a blanket percentage discount percentage for every product. | DIR cooperative VAR program will not accept ranges or +/- discounts for this solicitation. |
| 76. | Package 2 Itemized Pricing Sheet | NA | For the main categories mentioned under the 5b VAR Products pricing sheet, does a reseller quote just Microsoft and leave the other two products not interested in bidding? Can that lead to disqualification or give more points to a VAR who is bidding on all three? | Yes, respondents proposing under the VAR program can propose for all 3 or just 1 or 2. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|--|--------|--|--|
| 77. | Package 2 Itemized Pricing Sheet | NA | For the main categories mentioned under the 5b VAR Products pricing sheet, does a reseller quote just Microsoft- can a reseller get just one product contract in these three categories or would all three be awarded to a single reseller? | The respondent will receive one contract for the solicitation response. If a vendor proposes, COTS software under Tab2 and Tab3 of the Pricing Sheet, and also proposes under the VAR program Tab5a and Tab5b, still will receive one contract. |
| 78. | 3.7.1 | 17 | Document 01-RFO- Package 1 (Pg 17 3.7.1 3.7.1 ACR Submission and Review) Q) There are some products we sell that can only provide LOA, not the other two. Do you need VPAT/ACR for every product you've requested? Can we still add product just with LOA? | If a COTS software product owner does not provide resellers with an Accessibility Conformance Report (ACR) or completed VPAT), the vendor may not be able to sell the product, as DIR accessibility requirements are very clear. All Responses must include a Policy Driven Adoption for Accessibility (PDAA) self-assessment. |
| 79. | Exhibit J | NA | Exhibit J- Vendor References Q) Vendors have been asked to get the forms filled out by the end customers. Most of our customers are willing to be called by DIR and share updates about Softchoice's work, but many are not willing to fill out the forms due to non-disclosure/privacy clauses. Is it possible to just add the detailed work done along with the customer's contact details instead of having them fill out the form? | The requirement is for the customer to provide the information and submit the form. Any request for a phone reference must come from the customer and must be requested prior to the due date for the submission of the reference forms. DIR reserves the right to accept/not accept a phone reference in lieu of the written reference requirement. |
| 80. | 3.9.5 | 3 | In Package 1, the RFO Exhibit A, Respondent Information Section 13; P. 3 of 11, and in the RFO Document, Section 3.9.5, Exceptions to Requirements; P. 25, both documents reference Exhibit A1 as an excel sheet (.xlsx). However, Exhibit A1 is a Word Document. Should the reference be updated to reflect that it is a Word Document? | The document is being provided as a word document, please disregard the references to a Spreadsheet. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|--|---|
| 81. | 1.2 | NA | <p>Requirement: 1.2 Purpose The objective of this Request for Offer (RFO) is to solicit Responses from potential Respondents to provide Software, Commercial Off-the-Shelf (COTS) and Related Services, in addition DIR will be soliciting responses for Value Added Software from authorized resellers for software publishers with which DIR has established publisher agreements for volume license programs to DIR Customers, acting by and through the Department of Information Resources (DIR).</p> <p>Question: Please clarify the scope. Are respondents allowed to bid other Software Publishers beyond Adobe, Novell, and Microsoft?</p> | <p>The scope for this RFO is very clear, DIR is requesting respondents to propose all types of COTS software in any type of delivery available. The addition of the 3-volume program software referenced throughout the RFO as VAR are for the 3 manufactures referenced in the RFO (Microsoft, Adobe, and Novell). The addition of the VAR request does not change the RFO scope for COTS Software. vendors that currently have a VAR contract, a Case Management Contract and /or a Software contract, will respond to this solicitation for all products and if the vendor moves to the negotiations, it will be awarded one contract.</p> |
| 82. | Package 2 Itemized Pricing Sheet | NA | <p>Requirement: TAB 1 Products Detail and TAB 2 - BidStamp BRAND</p> <p>Average Question: When bidding Adobe, Novell and/or Microsoft, are respondents required to complete 1. Product detail worksheet and 2. Brand Average? If so, there is no separate column for Publisher Category on price worksheet 2. Brand Average, we presume that we should use the Function column to distinguish the pricing by Publisher Category followed by All products (to indicate that regardless of the function all products will have the same discount for the respective Publisher Category). Another option is to allow respondents to add a column for Publisher Category. Please provide confirmation or provide detailed clarification.</p> | <p>This will be clarified in detail during the Pre-solicitation conference presentation. Tab1 will contain a detailed product list for every brand being offered along with each discount. Tab 2 will have only the average discount for all products within a brand which is carried over from Tab1. However, the VAR products will show only the additional discount being proposed. Tab 2 will have the VAR discount being proposed for these 3 products identified and clearly market, when entered into BidStamp. These 3 products will be entered individually.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|--|
| 83. | Exhibit E | NA | Requirement: Exhibit E: VPAT (for COTS) - Question: May we provide links to the publisher's VPAT's? | Yes, Links can be provided under Package number 2 of the RFO response documents, next to the product list; or you may create a document and name it ACR/VPAT links either way it will be accepted. NOTE: DIR will not be responsible for links that do not work, and strongly encourages vendors to print ACRs and submit them to be sure. |
| 84. | 3.4.1 | NA | Requirement: 3.4.1 HUB Subcontracting Plan Question: We are considering using HUBs as resellers/order fulfillers. However, we are uncertain how that works. Would the state please share some additional information on how that works? | Please contact the HUB office via email at dir.hub@dir.texas.gov for a detail training on how the HUB program works. |
| 85. | 3.4.1 | NA | Requirement: 3.4.1 HUB Subcontracting Plan Question: May a DIR customer issue the PO and make payment to the HUB reseller? | Please contact the HUB office via email at dir.hub@dir.texas.gov for a detail training on how the HUB program works. |
| 86. | 3.4.1 | NA | Requirement: 3.4.1 HUB Subcontracting Plan Question: are respondents that Self-perform required to provide Prime Contractor Progress Reports? Is the report required monthly whether or not customer was invoiced on a given month? | Please contact the HUB office via email at dir.hub@dir.texas.gov for a detail training on how the HUB program works. |
| 87. | Exhibit J | NA | Requirement: Exhibit J Respondent References Question: If we provide more than 3 references will the state evaluate the 3 highest scoring references? | DIR will consider the first three references received. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|--|---|
| 88. | 4.2.2 | NA | Requirement: 4.2.2 Weighted Evaluation Criteria 3.9.3.7.? Respondent? S references will be evaluated in accordance with Section 4.2.2 Weighted Evaluation Criteria.? Question: We did not see Respondent References listed in the weight evaluation criteria. Is this requirement part of another category? If not, will you please detail how the references will be evaluated? | References are part of the Exhibit B evaluation Criteria; it is part of the vendor experience overall score. |
| 89. | 4.2.2 | NA | Requirement: 4.2.2 Weighted Evaluation Criteria 3.9.3.7.? Respondent? S references will be evaluated in accordance with Section 4.2.2 Weighted Evaluation Criteria.? Question: How much weight will total estimated contract dollar amount account for in the state? weighted evaluation criteria? | There are no weighted evaluation criteria for dollar amounts in the RFO. Vendor may need to clarify these questions. |
| 90. | Exhibit J | NA | Requirement: Exhibit J Respondent References Question: Does the State require 3 total references, or is it 3 per Publisher? | A minimum of 3 references in total, 3 customers total is required. Reference does not have anything to do with how many products the vendor is proposing. |
| 91. | Package 2 Itemized Pricing Sheet | NA | Requirement: Package 2 Itemized pricing sheet - on the Instructions tab (line 11), it states " Respondent shall provide a link to Manufacturer Suggested Retail Published Pricing List.? Question: Where should these links be included our response? | This line has been removed under the revised package 2 under addendum 1 |
| 92. | Exhibit J | NA | Requirement: Exhibit J Respondent References Question: Must the reference customer be an Adobe licensing customer if we are bidding Adobe? | NO, it is reference of your company experience with your customers. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|---|--------|---|--|
| 93. | Package 2 Itemized Pricing Sheet | NA | Requirement: RFO package 2 itemized pricing sheet, 5b VAR Products Pricing Sheet Question: May bidders add the formula for the DIR Customer Price = MSRP x (1-DIR Discount%) x (1+0.75%) to Worksheet 5B? | Yes, Vendors may add the formula, Package 2 Revised per addendum 1 will have the formula. |
| 94. | Package 2 Itemized Pricing Sheet | NA | Requirement: RFO package 2 itemized pricing sheet Question: 5b VAR Products Pricing sheet - some of the part numbers are discontinued. May the respondent provide currently available part numbers instead? Or will DIR update this worksheet to include only currently available part numbers? | The information provided in an example. Respondents should provide the actual information to include accurate and updated part numbers. |
| 95. | Package 2 Itemized Pricing Sheet | NA | Document: 14-RFO-DIR-CPO-TMP-570 Package 2 Itemized Pricing Sheet.xls Q: We have reviewed current pricing from comparable companies and notice most do not provide specific pricing but only MSRP discount % and Unit of pricing, is that typical and acceptable? | No, what you are seeing under the DIR page Appendix C pricing sheet is the final negotiated discounts to be posted on the web site. The vendor is required to post pricing in the awarded contract requirements Web Page. Vendors must submit pricing under Package 2. |
| 96. | Standard Terms and Conditions Section 4.9 | 9 | Document: 15-RFO-DIR-CPO-TMP-570 Package 3 A-DIR Standard Terms and Conditions (December 2021 - Final).pdf Section 4.9 Data Location, page 9 Q: Data hosting is provided by Microsoft Azure in European instances. Is this acceptable? | No, the data location is a Texas Legislative requirement. This RFO does not cover Data Hosting Services. However, these are the types of things you will list under the Exhibit A1 Exceptions. Just follow the directions for this section and if/and when your company moves to Negotiations these items will be negotiated with DIR Legal. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|---|---------|---|--|
| 97. | Standard Terms and Conditions Section 5.1.1 | 9 | Document: 15-RFO-DIR-CPO-TMP-570 Package 3 A-DIR Standard Terms and Conditions (December 2021 - Final).pdf Section 5.1.1? Work Product? page 9 and; Section 5.2 Ownership, page 11 Q: Our data is deliverable rather than a? work for hire? product. Is it acceptable to re-define the work product and identify what will be? owned? by the customer and what the customer will be given a license to? | These are the types of things you will list under the Exhibit A1 Exceptions. Just follow the directions for this section and if/and when your company moves to Negotiations these items will be negotiated with DIR Legal. |
| 98. | Standard Terms and Conditions Section 7.11 | 17 & 18 | Document: 15-RFO-DIR-CPO-TMP-570 Package 3 A-DIR Standard Terms and Conditions (December 2021 - Final).pdf Section 7.11 Trade Show Participation, pages 17-18 Q: Please provide examples of a trade show and a range of costs to the respondent. | The price for events varies from event to event. Please check the DIR Calendar for posted information on DIR events. |
| 99. | NA | NA | RFO Package 3 C? Sample Service Agreement Section 2.3 Payment Type describes Services provided on a time and materials (T&M) basis. May services be contracted on a Firm Fixed Price (FFP) basis? | That is a sample document, Service agreements are usually made at the customer level. Under Package 2, Tab 3 vendors will list the type of services they provide and the unit of measure for these services. |
| 100. | 3.4.1 | NA | Requirement: 3.4.1 HUB Subcontracting Plan Question: May 1099 employees qualify as a HUB. | The HUB Subcontracting plan is for vendors to provide opportunities, to Resellers and Subcontractors. A Employee regardless of how it is paid, is a company Employee and it does not qualify as a HUB. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|---|
| 101. | NA | NA | <p>Marketing Engagement Questions and Answers Questions 68 "Per the Marketing Engagement Questions and Answers, ""if a COTS standard commercial term i.e., a EULA or License / Service agreement requires a DIR customer to sign this document outside of the Purchase Order signature, such documents are to be reviewed, redlined, and approved by DIR Legal and become part of the negotiated contract appendices. NOTE: this does not include shrink-wrap software agreements." Most respondents will be responding on behalf of software publishers with commercial terms that are offered through 1) shrink-wrap agreements; and/or 2) agreements that require additional negotiation / a DIR customer signature. Question: In the interest of expediting contract negotiation/award process, will DIR consider awarding contracts to respondents / software publishers with shrink-wrap agreements through a separate process than respondent / software publishers with agreements that require further negotiation (and signature)?"</p> | <p>This requirement has been deleted from this solicitation see, Addendum 1</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|---|--------|---|---|
| 102. | Standard Terms and Conditions Section 5 | NA | <p>"Attachment A - Appendix A - DIR Standard Terms and Conditions Section 5, Intellectual Property Matters" Can DIR verify that in a SaaS (software as a service) environment that the applications, data storage, data referral, and any vendor authored interface processes shall remain the exclusive property of the vendor? As agreed under the software supply agreements, the customer is provided limited use of the application and storage processes. We are seeking confirmation that the ownership of all developed processes remains the property of the vendor and the customer's ownership rights are limited to storable data products produced through the use of the vendor. Supplied applications.</p> | <p>These are the types of things you will list under the Exhibit A1 Exceptions. Just follow the directions for this section and if/and when your company moves to Negotiations these items will be negotiated with DIR Legal.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|---|
| 103. | NA | NA | "Marketing Engagement Questions and Answers Questions 67" "Per the Marketing Engagement Questions and Answers, ""if a COTS standard commercial term i.e., a EULA or License / Service agreement requires a DIR customer to sign this document outside of the Purchase Order signature, such documents are to be reviewed, redlined, and approved by DIR Legal and become part of the negotiated contract appendices. NOTE: this does not include shrink-wrap software agreements." Most respondents will be responding on behalf of software publishers with commercial terms that are offered through 1) shrink-wrap agreements; and/or 2) agreements that require additional negotiation / a DIR customer signature. In the interest of expediting the contract negotiation/award process, will DIR consider allowing respondents to submit two separate responses (one response for software publishers with commercial terms in a shrink-wrap agreement, and one response for software publishers with commercial terms that require additional signatures/negotiation?)" | This requirement has been deleted from this solicitation see, Addendum 1 |
| 104. | NA | NA | RFO Document - Final Will DIR accept multiple responses from a single company in response to this solicitation? | No, DIR will not consider multiple responses from the same company. |
| 105. | NA | NA | RFO Document - Final In the event that a company provided multiple responses to this solicitation and those responses each met the criteria to receive an award, would DIR award multiple contracts to a single company in response to this solicitation? | No, DIR will not consider multiple responses and DIR will not be awarding multiple contracts to the same company. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|--|
| 106. | NA | NA | Our company (Prime TX DIR Bidder) has acquired several companies that all have COTS applications. Each company also has their own individual Tax IDs, and they are currently being consolidated under the Prime TX DIR Bidder's Tax ID. The consolidation is planned to be completed in the 3rd Quarter of 2023. Q. 1 What are our options for bidding on the current TX DIR COTS RFO? | All respondents to this RFO will need to submit their proposal in accordance with their legal structure and authorized selling authority at the time the proposal is submitted in accordance with the RFO requirements. The respondent will be evaluated and scored based on what is submitted in the proposal. Any changes to a company's structure and/or selling authority (authorized reseller/manufacturer) after the evaluation period has concluded will be considered on a case-by-case basis. Depending on what the company's changes include, DIR, at its discretion, will determine if the submitting entity will continue to the next phase of the negotiation/award process and whether or not changes to proposed offerings will be allowed. |
| 107. | NA | NA | Our company (Prime TX DIR Bidder) has acquired several companies that all have COTS applications. Each company also has their own individual Tax IDs, and they are currently being consolidated under the Prime TX DIR Bidder's Tax ID. The consolidation is planned to be completed in the 3rd Quarter of 2023. Q.2. Would we be able to bid as the Prime TX DIR Bidder with our COTS solutions and include the COTS solutions of the acquired companies by submitting Manufacture Letters of Authorization (Pg. 24 Section, 3.9.4.4 of 01-RFO-DIR-CPO-TMP-570 Package 1 RFO Document - Final) for each acquired company's COTS solution being proposed? | All respondents to this RFO will need to submit their proposal in accordance with their legal structure and authorized selling authority at the time the proposal is submitted in accordance with the RFO requirements. The respondent will be evaluated and scored based on what is submitted in the proposal. Any changes to a company's structure and/or selling authority (authorized reseller/manufacturer) after the evaluation period has concluded will be considered on a case-by-case basis. Depending on what the company's changes include, DIR, at its discretion, will determine if the submitting entity will continue to the next phase of the negotiation/award process and whether or not changes to proposed offerings will be allowed. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|---|
| 108. | NA | NA | Our company (Prime TX DIR Bidder) has acquired several companies that all have COTS applications. Each company also has their own individual Tax IDs, and they are currently being consolidated under the Prime TX DIR Bidder's Tax ID. The consolidation is planned to be completed in the 3rd Quarter of 2023. Q.3. Furthermore, following the award would the Prime TX DIR Bidder be able to modify the contract to reflect the finalized change of ownership? | All respondents to this RFO will need to submit their proposal in accordance with their legal structure and authorized selling authority at the time the proposal is submitted in accordance with the RFO requirements. The respondent will be evaluated and scored based on what is submitted in the proposal. Any changes to a company's structure and/or selling authority (authorized reseller/manufacture) after the evaluation period has concluded will be considered on a case-by-case basis. Depending on what the company's changes include, DIR, at its discretion, will determine if the submitting entity will continue to the next phase of the negotiation/award process and whether or not changes to proposed offerings will be allowed. |
| 109. | NA | NA | Following contract award if the Prime Bidder Company is acquired by another company. What happens to the awarded DIR Contract? Can a previously awarded contract be amended to reflect the change in ownership? | These are handled on a case-by-case basis. Generally speaking, in the event of an acquisition the contract assignment process is completed through a formal contract amendment with the acquiring company and DIR. |
| 110. | NA | NA | Contract modifications: Can an awarded contract be modified during the life of the contract to add additional COTS solutions? | Yes, please read Contract Sample package # 3 of the RFO section 4.1 Product and Service Offerings. Products and services available under this Contract are limited to the technology categories defined in Request for Offer DIR-CPO-TMP-570 for Software, Commercially Off the Shelf (COTS) and Related Services. At DIR's sole discretion, Successful Respondent may incorporate changes or make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO. |
| 111. | Exhibit I | NA | Exhibit I: Certification of OFF Premise Customer Services Do we need to fill this out if we only conduct installation and training on customer premises? Otherwise, we are off premise | No, however you will need to provide all the required insurance listed under the DIR Standard Terms and Conditions Section 10:15 Required Insurance Coverage. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|---|
| 112. | NA | NA | Will DIR retain ownership on a bidder's IP if awarded? | These are master contracts for DIR customers and not contracts directly with DIR. Please refer to RFO Bid Package 3, DIR Standard Term and Conditions for the term regarding Intellectual Property (IP). This RFO is for COTS (Commercial Off-The-Shelf) Software. As such, most if not all offerings will not have IP associated with them. |
| 113. | NA | NA | Please provide a link to that place to download the documents from. | The Solicitation Documents can be downloaded from the Texas State Comptrollers Web Site Electronic Business Daily (ESBD). This site works better when using google chrome. It is better if you copy and paste this link to the google chrome search bar. www.txsmartbuy.com/esbddetails/view/DIR-CPO-TMP-570 Also see Addendum 2 Attachment B for detail instructions to navigate the State Comptrollers Site to find the documents if the links available do not work. |
| 114. | NA | NA | Will a recording of today's pre-proposal conference be provided to vendors? | Yes, See Addendum 1 |
| 115. | NA | NA | Exhibit A1: Exceptions - Do you want us to propose additional terms and conditions in this section or wait until contract negotiations | All Exceptions must be requested with your response, please follow the instructions set forth in the RFO document Section 2.8 Proposed Changes and Exceptions. |
| 116. | NA | NA | Does Exhibit A need a wet signature or is a digital signature appropriate/acceptable? | A DocuSign or other electronically verifiable signature will be accepted. A typed name in the required signature location will not be accepted as a "signed". |
| 117. | NA | NA | We have a contract that was awarded for a base year and four option years. We completed the base year successfully, but the agency did not exercise the options because they lost funding. We regularly use this an account as a reference. Does not exercising the options considered a cancelled contract? | Yes, it is considered a cancelled contract, and it needs to be listed under Exhibit A, however it can also be used as a reference for the successful year completed. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|---|
| 118. | NA | NA | Do all signatures need to be wet signatures or are e-signatures allowed on any of the exhibits? | A DocuSign or other electronically verifiable signature will be accepted. A typed name in the required signature location will not be accepted as a "signed". |
| 119. | NA | NA | Can a COT software be added to HSP plan of more than one prime vendor? | The HSP form does not require that a product (COTS Software) is listed for each subcontractor, however a sub-contractor or Reseller can be listed in several prime responses for this solicitation. |
| 120. | NA | NA | Will the recording for this call be shared with the respondents registered for this meeting? | The recording information has been provided under Addendum 1. |
| 121. | NA | NA | Do we need to have our references, fill out a reference form and send it directly to DIR? Or just mentioning references name and contact info on the response document is sufficient? | No, a vendor cannot provide information for your references, each reference must come from the customer through the RFO email box listed under Exhibit J. |
| 122. | Exhibit J | NA | When can we expect the updated exhibit J? | This form has been provided under Addendum 1. |
| 123. | Exhibit F | NA | Do you need a separate Exhibit F for each reference or should all references be listed in one Exhibit F response? | Each reference must provide a separate reference form. The respondent may provide the same respondent information at the top of each reference form. |
| 124. | Exhibit I | NA | Question on Exhibit I - If we need to go on customer premises for installation and training, do we need to fill out this form? | No, however you will need to provide all the required insurance listed under the DIR Standard Terms and Conditions Section 10:15 Required Insurance Coverage. |
| 125. | NA | NA | Is the VPAT requirement for Primes, subs, or everyone? | Accessibility Conformance Reports (ACRs (completed VPATs)) are required for each software product being proposed under this solicitation regardless of who is submitting the response (vendor, subs or primes, or resellers). |
| 126. | NA | NA | Regarding 3 References. Can this be 3-Commercial References or only 3-Government References? | References can be from any customer your company has sold the products and services under the scope of this solicitation. |
| 127. | NA | NA | How many companies will be awarded a contract with DIR? Is there a maximum number of contracts to be awarded? | DIR will award as many contracts as needed to fulfill the needs of our customer base and be in the best interest of the State. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|--|
| 128. | NA | NA | What if the software is delivered through the Cloud? | This RFO does not have any restrictions on the software delivery method. Cloud-based software delivery systems are allowed. |
| 129. | NA | NA | Will this PowerPoint Presentation be provided to participants after the zoom call? | This has been provided under Addendum 1 |
| 130. | NA | NA | How will the different software solutions that serve different purposes be classified and awarded? | Each respondent's proposed pricing and corresponding discount off the MSRP/List Price is considered as part of the total weighted evaluation score. Respondents should make their best offering and not assume that they will have the opportunity to provide a better discount during the process. |
| 131. | NA | NA | We are a Value-added reseller for another company (not Adobe, Microsoft, or Novell), and we currently have a DIR contract. Does this mean that we cannot respond to this RFO? | The scope of this RFO includes all COTS (Commercial Off-the-Shelf) software providers and/or authorized Value-Added Resellers (VAR) for Microsoft, Adobe, or Novell. Currently, DIR is not considering additional VAR resellers as a part of this RFO. If the respondent can provide any of the three VAR offerings in this RFO or any COTS software offering as described in the Scope section of the RFO, a respondent is eligible to respond. |
| 132. | NA | NA | Regarding 3 References, can references be outside of the United States, and/or can they include Canada? | References can be from any customer your company has sold the products and services under the scope of this solicitation. |
| 133. | Exhibit J | NA | For the Exhibit J Reference Form - vendors do not submit this directly with our bid response, correct? Or do we need to include a copy with our response, even though the form says the reference must email it directly to the DIR email address provided? | Correct, Exhibit J, Reference Form will be submitted by the customer providing the reference through the RFO email provided in this form. Vendors are not required to provide this form with their responses. |
| 134. | NA | NA | What about integration of our solution to other DIR customer's products? That may require some development effort to integrate. | If the integration development does not require the change of a software core code , as defined in the RFO out of scope section. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|--|
| 135. | NA | NA | Is any application software with some configurations and implementation, be considered part of this scope? | A COTS Software configuration and implementation are part of the RFO scope and can be proposed. |
| 136. | NA | NA | Is it possible to offer a blended pricing response? i.e., a COTS software brand using ELA pricing and COTS software brand without ELA pricing | Yes, if the ELA pricing you are proposed means (<u>Enterprise license agreement (ELA)</u>) is a contract between a customer and a vendor that allows purchase of a software product for a company at a discounted, fixed rate for a certain time period. At the end of the contract, the customer can usually opt to extend maintenance for an additional year at the discounted ELA price). |
| 137. | NA | NA | Is there any percentage limitation in terms of the scope of the contract for subcontractors? (e.g., Some jurisdictions allow up to 50% of the contract to be performed by the subcontractor and the rest for the prime contractor) | No |
| 138. | NA | NA | Were a vendor looking to sell on the DIR via a VAR/Distributor (Carahsoft). Can we submit our documentation to work with multiple VAR/ Distributor (i.e., Carahsoft, and SHI)? | A vendor cannot respond to this Solicitation to be a reseller under a current or future prime vendor. A vendor may contract with several primes and be listed under several primes HUB Subcontracting Plan. There are no restrictions on how many prime HUB Subcontracting plans a vendor can be contracted. |
| 139. | NA | NA | Please repeat --- Are these renewals after five years? What are the total number of years? | This contract has a 2-year initial contract, a 2-year renewal and a 2 (1)-year extension. All renewal terms are to be exercised at DIR discretion. See Package 3 Contract Sample Section 2 Contract Term. |
| 140. | NA | NA | Will DIR process TX Ramp interim based on award of this contract? | No |
| 141. | NA | NA | The website we need to establish, can we require login and have an account verification? We do not want the public to see the rates we are offering Texas. | No, there are other methods to provide pricing in the web page without making the MSRP available to the public, reference Package 3 DIR Standard Terms and Conditions Section 7.2 and Package 3 Contract Sample Section 7. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|---|
| 142. | NA | NA | What was the name of the criteria that VPAT was examined with? | Worldwide Web Consortium WCAG 2.0 AA technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations. |
| 143. | NA | NA | What if there are inaccuracies in my Duns and Bradstreet financial report? Can I provide additional information to address the inaccuracies? | Yes |
| 144. | NA | NA | How will awards be prioritized? Will it be based on the order of responses received? So first in, first out to get awarded? | DIR receives all responses at the same time as the BidStamp portal does not allow access to the responses until the official closing date and time for the RFO. The recommendation of award will be determined after evaluations are completed and it will be determined by DIR at the DIR discretion based on the best interest for the State. |
| 145. | NA | NA | If I own an existing DIR contract as prime vendor and now, I'm offering my services to other vendors as a sub, do I have to offer the exact same pricing I offer as a prime as a sub? | Please refer to the terms and conditions regarding pricing and customer discounts in your cooperative contract. |
| 146. | NA | NA | Will this presentation be made available to vendors? | Yes, it has been provided under Addendum 1 |
| 147. | NA | NA | Are Letters of Authorization required for the software brands being offered or will a standard reseller agreement suffice? | As long as the reseller agreement <u>list the individual brands</u> and products being authorized for sale, a single agreement will suffice. |
| 148. | NA | NA | We are currently under DIR-TSO-4278 which expires 12/2024. Do we need to bid on this or are we allowed to extend the contract? | Any contracts under the solicitation numbers posted in the RFO will reach the end of life upon expiration of the contract. If a current contract holder would like to have the opportunity to continue as a software vendor under the cooperative contracts program, they will be required to submit a new proposal under this RFO. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|--|
| 149. | NA | NA | If we have a 3rd party accessibility firm perform our VPAT, do you have author preference? (i.e., should we submit it on our own letterhead or is the 3rd party accessibility firm's form okay) | There is no preference on who completes the Accessibility Conformance Reports (ACRs (completed VPATs)). Best practice is for a person with knowledge of how the product is tested against standards to complete the VPAT. ACRs can be submitted on letterhead if version 2.3 or higher is used and information from the original VPAT version is included. |
| 150. | NA | NA | On BidStamp the link to RFO documents is broken. | The Solicitation Documents can be downloaded from the Texas State Comptrollers Web Site Electronic Business Daily (ESBD). This site works better when using google chrome. It is better if you copy and paste this link to the google chrome search bar. www.txsmartbuy.com/esbddetails/view/DIR-CPO-TMP-570 . Addendum 2 Attachment B for detail instructions to navigate the State Comptrollers Site to find the documents if the links available do not work. |
| 151. | NA | NA | As a VAR, I'm constantly adding new solutions to my line card based on customer needs and new technologies. Am I able to add new COTS software solutions after the contract award? | Yes, please read Contract Sample package # 3 of the RFO section 4.1 Product and Service Offerings. Products and services available under this Contract are limited to the technology categories defined in Request for Offer DIR-CPO-TMP-570 for Software, Commercially Off the Shelf (COTS) and Related Services. At DIR's sole discretion, Successful Respondent may incorporate changes or make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|--|
| 152. | NA | NA | FYI. The "View Solicitation Button" in BidStamp for 570, is a broken link. | The Solicitation Documents can be downloaded from the Texas State Comptrollers Web Site Electronic Business Daily (ESBD). This site works better when using google chrome. It is better if you copy and paste this link to the google chrome search bar. www.txsmartbuy.com/esbddetails/view/DIR-CPO-TMP-570 . Addendum 2 Attachment B for detail instructions to navigate the State Comptrollers Site to find the documents if the links available do not work. |
| 153. | NA | NA | What software category does software training fall into? | COTS Software - Training Category - NIGP Code (208-66) Professional: Computer Training, E-learning, Hospital/Pharmacy, Legal, etc. Software, Microcomputer. |
| 154. | NA | NA | Are VPAT's required for software training? | Yes, training software does require an Accessibility Conformance Report (ACR) or completed (VPAT). Training documentation must be in an accessible format. |
| 155. | NA | NA | We sell by the Tier i.e., 1-20 = \$1,600, 21-35 - \$2,400 etc. How should I present to DIR? | First you must respond based on the Software brand and functional category, then under Tab 1 list the different packages you provide and what discount you will offer under this Solicitation. |
| 156. | NA | NA | Will we have access to a recording of the Prebid meeting? | This has been provided under Addendum 1 |
| 157. | NA | NA | Also, would you prefer a Per User MSRP and then the discount? | Your Choice, please review the recording of the pre-solicitation conference Package 2 Itemized Pricing section, it goes into details of how to fill out the pricing form and how to deal with volume discounts. |
| 158. | NA | NA | Can we just bid on Microsoft and put Adobe/Novell as NA if we want to? or do we have to bid on all three as a VAR? | Yes, a vendor may respond to one, two or all 3 VAR options. |
| 159. | NA | NA | If the prime who is responding to the bid is not a VAR for Adobe, Microsoft, or Novell, if they partner with a company that is a VAR would this be acceptable if the VAR is listed as a subcontractor or reseller? | No, a prime can only respond to the VAR section if they are a certified VAR reseller, if they are partnering with a VAR certified reseller they will be listed under the Prime VAR vendor HUB subcontracting plan. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|--|
| 160. | NA | NA | On the Products Detail tab of the Pricing Sheet: If we have tiered pricing, do you want us to list each tier for each product line? Or just the minimum tier for each product line? | Your Choice, please review the recording of the pre-solicitation conference Package 2 Itemized Pricing section, it goes into details of how to fill out the pricing form and how to deal with volume discounts. |
| 161. | NA | NA | Will software license agreements only be required after award? | Software License Agreements may / or may not be requested at the time of negotiations. However, respondents will be required to post software agreements in the contract web page after award. |
| 162. | NA | NA | Will these state software products be available to TxDOT? | Yes, the DIR Cooperative Contract Program Contracts are available for use to all DIR Customers base. |
| 163. | NA | NA | Under Law Enforcement COTS category, are there any features the state is looking for? This may help us not to bid if any features are missing in our current COTS product. | The Cooperative Contract Program does not cover specific specifications and detailed requirements for individual customers, that is decided by our customers at the time they are looking for a specific product. Therefore, if you have COTS software for Law enforcement please respond. |
| 164. | NA | NA | If we are a software reseller, where the customer issues a PO or signs the vendor's contract, it is not our contract. Does this type of engagement fit this contract? | The Cooperative Contract Program is a self-serve program, the DIR customer will issue a Purchase Order to the Prime contract and the Prime will be responsible to engage with its resellers according to the Prime and Reseller contract terms and conditions. |
| 165. | NA | NA | I am not too sure if this RFO applies to us. We are a traffic signal equipment distributor. We deal with remote traffic monitoring software called Centracs... would this type of software apply to this RFO? or is this more along the lines of actual Off the Shelf software (adobe, Microsoft, Etc.) | If your Traffic Signal Monitoring software is considered COTS and is ready for use, you should respond to this Solicitation, as the Turnkey solution options will allow you to market and sell the equipment along with the software as a solution package to DIR customer base. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|---|
| 166. | NA | NA | VPATs typically are sent once a customer selects a product. Sending all VPATs with a bid package can be very cumbersome, especially with multiple companies responding with the same brand. Can a company reference that VPATs are available by the manufacturer for each product rather than sending full VPATs for every company responding to the RFO? | No, each prime vendor will provide an Accessibility Conformance Report (ACR) or completed (VPAT) for the products being offered under the solicitation response. There is a way to facilitate a large volume of these ACRs. Please listen to the conference presentation section Mandatory submission and review slide 76 regarding options on how to provide these documents. Missing ACRs will impact the pass/fail score. |
| 167. | NA | NA | Do we need to submit a Manufacturer Letters of Authorization if we are the only manufacturer of our products? | No, you will provide a letter that states you are the developer and/or manufacturer of the products you are proposing. |
| 168. | NA | NA | We have received LOAs from OEM's but are having trouble receiving VPATs/ACRs. Are we still able to quote those OEMs/vendors with just an LOA and no VPAT/ACR? | Most OEM's have Accessibility Conformance Reports (ACRs) or completed (VPATs) posted on their web site, and you may provide links to these documents as well as actual documents. If a COTS software product owner does not provide resellers with an Accessibility Conformance Report (ACR) or completed (VPAT), the vendor may not be able to sell the product, as DIR accessibility requirements are very clear. NOTE: DIR will not be responsible for links that do not work, and strongly encourages vendors to print ACRs and submit them to be sure. |
| 169. | NA | NA | Is this solicitation prepared as a NASPO cooperative contract as well? | No, DIR is its own Cooperative Contract Program. |
| 170. | NA | NA | If a company is FedRAMP ready and StateRAMP ready, will this suffice for the TX RAMP requirement? | Please refer to the TX-RAMP Manual, FAQs, and additional information provided on DIR's website: https://dir.texas.gov/information-security/texas-risk-and-authorization-management-program-tx-ramp |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|---|
| 171. | NA | NA | Is it okay for a reseller to not include any HUB partners under method B? Do we still need to include them in our HUB plan? | Yes |
| 172. | NA | NA | In Exhibit A: Canceled Contracts. I assume this only applies to any contracts that were canceled (either by the vendor or the customer) prior to fulfilling the contract term. Canceled contracts do not apply to situations where a contract term was satisfied, but a customer opted not to pursue a subsequent renewal term, thereby terminating the business relationship | Correct, this section does not require disclosure of contracts that expired after a customer declined to exercise an optional contract renewal. |
| 173. | NA | NA | If a company offers multiple software products, unrelated to each other, does DIR prefer separate submissions for each product? Or does DIR prefer to receive a single submission with each software product noted in separate pricing line items? | Please review the Conference recording for the Pricing Section, the detail provided for filling our Package 2 itemized pricing sheet, will assist you in providing your response for all products under one response. |
| 174. | NA | NA | Has DIR already received discounted pricing from Microsoft, if so, is there a CPS or pricing details you can share with us, or is that listed on BidStamp? | DIR does not have specific pricing from Microsoft, the agreement is based on the VAR volume discount program. |
| 175. | NA | NA | Vania mentioned page numbers while going over the proposal format slides (e.g., 5 pages for vendor history; 5 pages for marketing plan); are these official page limits and if so, where can they be located? Or will they be released in an addendum? | This requirement is listed under Exhibit C - "In no more than five (5) pages total, non-inclusive of the requested attachments, Respondent must provide a plan that describes the Respondent's ability and strategy for promoting and supporting the contract, if awarded. The plan must include the information listed below. " And under Exhibit B as well. |
| 176. | NA | NA | On the pricing sheet, if we (the vendor) are NOT a VAR, do we ignore tab 5 or do we need to explicitly state on tab 5 that we are not a VAR | If a respondent is not a VAR provider just leave tab 5 blank. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|---|
| 177. | NA | NA | could you clarify, yes, we can extend the contract or yes, we need to bid? | If you are a current DIR vendor under any of the listed RFO in Slide 16 of the presentation, you must respond to this solicitation. |
| 178. | NA | NA | Bullet 3 states no redlines to DIR Standard Ts and Cs. Is that Appendix A? | Yes, under Package 3A - DIR standard Terms and Conditions. Respondents must list all exceptions in Exhibit A1, document. |
| 179. | NA | NA | Is there a section that outlines the reporting requirements (once an award has been made)? | Yes. Please refer to Section 9.2 of the DIR Standard Terms and Conditions. |

Addendum 1 Attachment Documents:

1. Attachment A – Example Vendor Sales Report Template per Addendum 2
2. Attachment B – Accessing and Downloading Documents ESBID Instructions

Vendor Name:

Contract Number:

Submitted Reporting Month:

RAMP Certified

Customer Name (*Customer's Proper Name*)

Reference Number

Sales Period

ORDER DATE

INVOICE DATE

INVOICE NUMBER

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Item 20.

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| SHIP DATE | Product Type (DBITS contracts) | Description | BRAND | LEASE |
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| Contract Price | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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Item 20.

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|---|--|---|--|--|--|---|
| Vendor Name: DIR-CPO-5123 | 202201 | Customer Name (Customer's Proper Name) | Reference Number | Sales Period | ORDER DATE | INVOICE DATE |
| Submitted Reporting Month: RAMP Certified | Enter "Yes" if the product is RAMP Certified (e.g. TX, State, Federal, etc.) If the product is not RAMP Certified, leave BLANK. For more information on the Texas Risk Authorization Management Program, go to https://dir.texas.gov/tx-ramp | Enter customer name. Name is case sensitive and must match how it is in the portal. You can find customer names under Lookup in the DIR VSR Portal. If you cannot find a customer name in the portal lookup please email ict.sales@dir.texas.gov | This number should be the customer Purchase Order number. For State Agency's Purchase Order Numbers must be used. If a purchase order is not available, use an agreement or project number that ties the sale back to the customer purchase. (Field length is 30 characters) | Put in the sales period that corresponds with the invoice date. Formatting for this column is as follows: YYYYMM . Ex: Invoice date is 03/31/2021, reporting month is 202103. | This date should be the actual date of order. The date must be on or after the contract start date and on or before the contract end date. Formatting for this column is: Default setting is MM/DD/YY. Date should be in either M/D/YYYY format. (Field length is 10 characters) | Actual invoice date on the invoice. Invoices are reported for previous calendar month. The date must be on or after the order date. Default setting is M/D/YYYY Date should be in either M/D/YY, MM/DD/YY or M/D/YYYY format. (Field length is 10 characters) |

SEND ALL QUESTIONS ON REPORTING TO: ict.sales@dir.texas.gov

| INVOICE NUMBER | SHIP DATE | Product Type (DBITS contracts) | Description | BRAND | LEASE | Quantity |
|---|---|--|--|--|--|--|
| Actual invoice number (Field length is 50 characters) | Actual date of service or when item was shipped. The date can't be before the order date NOR after the invoice date. Default setting is M/D/YYYY Date should be in either M/D/YY, MM/DD/YY or M/D/YYYY format. | This column is ONLY for vendors who have a Deliverable Based IT contract (DBITS). If you do not have a DBITS contract leave this column BLANK. For each row list the type associated with the description. They must be listed in this column EXACTLY as they appear on the DBITS Product Types tab. You can use the data on the tab to copy and paste into your report. The type must be allowed under your contract. Use the DBITS Product Types Tab. | Actual products or services that are listed on the invoice. The description should be sufficient to determine what goods or services were purchased. It cannot exceed 150 characters including spaces. Do not use any periods or other mathematical function symbols such as *, =, /, , or blank space. It should fully left align and shouldn't have any extra spaces at the end. | This is the brand (manufacturer) name listed in your pricing list and showing on your main DIR contract web page. Name must match exactly by spelling and punctuation. It may be Services or N/A if you have no brands listed. Check with your DIR contract manager if unsure. | Put in Lease if the purchase is a lease, otherwise use the word Buy. Cannot be blank. | Enter the quantity ordered by the customer (must be a numeric value) with up to four (4) digit decimal afterwards). Ex: 1.5123 or 6.0000. All numbers must display to load correctly. If reporting a credit put a minus sign at the beginning of the number. Ex: -1.0000. This Column CAN have a negative number when reporting a credit. |
| CAN BE A NEGATIVE NUMBER | | | | | | |

| Unit Price | Extended Price | MSRP | Customer Contact Name | Customer's Billing Address | City | State | Zip Code |
|--|--|---|---|---|--|---|--|
| Enter the Unit price listed on the invoice/Purchase Order. This cannot be a negative number. Can be up to a 6 digit decimal number however all numbers must display for it to calculate correctly. Ex. 1.234567. This Column CANNOT have a negative number when recording a credit | This number should equal the quantity times the unit price. This number is limited to only a 2 digit decimal place display. Ex: 1.68. If the Quantity is a negative number this should also be a negative number. If possible, use the calculation put in the first row and copy down (-m5*n5) through all other rows to ensure the amounts calculate correctly. This Column CAN have a negative number when reporting a credit. | List the MSRP or the number that is negotiated in appendix C, that lists the actual manufacturer price for the individual item (based on unit price). It cannot be blank or negative and should have no more than 2 digit decimal number. Ex: 2.88. This Column CANNOT have a negative number. This Column CANNOT have a negative number. | List contact for the order (individual's name). | Put in actual billing street address or PO Box. If third party prepares billing find out actual customer address and put it in. | Put in city name. Do not abbreviate or add punctuation at end. | State needs to be the all caps 2 digit abbreviation. Don't put upper lower case combination or period at end. Ex: Texas is TX | Put in actual the zip code that goes with the city name. This can be just the 5 digit number or the 5 digit number followed by a dash and then a 4 digit number. Ex: 78709 or 78619-0648 |
| CANNOT BE A NEGATIVE NUMBER | CAN BE A NEGATIVE NUMBER | CANNOT BE A NEGATIVE NUMBER | | | | | |

| Customer's Email | Mfg. Part Number (if not available put in N/A) | Reseller | Subcontractor | EPEAT |
|---|---|---|--|---|
| Put in email address of customer contact, it can be left blank if unknown, but preferred to be filled in... | Put in manufacturer part number related to the item listed in the description column L. If it is services put in N/A. | List name of order fulfiller/reseller, if any, from your HUB subcontracting Plan (HSP). Any order fulfiller/reseller sales should be detailed with those separated from Subcontractor or regular sales on the report. See examples below. If sales from a line item on an invoice include products or services from a Prime Vendor and/or Reseller and/or Subcontractor, you must split out the dollar amount attributed to the Prime Vendor/Reseller/Subcontractor on separate lines. Order Fulfiller/Reseller/Subcontractor's name(s) will need to match the HSP, including spelling, punctuation, etc. It should show on your main DIR contract page under Reseller Vendor Contacts. If any discrepancies, contact the assigned DIR Contract Manager. If you don't have an Order Fulfiller/Reseller leave this field blank. NOTE: Reseller is a company other than your own, that is authorized to sell products on your DIR contract on your behalf. Reseller should report sales directly to prime vendor. | List name of subcontractor, if any, from your HSP. If none, leave blank. Any order fulfiller/reseller sales should be detailed with those separated from Subcontractor or regular sales on the report. See examples below. If sales from a line item on an invoice include products or services from a Prime Vendor and/or Reseller and/or Subcontractor, you must split out the dollar amount attributed to the Prime Vendor/Reseller/Subcontractor on separate lines. Order Fulfiller/Reseller/Subcontractor's name(s) will need to match the HSP, including spelling, punctuation, etc. It should show on your main DIR contract page under Reseller Vendor Contacts. If any discrepancies, contact the assigned DIR Contract Manager. If you don't have an Order Fulfiller/Reseller leave this field blank. NOTE: Reseller is a company other than your own, that is authorized to sell products on your DIR contract on your behalf. Reseller should report sales directly to prime vendor. | Electronic Product Environmental Assessment Tool (EPEAT) for green products. Those that fit the criteria need to list the level: Bronze, Silver or Gold. If it doesn't fit criteria (not green), leave blank. Go to epeat.net to determine if product is 'green'. |

| Bulk Purchase put "Yes" (if not leave blank) | Contract Discount Percentage | Actual Discount Percentage | Contract Price |
|--|--|---|---|
| Put "Yes" in this column for each row that pertains to a sale made using a Bulk Purchase agreement. For all other rows leave blank. (This only pertains to vendors that have entered into a Bulk Purchase agreement with DIR.) | If manufacturer discount percentage is used in your DIR contract pricing (general Appendix C, Pricing Index), list your DIR contract discount percentage for the item listed in column N. Put in #.##%. Ex: 15.00% or 6.50%. If you complete this column you must also complete the Actual Discount Percentage (Column AC). If your contract pricing (e.g., Appendix C) is fixed rate pricing, leave this column AB and Actual Discount Percentage (Column AC) blank. Complete Contract Price (Column J) instead. This Column CANNOT have a negative number. | List actual discount percentage provided to the customer. This amount could be a larger discount than column AB, if a larger discount than is listed on the contract is given or negotiated. The percentage is never less than Contract Discount Percentage (column AB). Put in #.##% format. Ex: 15.15% or 6.78%. If fixed rate pricing leave blank and fill in Contract Price (Column AD) instead. This column is required if you have discount percentages in your contract pricing and completed Contract Discount Percentage (Column AB). This Column CANNOT have a negative number. | Negotiated DIR contract Price. Number is in #.## format. Required if fixed pricing is offered instead of discounted percentage off of MSRP. If your contract consists of a fixed price (e.g., price per product or hourly rate) and does not include a manufacturer discount percentage, then you do not need to complete Contract Discount Percentage and Actual Discount Percentage (Columns AB and AC). NOTE: Some contracts contain both a discount percentage and fixed rates. In that case Vendor should complete appropriate column for item specified in Description (Column J). This Column CANNOT have a negative number. |
| | CANNOT BE A NEGATIVE NUMBER For Columns AB, AC and AD: either fill in AB and AC and leave AD blank, OR Fill in just AD and leave AB and AC blank | CANNOT BE A NEGATIVE NUMBER | CANNOT BE A NEGATIVE NUMBER |

Item 20.

- 1
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- 4

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For use in filling in Column "I" Product Type (DBITS contracts)

For DBITS contracts awarded under RFO-553 use the four (4) available types below for reporting sales. Types must match exactly for loading. Types must be listed under the contract being reported.

- Application Development, Maintenance, and Support, Technology Upgrade, Migration, and Transformation; and Enterprise Business Intelligence (BI), Data Management, Analytics, and Automation, including Data Warehousing
- IT Assessments, Planning, Independent Verification and Validation (IV&V), and Market Research, Procurement Assistance, Project and Program Management

For DBITS contracts awarded under RFO-253 use the ten (10) available types below for reporting survivability sales. Types must match exactly for loading. Types must be listed under the contract being

- Application Development
- Application Maintenance and Support
- Business Intelligence/Data Warehouse
- Enterprise Resource Planning (ERP)
- IT Assessments/Planning
- Service Oriented Architecture (SOA)
- Project Management
- Technology Migration/Upgrade
- Independent Verification Validation
- Information Technology Procurement Assistance

Enterprise Resource Planning (ERP)

visory, and Contract Implementation Services

ADMIN FEE PAYMENT REMITTANCE

Instructions: Use the following Admin Fee Payment Remittance form to applying Admin Fees associated with your contract(s). Admin Fees a following submission of this report, unless stated otherwise in y

Example of Reporting Timeline: Invoiced sales during the month of Januar reported via the Vendor Sales Report by the 15th of the following month (the 15th falls on a weekend or holiday, then the VSR is due the following b and approves the submitted VSR, DIR will email the Total Admin Fee (Final applicable)) between March 1st – 10th to the Vendor Contract Manager ar Payment of Admin Fees (via ACH or Check) is due on or before March 25th

IF PAYING BY CHECK, enter your Contract Number(s) on the check memo l enclose the completed Admin Fee Payment Remittance Form and email a

| | |
|-------------------------------------|--------------------------|
| Mail Checks to: | Express or Overni |
| Department of Information Resources | Department of Inf |
| ATTN: Accounts Receivable | ATTN: Accounts R |
| PO Box 12728 | 300 West 15th Str |
| Austin, TX 78711 | Austin, TX 78701 |

IF PAYING BY ACH/EFT PAYMENT, email a copy of this completed form to: To sign up for ACH payments, [download the form](#) or request a form from [e](#) approximately 30 days for processing.

| | | | |
|--|--------------------|-----------------------------|----------------------------------|
| Vendor Name (ABC Company) | | | |
| Vendor Contact Name (John Smith) | | | |
| Vendor Contact Phone | | | |
| Vendor Contact Email | | | |
| Date of Remittance (MM/DD/YYYY) | | | |
| Month of Sales Reported (YYYYMM) | | | |
| Method of Payment (ACH or Ck#) | | | |
| Contract Number (ex. DIR-CPO-XXXX or DIR-TSO-XXXX) | Total Sales | Admin Fee Percentage | Late Fees (If applicable) |
| | \$ | % | \$ |
| | | | |
| | | | |
| | | | |
| Total Amount Remitted (Admin Fee(s) + Late Fees) | | | |

Item 20.

ADMINISTRATIVE FEE PAYMENT FORM

To assist DIR with identifying and processing payments due the 25th of the month, please complete your Contract Appendix A.

Payments (1st through 31st) must be received by the 25th of the month (business day). Once DIR processes the payment, you will receive an Admin Fee + Late Fees (if applicable) and any other listed contacts.

Please email this form (or accompanying form) and payment to: adminfee@dir.texas.gov.

Light Shipping:
 Information Resources
 1000 North Fwy
 Houston, Texas 77002

Contact: adminfee@dir.texas.gov
adminfee@dir.texas.gov and allow

To preserve the Administrative Fee in place for the calculation of the Administrative Fee that is reported on the monthly report, please use the following examples:

Example 1:

- A 3-year lease of a copier/printer has an original Order Date of January 1, 2017. Because the original Order Date, January 1, 2017, is the Order Date for that particular contract, the 3-year lease does not change, the Administrative Fee would have an Administrative Fee Payment Date of January 1, 2017.

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| Admin Fee Payment | Notes |
|-------------------|---|
| \$ | |
| | (Use additional lines for multiple contracts with each Admin Fee Payment) |
| | (Use additional lines for multiple contracts with each Admin Fee Payment) |
| | (Use additional lines for multiple contracts with each Admin Fee Payment) |
| \$\$ | |

Last Revised: August 2020

at the time of the sale of product or service,
is based on the Order Date of the purchase
Vendors Sales Reports (VSR) to DIR.

Scenario:

Final Order Date of January 2, 2017. On that date,
Administrative Fee was 0.50%.

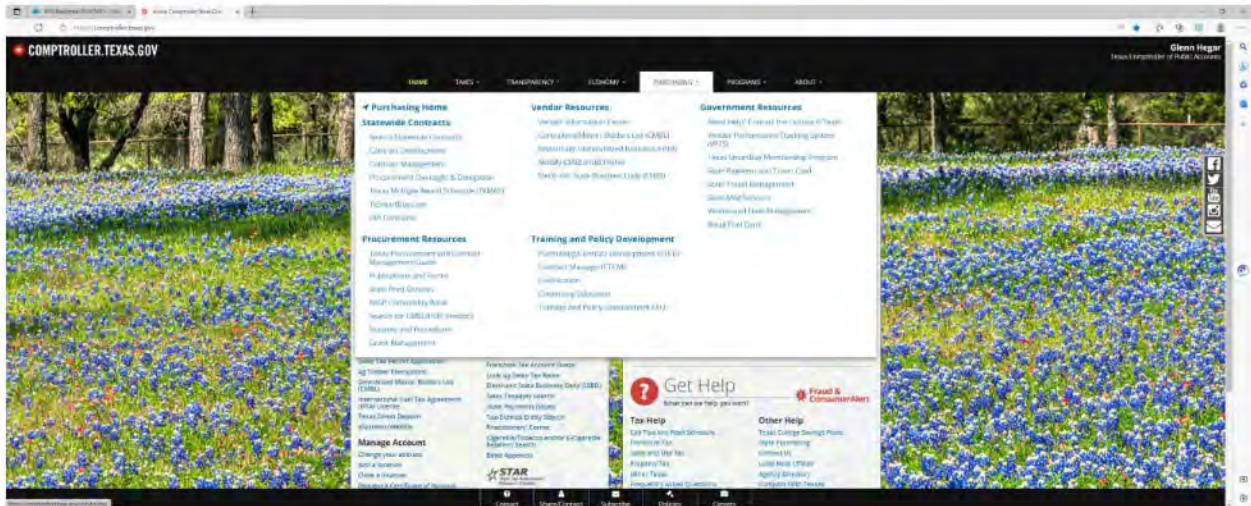
Administrative Fee was changed to 0.75%.

January 2, 2017, reported on the VSR for the
calculation of the Administrative Fee
Annual sale is 0.50%.

Effective on or after October 20, 2017

Administrative Fee of 0.75%.

1. Using Google Chrome type in www.comptroller.texas.gov



2. Go to the Purchasing menu at the top and select ESBD

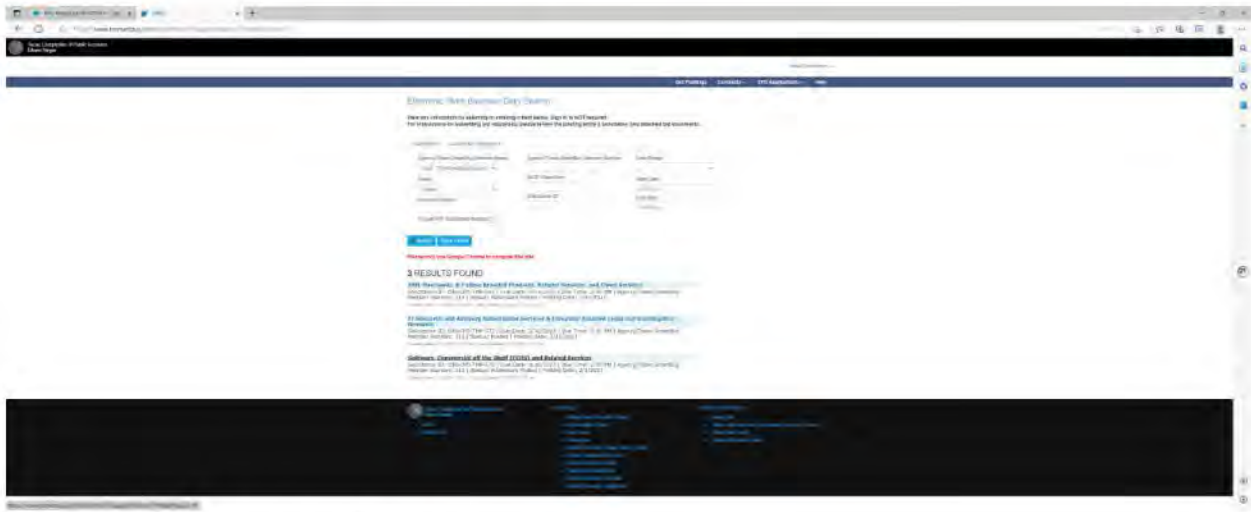


3. Once on the ESBD select the agency 313 Department of Information Resources



4. Selected posted solicitations.

Item 20.



5. Select the DIR-CPO-TMP-570

www.txsmartbuy.com/esbddetails/view/DIR-CPO-TMP-570



6. Please navigate to the bottom of the page to see the list of zip files to download.



PS: Remember to open the zip files and download each document.

Also remember to download the latest Addendum 1.



TEXAS DEPARTMENT OF INFORMATION RESOURCES

Addendum

| | |
|-----------------------------|-----------------|
| SOLICITATION NUMBER: | DIR-CPO-TMP-570 |
| ADDENDUM NUMBER: | 3 |

Addendum Date: April 04, 2023

If you should have any questions regarding this Addendum, please contact:

Vania Ramaekers
 Department of Information Resources
 300 W. 15th Street, Suite 1300
 Austin, Texas 78701
 Email: vania.ramaekers@dir.texas.gov

Notice is given to Respondents desiring to submit a response to the above referenced solicitation that additional information is required:

This Addendum modifies the solicitation for Software (COTS) and Related Services, Solicitation No. DIR-CPO-TMP-570, released February 2, 2023. It contains the answers to vendor questions received through March 21, 2023.

In the submission of its response to this solicitation, Respondents shall submit this signed “page one” of the Addendum, acknowledging receipt of the Addendum.

Respondent Acknowledgment of Receipt

(Printed entity name)

(Printed name of authorized representative)

(Signature of authorized representative)

(Date)

Question and Answer Document

The following table outlines vendor questions, references Request for Offer (RFO) sections and page numbers, and the Department of Information Resources (DIR) response to questions (question are organized in order received):

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|----|-------------|--------|---|---|
| 1. | Exhibit C | NA | Question 3, can we provide the overview of products as a separate attachment which will not be included in 5-page limit? | No, respondents will provide a summary overview of the products being proposed within the 5-page limit. |
| 2. | General | NA | For planning purposes, when the addendum with answers and the updated pricing sheet will be published to ESD from the proposal conference on 3/1/2023? | Addendum 1 with the revised documents was posted on 3/10/2023. |
| 3. | Exhibit J | NA | This reference form refers to Web Development or Managed Services and not COTS. Are we to use this as is? I have checked the ESD Smartbuy portal and do not see any amendment. | Addendum 1 with the revised documents was posted on 3/10/2023. |
| 4. | Exhibit J | NA | Quality of Comprehensive Web Development Services 1. Have you purchased any Comprehensive Web Development and/or Managed Services from this Vendor in the past 2 years? Yes___ No___ | Addendum 1 with the revised documents was posted on 3/10/2023. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|----|-------------|--------|--|--|
| 5. | General | NA | In the past, TX DIR has offered Master Lease Agreement and Master Operating Lease Agreement templates, to allow multi-year payment options for financing larger dollar purchases. Will TX DIR issue these templates as part of solicitation - RFO-DIR-CPO-570 (COTS and Related Services)? If yes, how would those be submitted and cited in the response? | Addendum 1 has removed all requirements for respondents to provide any type of agreement related to this solicitation. Any Lease Agreement or Master Operating Lease Agreements will be discussed and provided to DIR during negotiations. |
| 6. | Exhibit J | NA | RE: RFO DIR-CPO-TMP-570 - Exhibit J / Webinar It was shared on the pre-proposal webinar by Vania that DIR was updating Exhibit J and an addendum would be released with the slide deck from the webinar, additional info if required, and the revised Exhibit. When can we expect the addendum to be released? | Addendum 1 with the revised documents was posted on 3/10/2023. |
| 7. | 3.3.1 | 11 | When will the slides and recording be made available? And where will they be located? | Addendum 1 with the revised documents was posted on 3/10/2023. |
| 8. | Exhibit J | NA | Is the "Comprehensive Web Development and/or Managed Services" reference included in the Exhibit J Reference Form in error? | Yes, see Addendum 1 with the revised documents was posted on 3/10/2023. |
| 9. | Exhibit A | NA | Are e-signatures permissible on all forms or is TX DIR expecting wet (scanned) signatures? Or is the wet signature requirement (as indicated during the bid conference on 3/1) pertinent to a specific form/all forms? | A DocuSign or other electronically verifiable signature will be accepted. A typed name in the required signature location will not be accepted as a "signed". |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|--|--|
| 10. | Package 2 Itemized Pricing Sheet | NA | On the instruction tab of the Pricing Sheet there is this instruction for Tab 1. "Product detail list Pricing information is not entered in the BidStamp. VIS". Does this mean we are not to enter the information from our Pricing sheet into BidStamp. as we have in the past? There is a "Create Price List: link so it is confusing. It seems contradictory. | Respondents will create a pricing sheet, and Respondents will enter the average brand discount as listed in tab 2 of the pricing sheet into BidStamp. Please review the pre-solicitation conference video for detail on how to complete the pricing sheet. |
| 11. | General | NA | The contract holder gets purchased by another company. What happens to their contract? | DIR has a contract assignment process to deal with companies buy out. |
| 12. | General | NA | The contract holder purchases another company. Can the contract holder begin selling the purchased company's products/services on the existing contract? | Sales cannot be made under a contract with an entity that is no longer in existence. There is an amendment process and a Contract Assignment process that must be followed and completed before any sales can be made. |
| 13. | Exhibit J | NA | The Reference Form asks for reference customers to provide feedback on the respondent's ability to provide comprehensive web development services. However, this RFO is for the resale of general software products and this type of reference is not relevant. Will DIR, please revise the questions in this reference form to reflect the scope of the solicitation more accurately? | Yes, see Addendum 1 with the revised documents was posted on 3/10/2023. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|--|---|
| 14. | 3.3 | 11-12 | As per the Pre-Proposal Conference held on 01Mar2023, checking on the status of the release to Addendum 1. We've checked the ESD site several times since last Friday, not seeing it posted. Can you advise when Addendum 1 will be released? | Addendum 1 was posted on 3/10/2023. |
| 15. | Terms and Conditions | NA | Is the expectation for this RFO that the reseller ensures all proposed software publishers have agreed to and will meet the terms of Appendix A while also ensuring there are no conflicting terms with the publisher's end user license agreements? | Additional terms and conditions, including those in end user license agreements, may not conflict with the terms and conditions of Appendix A. Please reference sample Contract Template Section 10.1 Software license Agreements and 11.a Conflicting or Additional Terms. |
| 16. | Terms and Conditions | NA | Is it the expectation of DIR and this RFO that resellers eliminate any publishers from their response that do not agree to the terms as outlined in Appendix A? | Additional terms and conditions may not conflict with the terms and conditions of Appendix A. Please reference sample Contract Section Template Section 10.1 Software license Agreements and 11.b Conflicting or Additional Terms. |
| 17. | Terms and Conditions | NA | Are respondents able to add publishers to their offering post award? | Yes, please reference sample Contract Section Template Section 4.1 Products and Services. |
| 18. | Package 2 Itemized Pricing Sheet | NA | For recurring fees, should those be reflected on an annual, monthly, or other basis? | Recurring fees should be listed /reflected how it is charged to the customers. |
| 19. | Package 2 Itemized Pricing Sheet | NA | Are vendors permitted to include one-time fees (ex. implementation fees)? If yes, how would DIR prefer we list these fees in the pricing sheet? | Respondents are encouraged to list any fees that will impact the customer prices. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|--|--------|---|--|
| 20. | Package 2 Itemized Pricing Sheet Tab-4 | NA | Are volume discounts offered once an individual transaction reaches a threshold or once total vendor sales through this DIR contract reach the level defined? | The top portion of Tab-4 Volume Discounts is offered when an individual transaction reaches a threshold based on quantity/or volume, not dollar thresholds. The bottom portion of Tab 4 is for Aggregate Sales which means that the discount will increase based on the respondents contract total sales. |
| 21. | Exhibit J | 1 | What should go in "Group" [sic] in the section to be completed by the Vendor? | The form does not have a requirement for a "Group" anywhere, please fill out exactly what is requesting below the red line: Vendor name _____ Software Product/Services Category _____ Prime Contractor _____ Subcontractor(s) _____ Dates of Performance: Starting Date _____ Ending Date _____ Total Est. Contract Dollar Amount \$ _____ |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|---|--|
| 22. | Exhibit J | NA | <p>The portion to be completed by the Customer refers to "Comprehensive Web Development and/or Managed Services" in the header and several questions. Web Development Services is only one of the categories of this FRO, and it is not applicable to our company. It will confuse our customers, and they will most likely answer "NA" because they did not receive Web Development Services from us. Would DIR consider revising the form to say: "Offerings (Products and/or Services)" instead of "Comprehensive Web Development and/or Managed Services"? Otherwise, are we allowed to modify this portion to align with the products and services we provided to our customers?</p> | <p>Addendum 1 with the revised documents was posted on 3/10/2023.</p> |
| 23. | 3.9.4 | 31 | <p>Please confirm what the partial statement "may be made available through a Contract." is in reference to.</p> | <p>Respondents may disregard the last statement under this paragraph. The section 3.9.4 Pricing should read "Any Respondent responding to this RFO must submit specific pricing for the products and services requested herein. For the purposes of obtaining pricing and evaluating the responses to this RFO, the products and related services, if any, shall be priced and discounted as instructed. "</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|---|
| 24. | Exhibit C | NA | <p>The State has provided 3 pages of requirements. The State has requested Vendors respond, "In no more than five (5) pages total, non-inclusive of the requested attachments". In Vendor's completion of response to Exhibit C please confirm the response length is allowed to be a total of 8 pages of those 8 pages; 5 pages will be of Vendor generated response and 3 pages of the State requirements.</p> | <p>Exhibit C provides 3 pages, these are the questions DIR requires the Respondents to answer, to reflect the Marketing Plan strategy that is proposing, the total of 5 pages is to avoid Respondents providing DIR with a lengthy document that does not answer the questions. Respondents may attach organizational charts, Service Level Agreements Samples, which does not count as part of the 5 pages requirements.</p> |
| 25. | General | NA | <p>Reference Pre-Proposal Conference. During the Pre-Proposal Conference for the subject RFO, if was communicated that document, addendums, etc. would be found at ESBD https://www.txsmartbuy.com/esbd). We have found there appears to be no addendums, no link to the Pre-Proposal Conference recording, no questions posed during the conference, nor other communications have been posted yet. Can you please confirm if the link is correct, and if addendums etc. are forthcoming?</p> | <p>The ESBD link is correct, however the comptroller's office uses google chrome engine, and sometimes the links from other engines do not work. Please reference the document provided under Addendum 2, Accessing and Downloading Documents ESBD instructions.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|---|
| 26. | 2.7 | 8 | (EIR) Accessibility In order to protect our Company, Solutions, and our clients, we would require DIR to sign a non-disclosure agreement before sharing documents that detail EIR accessibility (e.g. - VPATs). Would DIR be willing to sign an NDA prior to the RFP closing date? | DIR will not sign an NDA. If the respondent believes the information submitted is confidential, Respondent should comply with the RFO section 3.14. Failure to submit all required submission documentation may result in the disqualification of the response. |
| 27. | Exhibit A | NA | Exhibit E: VPAT (for COTS) Will DIR accept an existing VPAT e.g., https://simpligov.com/vpat | DIR will accept an existing ACR (completed VPAT) as long as the product has not changed since the last accessibility test to WCAG standards. If the product has been updated a new VPAT needs to complete with updated testing results. |
| 28. | Exhibit C | NA | Is a page 8" by 11" portrait or is a page up to the respondent's discretion? | Up to the respondent discretion. |
| 29. | Exhibit C | NA | Please define what a "page" is? | A page is defined as one (1) side of an 8 ½ X 11-inch sheet of paper. One (1) 8 ½ X 11-inch sheet of paper printed on both sides constitutes two (2) pages. Respondents may attach organizational charts, Service Level Agreements Samples, which does not count as part of the 5 pages requirements. |
| 30. | Exhibit C | NA | Is it okay to submit in tabloid/landscape format? | No, A page is defined as one (1) side of an 8 ½ X 11-inch sheet of paper. One (1) 8 ½ X 11-inch sheet of paper printed on both sides constitutes two (2) pages. Vendors may attach organizational charts, Service Level Agreements Samples, which does not count as part of the 5 pages requirements. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|---|
| 31. | Exhibit G | NA | <p>EDGAR Certification form - Conflict of Interest Questionnaire at the end of the document (no page numbers). Is the Conflict-of-Interest Questionnaire (Form CIQ) at the end of Exhibit G - EDGAR Certification form provided as a "for information only" example of what will need to be completed and provided upon establishing a Respondents relationship with an applicable Customer? Or are respondents required to complete and submit this Form CIQ with their proposal responses?</p> | <p>Respondents must provide the EDGAR Certification Form as requested in Section 3.6.1, Federal Requirements, of the RFO.</p> |
| 32. | Exhibit A | 10-11 | <p>Attachment 1, List of Respondent's Cancelled Contracts, page 10, states: "THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT...." but there is no designated signature block on this form. Is this instruction referring to the signature block on page 9 of Exhibit A - Respondent Information?</p> | <p>Yes, that is correct.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|--|
| 33. | Exhibit B | 1 | Paragraph (3) on page 1, requires an experience summary for each Technology Category Experience. Are respondents required to provide the experience summary(is) inserted into the same Exhibit B document, and if so, where in the document should these be placed? Or are respondents required to provide the experience summary(is) in a separate response document? | Respondents will provide their experience regarding the products being proposed under this RFO as part of the Exhibit B document under Question 3. Respondents will create a paragraph for each Category being proposed, and the experience related to that category listed under Table 1. |
| 34. | Exhibit C | NA | Contract Marketing and Customer Support Plan, pages 1-2, items 1 through 7. Are respondents required to insert their response content after each item in the Exhibit C document itself, or should their Contract Marketing and Customer Support Plan be provided as a separate response document? | Respondents may choose to insert their responses after each item or to create a separate document clearly titled and labeled as Exhibit C. The total page count applies in both instances. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|--|--------|---|--|
| 35. | Exhibit B | NA | RE: Exhibit B - Respondent History and Experience, paragraph (4), Table 2: Number of Years Providing Requested Products/Services, page 1. QUESTION: In Table 2: Number of Years Providing Requested Products/Services, in the column with the "Products / Services" heading, are respondents required to list each product being proposed in the first column, or only the Technology Categories listed in Table 1: Category(is) to which Respondent is Responding? | Respondents will use the categories listed under Table 1, to which respondents are proposing. |
| 36. | Standard Terms and Conditions Section 10.4 | NA | Successful Respondent Certifications, paragraph B, sub-paragraph xxiv. Successful Respondent Certifications, paragraph B, sub-paragraph xxiv. QUESTION: If a Successful Respondent's COTS /SaaS software is FedRAMP authorized, does that satisfy the TX-RAMP certification requirements for the State of Texas and 1 TAC §§ 202.27 and 202.77? | No, Fed Ramp and TX-RAMP certifications are not required to be awarded a contract under this RFO; however, TX-RAMP certification is required for state agencies, institutions of higher education, and public community colleges to purchase cloud computing services. Please refer to Texas Risk and Authorization Management Program (TX-RAMP) Texas Department of Information Resources for more information. |
| 37. | Package 2 Itemized Pricing Sheet | NA | Will our pricing be provided to potential customers through the DIR websites, or will they only show our % off MSRP? | DIR will post the final negotiated pricing index with the percentage discount from MSRP. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|---|--|
| 38. | Package 2 Itemized Pricing Sheet | NA | Will our pricing be included in the contract required to be hosted on the DIR landing page upon award? | The Package 2 Itemized Pricing Sheet is part of the Respondents response documents. The pricing requirements for the DIR Contract web page are detailed in Package 3A Standard Terms and Conditions Section 7 and Package 3B Sample Contract Template Section 7 Internet Access to Contract and Pricing Information. |
| 39. | Exhibit B | NA | Question 3 - For each Technology Category selected in Table 1 and in no more than three (3) pages total... Question: We are responding to 3 categories. May we combine our response into 9 pages (3X3) if we identify the categories that each experience relates to? We intend to provide multiple customer experience/projects that include multiple categories, and this would avoid having us having to duplicate the information. | Please provide your related experience within Exhibit B question 3 by creating a paragraph for each category being proposed under this RFO. Keep your experience paragraph per category simple and as clear as possible. Exhibit B has a limit of 5 total pages. |
| 40. | 3.6.5 | NA | Authorized Reseller / Order Filler Question: Several publishers have asked what the intent is for this statement "...and may sell such products under the terms and conditions of the DIR Contract, in support of Respondent's proposal". Would DIR please clarify? | As an authorized reseller, the respondents must understand the Terms and Conditions of the DIR contract to make sure there are no conflicts with your manufacturers and publishers. Any additional terms and conditions related to EULA's, SLA's etc.... For additional details on how this relates to the respondent, DIR customer and the publisher please reference sample Contract Template Section 10.1 Software license Agreements and 11.a Conflicting or Additional Terms. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|---|
| 41. | 2.6.h | NA | <p>AUTHORIZED VAR RESELLERS MUST HONOR EXISTING / CURRENT CUSTOMER AGREEMENTS</p> <p>Question: How is this handled if there is a multiple award?</p> | <p>Currently DIR has VAR agreements with several customers, depending on the selection of the VAR provided for the next contract term under each brand (Microsoft, Adobe and Novell) the Respondents awarded the contracts will coordinate the transition of each license agreement renewal dates as the current Respondent's contract expires and the new contract terms begins. There is a specific transition process set forth by each Manufacturer (Microsoft, Adobe and Novell) that needs to be followed. If you are a VAR provider with these 3 manufactures, you should be aware of this transition process. DIR Contract Manager and the Successful Respondents will work together each step after the award of the new contract is made.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|--|
| 42. | Exhibit J | NA | Vendor References form asks the entity providing the reference if they have ever purchased Comprehensive Web Development Services. This RFO is not for Comprehensive Web Development Services; it is for Software, Commercially Off the Shelf (COTS) and Related Services. Can DIR please correct the reference document so that it aligns with the RFO in question? Or can we have our customers edit where necessary. Example: if we are asking our customer to provide a reference for ERP software, the Comprehensive Web Development Services questions, won't be applicable and therefore they cannot complete the form as intended. | Addendum 1 with the revised documents was posted on 3/10/2023. |
| 43. | General | NA | We are evaluating TXRAMP certification for SaaS offerings, but these offerings are not likely to be certified at the time of RFO submission. Will DIR consider SaaS customer references who are not, yet TXRAMP certified in order to qualify for the SaaS category? If not, will there be an opportunity to add this category before or during the period of performance? | DIR will accept all customers references provided on or before 4/28/2023. TXRAMP has no impact on the reference's requirements for this RFO. The SaaS category will be awarded based on the evaluations process, the TXRAMP requirements can be done before or after the award of these contracts. TXRAMP can be done throughout the life of the contract. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|---|--|
| 44. | Package 2 Itemized Pricing Sheet | NA | Tab 3. For the Itemized Price Sheet I wanted to confirm that we are putting Related Services on tab 3. Also, what is the purpose for the Subcategory on tab 3 (there are 3 category fields)? The Subcategory examples are not clear as they do not necessarily relate to the types of services we provide. Our services for software versus a SaaS application would be the same. | Yes, all related services will be listed under Tab 3. The purpose of the Subcategory is to identify the product listed under Tab 1, and to analyze products and services as a package and stand alone. It is ok to enter NA if the service you are providing is not related to a specific software function, brand or category listed in Tab1. |
| 45. | 3.6.5 | NA | Authorized Resellers/Order Fulfillers Question: Can DIR please provide a sample of an approved manufacturer's letter? | No, this is a document provided by the manufacturer to a reseller. |
| 46. | 3.6.5 | NA | When we purchase thru an entity such as ScanSource for products such as HP, do we get letter from ScanSource or HP? | Are you a ScanSource authorized Reseller? If yes, they should provide you with a letter that shows you can sell all the products listed under their business catalogue. If not, you will need to be a HP authorized reseller and you should provide an HP authorized reseller letter. |
| 47. | Exhibit C | NA | Question 7 - We understand we will need a website for DIR. How quickly after the award is this required? | DIR requires the web site to be completed 30 days after the award letter is sent to Respondents. |
| 48. | Package 2 Itemized Pricing Sheet | NA | We noticed that Apple's DIR pricing is a percentage of MSRP. Due to the high volume of part numbers that Transact Campus offers, is this acceptable for the price component? | Please clarify, DIR does not list Apple products under this RFO, nor are we providing any type of percentage off MSRP information either. You may want to check with the Manufacturer if this RFO is suited for Apple Software products. |
| 49. | General | NA | Will DIR provide the live Q&A responses from the March 1st webinar | Addendum 2 was posted on March 27, 2023. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
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| 50. | General | NA | <p>Reference Section: Marketing Engagement Questions and Answers.pdf, Pre-Solicitation, Question 14</p> <p>Question: The link in the response is not hyperlinked. Would you please provide the URL to Interstate Cooperation Contracts?</p> | <p>Please copy and paste this link to a web browser. https://dir.texas.gov/it-solutions-and-services/organizations-outside-texas/icc</p> |
| 51. | 3.4.1 | 14 | <p>During the Pre-proposal Conference presentation on March 1, there were three HUB options mentioned (subcontracting meets or exceeds the 21.1%; subcontract to a partner, but less than 21.1%; or don't subcontract at all). 1) Since the HSP Plan appears to be a pass/fail requirement for this RFO, are there any evaluation points associated with subcontracting to a HUB partner? 2) Is subcontracting 21.1% to a HUB partner weighted in any way in the evaluation points? Or will the same evaluation points be awarded to the Respondent if they subcontract less than the 21.1% or none of the work to HUB subcontractors?</p> | <p>The answer to questions 1 and 2 is: There are no evaluation weights associated with the HUB Subcontracting Plan.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|-----|-------------|--------|--|---|
| 52. | 3.4.1 | 14 | Is it a requirement for a Non-HUB Prime Respondent to subcontract with HUB vendors if the Respondent is capable of self-performing (and usually self-performs) all work associated with the contract and will be fulfilling the entire contract with their own resources? And if self-performing Non-HUB Prime Respondents complete and submit the HSP saying that they will not subcontract at all, does that HSP qualify as a "Pass" in the evaluation criteria? | HUB or non-HUB prime vendors, if Self Performing, will provide a justification on how your company will perform an entire contract with its own employees, supplies, materials, and equipment. Do not reference the possibility of subcontracting in the future, why you do not subcontract, refer to other documents, or make any statements about subcontracting. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
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| 53. | 3.9.4 | 22-24 | <p>Please clarify this statement, "Respondents must offer only one discount for each brand, product family or whatever group of Respondent's choice proposed. The discount shall be applied to all products within that brand, product family or whatever group of Vendor's choice. Product discount ranges and/or averages will not be accepted." The standard pricing model for products being offered under this RFO traditionally follows this example: Brand ABC Software 15% off MSRP -Hardware 10% off MSRP -Training 5% off MSRP Maintenance 8% off MSRP</p> <p>If our understanding is correct, DIR is requesting ONE discount per Brand. This will not be advantageous for the government as this will force respondents to provide DIR with the lowest discount to account for the fluctuation in commercial discount practices. The federal government does not require this sole discount rule in its contracts. Further, respondents that currently hold DIR contracts are not subject to this one discount per Brand rule and therefore will be forced to dramatically reduce discounts across the board to accommodate this new rule.</p> | <p>The instructions do not ask for one discount per brand. Please re-read: "Respondents must offer only one discount for each brand, product family or whatever group of Respondent's choice proposed. The discount shall be applied to all products within that brand, product family or whatever group of Vendor's choice." Please reference the Pre-Solicitation Conference detailed pricing section and these questions will become clear. Tab 1 Product Detail list - Respondents will list all products under the brands and categories with different discounts if that is what the Respondents wants to do, once this tab is completed the average discount for each brand is carried to TAB 2 BidStamp Brand Average tab and that is what is loaded into the BidStamp pricing sheet.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
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| 54. | Exhibit J and Exhibit F | NA | We are requesting that four different state agency clients submit reference documentation on our behalf. One state responded immediately that they would be happy to be a reference but they "...are unable to sign the release from liability form or any sort of indemnification or release of liability." Is there any flexibility on using Exhibit F, or does DIR have any guidance for state agencies in this regard? | The Release of Liability form is for the Respondent to complete and submit with the response package. The Respondent is providing DIR with a release of Liability for DIR to contact and use the reference forms being provided. See the top of the form direction in red which reads "THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE AND SUBMITTED WITH THE RESPONDENT'S RESPONSE" |
| 55. | 2.1 | 12 | Can we respond even if we can only support a few of the categories /functionalities? | Yes, respondents can propose any or all the listed categories and functionalities. |
| 56. | 1.2 | 9 | Can we leave blank any forms and responses dealing with Value Added Software since we don't provide that? | Yes, Respondents will provide information and response to the products and services being proposed. Vendors providing Software COTS products only do not need to fill out or complete any of the VAR section requirements. Simply answer NA on the form. |
| 57. | Exhibit C | NA | Please clarify the 5-page limit for Exhibit C. The original Exhibit C document is 3 pages long. Do we have 5 pages for our responses and information, bringing the final page count 8 pages? | Exhibit C provided 3 pages is the questions DIR requires the Respondents to answer, to reflect the Marketing Plan strategy that is proposing, the total of 5 pages is to avoid Respondents providing DIR with a lengthy document that does not answer the questions. Respondents may attach organizational charts, Service Level Agreements Samples, which does not count as part of the 5 pages requirements. |

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| 58. | Exhibit J | NA | Could you please confirm if the previously issued Reference forms will work as we have already sent the forms to our customers, or do you want us to resend them the revised version of Reference form? | IF a Respondent have made the appropriate changes to the exhibit J form to reflect the products and services which are related to this RFO Scope that they provided the customers, in this case you do not need to resend the forms. |
| 59. | Exhibit A | NA | Are Adobe Acrobat Certified Signatures accepted as an alternate to a pen signed document? | A DocuSign or other electronically verifiable signature will be accepted. A typed name in the required signature location will not be accepted as a "signed". |
| 60. | Sample Contract Section 2 | 2 | Page 2 Section 2 "Term of Contract" Question: Would DIR be amenable to Microsoft EA and EES agreements being a 3-year contractual commitment term? | This RFO will award a contract with a minimum of 4-year term with an additional 2 one-year optional extensions. |
| 61. | Exhibit H | NA | 09-RFO-DIR-CPO-TMP-570 Package 1 Exhibit H Policy Driven Adoption for Accessibility (PDAA) Vendor Assessment - 4b - In the VADSIR document you list "24hour / 7day/week toll free phone support number" as an example of alternate means. Is this considered a type of alternate means for question 4b in the PDAA response as well? | Alternate methods are anything that provides information to a user in an alternate format that accommodates their needs; examples are help desk support, text alternatives, adding captions, etc. Complete the question with how your organization will accommodate non-compliant EIR. |
| 62. | Exhibit H | NA | 09-RFO-DIR-CPO-TMP-570 Package 1 Exhibit H Policy Driven Adoption for Accessibility (PDAA) Vendor Assessment - 3c - Please explain the distinction between "into" and "across" listed in the answer options for 2 or 3. | Accessibility criteria integrated into processes refers to independent processes. There may be gaps in accessibility when transitioning from one process to another. Accessibility criteria integrated across processes refers to cross-functional processes and alignment with accessibility criteria between those processes to prevent gaps. The latter is a more mature model. |

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| 63. | Exhibit B | NA | Experience Question 2 – “For each Technology Category selected in Table 1 and in no more than three (3) pages total” Question: For clarification, does this mean 3 pages PER category? | Please provide your related experience within Exhibit B question 3 by creating a paragraph for each category being proposed under this RFO. Keep your experience paragraph per category simple and as clear as possible. Exhibit B has a limit of 5 total pages. |
| 64. | Exhibit J | NA | Does DIR require 3 references for EACH Technology category (software, SaaS, related services)? | A minimum of 3 references are required. Reference does not have anything to do with how many products the vendor is proposing. |
| 65. | Exhibit J | NA | May one customer reference be used for multiple technology categories? | A minimum of 3 references are required. Reference does not have anything to do with how many products the vendor is proposing. |
| 66. | Exhibit J | NA | Will DIR accept more than 3 references, and if so, how many more? | DIR will consider the first three references received. |
| 67. | Standard Terms and Conditions Section 6 | NA | TERMS AND CONDITIONS APPLICABLE TO STATE AGENCY PURCHASES ONLY. Paragraph A relates to ACR and VPAT compliance. If a software application does not meet accessibility requirements at this time, can it still be approved and sold to Local Governments (non-State Agencies) in Texas? Or, if it currently doesn't meet requirements is that a pass/fail rejection of the offer? | All products offered in the solicitation response must have an ACR. Products with ACRs that do not conform to WCAG 2.0 AA success criteria may still advance in the process. The procuring agency will make the final decision on products they wish to purchase. State of Texas agencies and institutions of higher education are required to comply with 1 TAC 206.50 and 1 TAC 213. |

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| 68. | 3.9.3.8 | NA | <p>Canceled Contract References. Are you looking for a list of customers who have "canceled" a contract during an agreed upon term? Some SaaS agreements are month to month. If a customer chose not to renew for the following month, is that considered a cancelation? There could be dozens of these types of cancelations. Same for customers paying annual maintenance and support. If a customer chooses not to renew for an upcoming annual term, is that considered a cancelation as well? Or are you only looking for cancelations during the term of an agreement?</p> | <p>This section does not require disclosure of contracts that expired after a customer declined to exercise an optional contract renewal.</p> |
| 69. | General | NA | <p>How do we handle new features / offerings associated with the COTS application that are not currently available, but will be within the term of the DIR contract? These features would not be a new COTS application, but new capabilities that would come with an added cost to the End Customer.</p> | <p>Please review sample Contract Template Section 4 Products and Service Offerings.</p> |
| 70. | Exhibit B | NA | <p>Question 6, Table 4. Sales to Other State Public Entities. Are you asking for a list of all contracts with other entities in other states? If so, each one individually or aggregate by state? From what time? Last 12 months? Longer?</p> | <p>Vendors will provide total sales to date by State for sales which falls under the scope of this RFO.</p> |

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| 71. | General | NA | Requirement: BidStamp Pricing Question: In BidStamp is the "discount off MSRP" the same as brand average discount? | Yes |
| 72. | General | NA | Addendum 1, Page 2 of 2; The acknowledgement page reads, "... Respondents shall submit this signed "page one" of the Addendum, acknowledging receipt of the Addendum."; however, the bottom of the page reads Page 2 of 2. Should the acknowledgement read, "Respondent shall submit this signed "page two" of the Addendum"? | Respondents will provide Page 1 and Page 2 signature page of Addendum 1 with their responses. |
| 73. | Standard Terms and Conditions Section 11.2.3 | 34 | Termination for convenience provisions creates a great deal of economic uncertainty for the Respondent. Accordingly, Respondent respectfully asks whether the State is willing to remove the provision in its entirety? Alternatively, is the State willing to insert additional language in the Termination for Convenience section that states: "notwithstanding anything in the Contract to the contrary, the State acknowledges and agrees that the Respondent's SaaS subscriptions are billed annually at the beginning of the subscription, are due upon being invoiced and nonrefundable when paid with the exception of a termination of the contract for cause."? | DIR will consider exceptions to the DIR Standard Terms and Conditions on a case-by-case basis. In order for these to be considered, Respondent must comply with Sections 2.6 and 3.9.5 of the RFO with the Respondent's submission. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
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| 74. | Standard Terms and Conditions Section 5.11 | 13 | The State's license requirements are very broad, and effectively reduce the Respondent's rights in its intellectual property (IP) and are not necessary for the Customer to carry out its intended purposes for the Respondent's IP. Accordingly, Respondent respectfully asks whether the State is willing to limit the scope of the license to a non-exclusive, non-transferrable license, solely for the Customer's internal business purposes to use for the term of the Agreement. | DIR will consider exceptions to the DIR Standard Terms and Conditions on a case-by-case basis. In order for these to be considered, Respondent must comply with Sections 2.6 and 3.9.5 of the RFO with the Respondent's submission. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
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| 75. | Standard Terms and Conditions Section 5 | 9-13 | <p>Section 5 Intellectual Property Matters contains provisions that allow the State to acquire all property rights in any deliverables; however, the Respondent is providing a COTS software solution.</p> <p>Respondent respectfully asks whether the State is willing to insert the following language into Section 5.</p> <p>"Notwithstanding any provision to the contrary, Respondent's deliverables are commercial-off-the-shelf (COTS) software products developed by the Respondent at great private expense and are trade secrets that should be construed as "restricted computer software" as such term is defined in FAR 52.227-14. Accordingly, Respondent shall retain all title, copyright, patent, and other proprietary rights to all proprietary material and to all copies thereof. Additionally, any enhancements, modifications, improvements, derivations, extensions, links, or other changes to the licensed software programs and documentation, whether made by or shared with the Customer, be the exclusive property of the Respondent."</p> | <p>DIR will consider exceptions to the DIR Standard Terms and Conditions on a case-by-case basis. In order for these to be considered, Respondent must comply with Sections 2.6 and 3.9.5 of the RFO with the Respondent's submission.</p> |

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| 76. | Standard Terms and Conditions Section 10.1.1 | 23 | <p>Section 10.1.1 Indemnities by Successful Respondent contains provisions that require unlimited indemnification requirements for certain claims. This provision harms competition by favoring Respondents with greater assets that are able to tolerate a larger amount of risk shifting. The RFO should even competition by limiting the indemnification responsibility to the insurance coverage required. Accordingly, the Respondent respectfully asks whether the State is willing to limit the indemnification requirements to third party claims, and, with the exception of claims for patent or copyright infringement, violations of state or federal tax requirements, worker's compensation and unemployment compensation laws, or willful conduct, that indemnification requirements be tied to the Respondent's types and amounts of available insurance coverage required under the RFO.</p> | <p>DIR will consider exceptions to the DIR Standard Terms and Conditions on a case-by-case basis. In order for these to be considered, Respondent must comply with Sections 2.6 and 3.9.5 of the RFO with the Respondent's submission.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
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| 77. | Standard Terms and Conditions Section 4.4(C) | 8 | Section 4.4(C) Assignment - does not permit the Respondent to assign the Contract without the prior written approval of the State. Respondent exists in a very dynamic business environment that routinely involves mergers and acquisitions. Accordingly, Respondent respectfully asks whether the State is willing to incorporate language into this provision that provides that approval for an assignment shall not be unreasonably delayed or withheld. | DIR will consider exceptions to the DIR Standard Terms and Conditions on a case-by-case basis. In order for these to be considered, Respondent must comply with Sections 2.6 and 3.9.5 of the RFO with the Respondent's submission. |
| 78. | Standard Terms and Conditions Section 4.2(B) | 8 | Will the amended terms of the contract affect any redlines suggested by the respondent and accepted by DIR? | Such amendments may impact negotiated exceptions to the extent necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority or to satisfy a procedural change due to DIR system upgrades or additions. |
| 79. | Standard Terms and Conditions Section 5.2 | 12 | Under this solicitation, we are exclusively offering our proprietary Software and COTS product to any prospective customers, and hence the ownership of the product will have to remain under the 'Successful Respondent'. Is it ok if completely re-write the ownership clause as per this understanding? | DIR will consider exceptions to the DIR Standard Terms and Conditions on a case-by-case basis. In order for these to be considered, Respondent must comply with Sections 2.6 and 3.9.5 of the RFO with the Respondent's submission. |

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| 80. | 3.6.5 | 15 | The content that is offered in our COTS product is provided by us via a reseller agreement with our vendors, do we need to provide authorization letter from all these content vendors? Please note that some of them are on Texas DIR and some are not. | Based on your clarification via email, your company is selling training and assessment software. As a reseller you will need Authorization Letters from the Manufacturer of the software you are selling. |
| 81. | Exhibit E | NA | Our product has single sign on access to many of our content providers, do we need to provide the VPAT for our vendor software as well? or is the VPAT for our product sufficient? | For "COTS" offerings, an ACR (a completed VPAT) is required for all product offerings. If state of Texas employees or the public will be end users for a product, an ACR is required. |
| 82. | General | NA | We have 2 products that we would like to list in our responses, do we need to prepare separate Exhibit documentations (e.g., Exhibit B or Exhibit C) or a combined one is enough? | Exhibit B and C are not related to a product, it is about the company so you only need one Exhibit B and one Exhibit C form for your company, and you should address each form as it pertains to the products being proposed. |
| 83. | 3.9.4.1 and Package | NA | As Discount off List Price is an acceptable pricing methodology per Section 3.9.4.1 of the RFO, can DIR please revise the header for Column G in Tab 1 of Package 2 - Itemized Pricing Sheet to read "DIR Customer Discount % off MSRP or List Price"? | DIR does not need to update the form; respondents may update the form titles to fit their pricing structure. Just make sure to not change any of the formulas. |
| 84. | Exhibit A | NA | Is an electronic signature from an authorized representative acceptable for Exhibit A? | A DocuSign or other electronically verifiable signature will be accepted. A typed name in the required signature location will not be accepted as a "signed". |

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| 85. | Standard Terms and Conditions Section 7.2 | 15 | QUESTION: Section 7.2 of the DIR Standard Terms and Conditions opens the possibility to require the Respondent to disclose marketing strategies and specific customer pricing. These items are normally held as confidential, protected from routine disclosure, and are considered trade secrets. Accordingly, is the State amenable to the webpage only being required to maintain information on how to obtain a quote without going into additional details including, but not limited to, items such as price lists and discounts? | Web requirements allow for "instructions to for obtaining quotes and placing Purchase Orders to be established in leu of posting actual pricing". See Sample Contract Section 7a A current price list or mechanism to obtain specific contract pricing. |
| 86. | Contract Sample Section 7 | 4 | Section 7 of the DIR Sample Contract opens the possibility to require the Respondent to disclose marketing strategies and specific customer pricing. These items are normally held as confidential, protected from routine disclosure, and are considered trade secrets. Accordingly, is the State amenable to the webpage only being required to maintain information on how to obtain a quote without going into additional details including, but not limited to, items such as price lists and discounts? | Web requirements allow for "instructions for obtaining quotes and placing Purchase Orders in leu of posting actual pricing". See Sample Contract Section 7a A current price list or mechanism to obtain specific contract pricing. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
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| 87. | Exhibit C | NA | QUESTION: Paragraph 7 of Exhibit C - Contract Marketing and Customer Support Plan opens the possibility to require the Respondent to disclose marketing strategies and specific customer pricing. These items are normally held as confidential, protected from routine disclosure, and are considered trade secrets. Accordingly, is the State amenable to the webpage only being required to maintain information on how to obtain a quote without going into additional details including, but not limited to, items such as price lists and discounts? | Web requirements allow for "instructions for obtaining quotes and placing Purchase Orders in leu of posting actual pricing". See Sample Contract Section 7a A current price list or mechanism to obtain specific contract pricing. |
| 88. | 3.6.5 | 16 | We are an authorized reseller of the SaaS product, however in public sector deals, SaaS company cannot sell the product directly. They sell it through middle entity. So, do we need certification from patent SaaS company or the middle company for authorized reseller? | DIR requires the Respondent submitting a response to provide authorization to sale to DIR customers, so the respondent must determine how/who are the parties which authorizes their company to sale a product, then obtain an authorization letter from the correct source. |
| 89. | 2.1 | 4 | May we include a single COTS product in multiple categories/ functionalities? Our product is capable of several of the listed functions. | Yes, a product can have multiple functionalities. |

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| 90. | General | NA | Are we required to demonstrated TX-RAMP or FedRAMP compliance in our response to the RFO? | No, Fed Ramp and TX-RAMP certifications are not required to be awarded a contract under this RFO; however, TX-RAMP certification is required for state agencies, institutions of higher education, and public community colleges to purchase cloud computing services. Please refer to the Texas Risk and Authorization Management Program (TX-RAMP) Texas Department of Information Resources for more information. |
| 91. | General | NA | Is FedRAMP compliance sufficient to meet TX-RAMP requirements? | No, TX-RAMP certification is required for state agencies, institutions of higher education, and public community colleges to purchase cloud computing services. Please refer to Texas Risk and Authorization Management Program (TX-RAMP) Texas Department of Information Resources for more information. |

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| 92. | Exhibit B | 1 | Question #2 - Can you clarify or provide definitions to distinguish between what may be considered Software and what may be considered Software as a Service? "Software" is not specifically defined in Exhibit L: Definitions and we want to ensure we correctly classify our product. | Software is a set of instructions, data or programs used to operate computers and execute specific tasks. Software as a Service (SaaS) is a delivery model for software. The capability provided to the consumer is to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g., web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, except for limited user-specific application configuration settings. (Per NIST definition publication 800-145) |
| 93. | Exhibit B | 1 | If a product may be classified as Platform as a Service, should it be classified as Software as a Service, or as Software in Exhibit B? Can you confirm that a Platform as a Service product is an eligible COTS solution for this RFO? | Platform as a Service has not been listed as an out-scope service for this RFO. |
| 94. | Standard Terms and Conditions Section 10.4 | 27 | Under the umbrella of Texas state agencies, Junior Colleges require that COTS/SaaS software they purchase be TX-RAMP certified. If a local High School (not a state agency) engages in cooperative courses with a Junior College, would that result in the high school having a TX-RAMP requirement for any COTS/SaaS software purchased by the high school? | TX-RAMP certification is required for state agencies, institutions of higher education, and public community colleges to purchase cloud computing services. Please refer to Texas Risk and Authorization Management Program (TX-RAMP) Texas Department of Information Resources for more information. |

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| 95. | Package 2 Itemized Pricing Sheet | NA | Tab 1 Products Detail: Are discounts off MSRP a requirement of this response? In other words, will a bid with no discounts be disqualified? | No, DIR cannot disqualify a response due to a zero discount, however, keep in mind that Pricing is 40% of the total evaluation score. |
| 96. | General | NA | Vendor and the Texas Department of Information Resources recently agreed upon mutually acceptable terms between the parties under a recent DIR solicitation. Based upon that negotiation, the parties reached mutual agreement on terms using very limited, narrowly tailored and mutually approved exceptions. Given the recent completion of this negotiation and the direct involvement of both parties in reaching final agreement, the Vendor would like to confirm whether we are able to utilize that framework and that underlying agreement for this RFP? | Respondent should provide Exhibit A1 exception table form with the requested exceptions. DIR will determine whether to accept or reject such exceptions. The acceptance of the same or similar exceptions in a previous or existing contract does not indicate that DIR will accept such exceptions for a contract awarded under this RFO. |

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| 97. | General | NA | The products that we are including in our response are built on the Microsoft Power Platform and we will include those licensing fees in our pricing exercise. Clients that have used our product also need to have standard Microsoft licenses including, for example, a Power App per User license or Microsoft Basic license that includes Outlook and SharePoint. Should those license fees be included in our pricing exercise or is there an already negotiated DIR Microsoft Contract that should be referenced? | Respondents will list their products under the detailed product list and make a note under the product description of any dependencies these products must function. Most DIR customers do currently have Microsoft office suite as a standard on all computers. |
| 98. | Exhibit E | NA | Our Software has an existing VPAT prepared. Would it be acceptable for submitting vendors to provide a previously prepared VPAT instead of filling out Exhibit E? | DIR will accept an existing ACR (a completed VPAT) as long as the product has not changed since the last accessibility test to WCAG 2.0 AA standards. If the product has been updated a new VPAT needs to complete with updated testing results. |
| 99. | 2.8 | 8 | The RFO states "Respondent's Response may be disqualified if their exceptions are excessive." Please define what you would consider "excessive." Because we are a services and technology company, oftentimes a lot of the language included in prospect terms and conditions is not applicable which has the potential to lead to extensive terms and conditions. | Such determinations will be made at DIR's sole discretion. DIR encourages Respondents to take only those exceptions that are absolutely necessary. |

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| 100. | 2.2 | NA | Value Added Resellers (VAR) - Our software solution works on top of Microsoft licensed products. Should we include the pricing for the underlying Microsoft products in the Products Detail tab in the spreadsheet or the 5b VAR Products Pricing Sheet? If a single VAR is awarded the sale of all Microsoft products (as stated in 2.2) we would assume that the license line item for the Microsoft license would follow their pricing. | No, Respondents will list their products under the detail product list and make a note under the product description, of any dependencies these products must function. Most DIR customers do currently have Microsoft office suite as a standard on all computers. The VAR program is very specific and does not apply to products dependencies, it is a completely separate program for DIR to sale volume licensing to our customer base. |
| 101. | 3.9.3.6 Exhibit E | NA | Accurate Product Voluntary Product Accessibility Templates (VPATs) Regarding the request for VPAT, traditionally we ask for a signed NDA. Is this acceptable to the state? Is there a specific avenue to go about this? | DIR will not sign an NDA. If the respondent believes the information submitted is confidential, Respondent should comply with the RFO section 3.14. Failure to submit all required submission documentation may result in the disqualification of the response. |
| 102. | 1.2 | NA | Is there a max number of vendors for award per product listed within this RFO? | No, DIR will award as many contracts as necessary to fulfill our customer base needs. |
| 103. | Exhibit A | NA | Where can vendors obtain the Comptroller of Public Accounts Respondent Identification Number? | Contact the Texas State Comptroller office if you have any questions. https://comptroller.texas.gov/taxes/franchise/ |
| 104. | Exhibit J | NA | Reference Form - What number should be included in the Total Est. Contract Dollar Amount? | The total cost of the Project being referenced. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|---|
| 105. | Exhibit J | NA | Reference Form- Some responses from existing clients to the reference form may be commercially sensitive in nature. Are these responses considered confidential or are they subject to FOIA requests? If not automatically designated as confidential, is there a process to make them confidential? | If the respondent believes the information submitted is confidential, Respondent should comply with the RFO section 3.14. Ultimate determinations regarding confidentiality are made by the Office of the Attorney General. Failure to submit all required submission documentation may result in the disqualification of the response. |
| 106. | Exhibit J | NA | Reference Form - What do the "Dates of Performance" refer to? | The beginning and ending date of the Project you are requesting a reference for, from your customer. |
| 107. | 4.1 | NA | Evaluation of Responses - Will demonstrations be held? | No, there will not be any demonstrations conducted under this RFO. DIR is not buying anything we are currently setting up Cooperative Contracts for the DIR Customer base. |
| 108. | 4.1 | NA | Evaluation of Responses - If demonstrations will be held, how many vendors does DIR anticipate inviting? | No, there will not be any demonstrations conducted under this RFO. |
| 109. | 1.3.3 | NA | Information Technology Acquisition- What interstate agreements are there in place for other entities to buy off DIR contracts? | See the Current DIR customers list on our web site. https://dir.texas.gov/it-solutions-and-services/organization-outside-texas/icc |
| 110. | 1.2 | NA | "For administrative efficiency for DIR and its Customers, DIR reasonably anticipates that it will award a finite number of Contracts as determined by the competitive breaks created through evaluation of Responses." Can DIR please expand on an approximate number of awards potentially made through this RFO? | The total number of contracts to be awarded will be based on the DIR customer base needs. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|---|
| 111. | 1.2 | NA | "For administrative efficiency for DIR and its Customers, DIR reasonably anticipates that it will award a finite number of Contracts as determined by the competitive breaks created through evaluation of Responses." Can DIR please expand on how "competitive breaks" are defined and determined? | The Competitive Break is determined after the evaluation scores are completed and compiled, at this time DIR does not have any additional details as to at what point the break will be determined, there are a lot of factors that contributes to the decision process. This detail will be made available to all respondents after the RFO is closed. |
| 112. | 2.4 | NA | Regarding 2.4 - Related Software Services, if a supplier offers custom scoped implementation /service projects with a resulting one-time fee (vs set hourly charges), how should this be presented within Package 2 – Pricing Form? | Respondents may enter these types of services as a onetime fee, with a determined discount percentage. If there are discounts based on total cost or volume of purchase these may be enter under the volume tab. |
| 113. | 2.4 | NA | Related Software Services - If a respondent is offering hourly-based service rates, is there any need/requirement to provide further details on how scoping and the number of hours for a given project are determined? | No, provide the service description and the hourly rate along with the discount p/hour. If there are discounts based on total cost or volume of purchase these may be enter under the volume tab. |
| 114. | General | NA | The RFO uses "successful respondents" and "value added resellers (VAR)." To confirm, is it correct that this RFP may be awarded to both direct software providers and VARs, or are only VARs allowed to respond? | All Respondents that sales COTS software may respond to this RFO. This RFO will be awarding contracts for VAR (Microsoft, Adobe, and Novell) resellers as well as COTS software providers of all categories, functionalities, and types. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|--|
| 115. | General | NA | Our firm is the direct creator and distributor of our software, and we do not utilize VARs. Is this acceptable and/or is there any additional guidance for a successful/compliant bid from us? | Your software is part of the COTS section of this RFO, it does not have any relation to the VAR section. Please respond to the RFO listing your products under Tab 1, 2, 3 and 4 only Tab 5 is for VAR only and it does not apply to your company. |
| 116. | 2.11 | NA | “At DIR’s sole discretion, Successful Respondent may incorporate changes or make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO.”. What is the process for requesting additions to product/service offerings? How long does this process take? | DIR has an Amendment Process for requesting additional products can be added to a specific awarded contract. |
| 117. | Exhibit C | NA | Are there any ideal examples of marketing plans for reference? | No, a company should be able to answer the questions under the Exhibit C and expand to demonstrate the marketing strategies as well as the support plan for DIR customers. |
| 118. | Exhibit C | NA | As there are various depths that a vendor can go for promoting a successful DIR contract, does DIR have any general guidance for what it seeks to see from successful proponents? | In addition to the information in the RFO, DIR provides additional resources for vendors on the DIR website: https://dir.texas.gov/it-solutions-and-services/selling-through-dir and on the DIR YouTube Channel. |
| 119. | Exhibit J | NA | There are several references to “Comprehensive Web Development Services” which may not be applicable based on the categories listed in Section 2.1. Is there an updated version available or should we provide the appropriate context to the applicable references? | Addendum 1, with the revised documents was posted on 3/10/2023. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|---|
| 120. | 3.9.5 | NA | "Final terms and conditions will be agreed upon/during negotiation" Will each awarded vendor have their own final contract with their respective terms, or will all awarded vendors share one collective contract? | DIR will award one Contract per respondent, upon completion of negotiations. |
| 121. | Exhibit B | NA | Item 2 - Can DIR please provide definitions for Software, Software as a Service (SaaS), and Complete Solution Software/Hardware and Services? Only SaaS is defined within the definition's attachment. | Software is a set of instructions, data or programs used to operate computers and execute specific tasks. Software as a Service (SaaS) is a delivery model for software. The capability provided to the consumer is to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g., web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, except for limited user-specific application configuration settings. (Per NIST definition publication 800-145) Complete Solution (a package that offers all that is needed for the customer to have a working system for its end users) is when a Respondent sale both software license or Software as a Service along with hardware and or other services. |
| 122. | Exhibit B, | NA | For "Institutes of Higher Education", should these only be public institutions, excluding private universities & colleges? | TEC 61.003 defines Institutions of Higher Education https://statutes.capitol.texas.gov/Docs/ED/htm/ED.61.htm#61.003 |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|----------------------------------|--------|---|--|
| 123. | Package 2 Itemized Pricing Sheet | NA | Pricing – how should vendors indicate minimum orders/volume on the pricing sheet? | Vendors will note minimum orders under the product description. |
| 124. | Package 2 Itemized Pricing Sheet | NA | Pricing for some support services is based on formulas i.e., a percentage of the licensing cost. How should vendors express pricing that is not a set dollar amount but rather based on specific order amounts? | Vendors should enter a set of examples of Support Packages entering the total cost and the discount associated with it as shown on the spreadsheet. The formula to obtain the total cost for support can be explained under the description field. |

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|------|---------|----|--|--|
| 125. | General | NA | <p>We work with a few contracting partners that would like us to participate in DIR-CPO-TMP-570 We are working on completing the TXRAMP process. We currently have a provisional certification from TXDIR. One of the clauses in this agreement states we need to be TXRAMP compliant; see below: xxiv) if the services to be provided under a Purchase Order include cloud computing services, Successful Respondent shall comply with the requirements of the Texas Risk and Authorization Management Program ("TX-RAMP"), as provided by 1 TAC §§ 202.27 and 202.77, and the TX-RAMP Program Manual ("Program Manual"). Successful Respondent shall maintain program compliance and certification throughout the term of such Purchase Order, including providing all quarterly and ongoing documentation required by the Program Manual and any other continuous monitoring documentation or artifacts required by the Customer issuing such Purchase Order. Upon request from DIR or the Customer issuing such Purchase Order, Successful Respondent shall provide all documents and information necessary to demonstrate Successful Respondent's compliance with TXRAMP; and-</p> <p>-Does a provisional certification</p> | <p>TX-RAMP certifications are not required to be awarded a contract under this RFO; however, TX-RAMP certification is required for state agencies, institutions of higher education, and public community colleges to purchase cloud computing services. Please refer to the Texas Risk and Authorization Management Program (TX-RAMP) Texas Department of Information Resources for more information. For additional information regarding TX-RAMP, please refer to: https://dir.texas.gov/information-security/texas-risk-and-authorization-management-program-tx-ramp.</p> |
|------|---------|----|--|--|

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|---|---|
| | | | allow us to participate in the RFO? Any advice you can give would be appreciated. | |
| 126. | General | NA | I am seeing specific item codes listed. Nothing for data management, data governance, data discovery, data migration. How will companies (both unstructured and structured data) bid? Do we bid without a code? | There is no requirement to bid based on an NIGP code. The NIGP codes are utilized to help notify potential respondents of the offerings in the solicitation, however the NIGP code for such COTS Software is 208/11 Application Software not otherwise classified. This solicitation is not for data management, data governance, data discovery, data migration services only. All responses must contain a Commercial Off-the-Shelf (COTS) software solution. |
| 127. | General | NA | Since the HSP Plan appears to be a pass/fail requirement for this RFO, are there any evaluation points associated with using a HUB partner? | No |
| 128. | General | NA | Or will the same evaluation points be awarded to the Respondent if they subcontract less than 21.1% or none of the work to HUB subcontractors? | No points are awarded for the HSP. It is a pass or fail document. |
| 129. | General | NA | We will be submitting several products that vary in cost and complexity. Could we respond with a HUB partner for deals at or above a certain price threshold? (Example: Texas A&M wants to buy Product XYZ for \$100K (our example threshold), we contract with a HUB partner at 5% (our standard participation) for data migration support.) | You are responsible for any agreement between you and a reseller/subcontractor that you list on your HSP, i.e., what you pay the reseller, what products they may sell under your contract, etc. This information will not be listed on your HSP. You are responsible for completing all required fields on the HSP, please refer to the checklist on page 1 of the HSP and complete according to the Method you have chosen to complete. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|---|
| 130. | General | NA | Is it a requirement for a Non-HUB Prime Respondent to subcontract with HUB vendors if the Respondent is capable of self-performing and usually self-performs all work associated with the contract, and therefore will be fulfilling the entire contract with their own resources? | The HUB program is a Good Faith Effort program. The prime Respondent will decide how they will best fulfill a contract. |
| 131. | General | NA | And if self-performing Non-HUB Prime Respondents complete the HSP saying that they will not subcontract at all, does that HSP qualify as a "Pass" in the evaluation criteria? | If a respondent, HUB, or non-HUB, has chosen to complete as Self Performing, they will complete Sections 1, 2, 3, and 4 of the HSP. In Section 3, they will justify how their company will perform an entire contract with its own employees, supplies, materials, and equipment. |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|----------------------------------|--------|---|--|
| 132. | General | NA | <p>We have had several questions on BidStamp since the 27th that are unanswered. On the Prebid call Vania mentioned that some of the questions had to go to your legal to answer and I believe the questions we have are some of them. Our questions deal with company ownership. Trimble already owns the company's COTS solutions we would like to propose in our bid, however the companies all still have separate tax id numbers. In September, all the companies will be incorporated under Trimble's Tax ID number. The questions I submitted relate to this topic and could affect how we bid or if we can bid at all. I was hoping you could help find out the status of these questions and when we might expect the answers to them.</p> | <p>You would need to respond to how your company is formed at the time the submission is due. Any updates/changes would be handled post submission.</p> |
| 133. | Package 2 Itemized Pricing Sheet | NA | <p>I have already been populating the Original Pricing Sheet. Can I continue to use it, or do I need to copy and paste from one into the other?</p> | <p>No, you are fine, as long as you make sure any of the changes made does not affect what you are proposing. Most of the changes were made to the VAR tabs.</p> |

| # | RFO Section | Page # | Vendor Question | DIR Answer |
|------|-------------|--------|--|---|
| 134. | General | NA | We are a software solution looking to be listed on the DIR via different partners (i.e., Carahsoft, SHI) on the upcoming COTS RFO. My question is, can we submit our information to multiple partners? That would not disqualify us in any way, would it? | Yes, you can be a subcontractor to multiple primes. |
| 135. | General | NA | Couple of brief questions about pre solicitation I have been hoping you can answer. It is a pretty basic question, not anything regarding the solicitation itself, more what it covers. It is talking about software commercial-off-the shelf and related services, but it does not mention things like antivirus or threat protection. Is that in a different category? | This is a catch all solicitation and it covers all types of software; the only criteria are that it qualifies as COTS ready to use software. The NIGP code 208/11 Application Software, (Not Otherwise Classified), covers antivirus, and threat protection software. |



TEXAS DEPARTMENT OF INFORMATION RESOURCES

Addendum 4

| | |
|-----------------------------|-----------------|
| SOLICITATION NUMBER: | DIR-CPO-TMP-570 |
| ADDENDUM NUMBER: | 4 |

Addendum Date: April 13, 2023

If you should have any questions regarding this Addendum, please contact:

Vania Ramaekers
 Department of Information Resources
 300 W. 15th Street, Suite 1300
 Austin, Texas 78701
 Email: vania.ramaekers@dir.texas.gov

Notice is given to Respondents desiring to submit a response to the above referenced solicitation that additional information is required:

This Addendum modifies the solicitation for Software (COTS) and Related Services, Solicitation No. DIR-CPO-TMP-570, released February 2, 2023.

In the submission of its response to this solicitation, Respondents shall submit this signed "page" of the Addendum, acknowledging receipt of the Addendum.

Respondent Acknowledgment of Receipt

(Printed entity name)

(Printed name of authorized representative)

(Signature of authorized representative)

(Date)

1. The solicitation Deadline for submitting Response to RFO has been changed from 04/28/2023 02:00PM (CT) **to May 23, 2023, 02:00PM (CT)**
2. A second round of Questions and Answers (Q&A) is being added to the schedule to allow for questions that were submitted on or after 3/21/2023.
3. The Solicitation Schedule has been modified as follows:

| Activity | Date/Time (CST) |
|--|-------------------------------------|
| Publish RFO on Electronic State Business Daily | 2/2/2023 |
| Deadline for submitting Pre-Proposal Conference questions | 02/24/2023 05:00 PM (CT) |
| Pre-Proposal Conference (Optional) | 03/01/2023 01:00 PM (CT) |
| (First Round) Deadline for submitting all RFO Questions | 03/21/2023 05:00 PM (CT) |
| (First Round) Deadline to Post Q&A Addendum to ESBD | 04/03/2023 05:00 PM (CT) |
| (Second Round) Deadline for submitting all RFO Questions | 05/03/2023 05:00 PM (CT) |
| (Second Round) Tentative Deadline to Post Q&A Addendum to ESBD | 05/17/2023 05:00 PM (CT) |
| Deadline for submitting Response to RFO | 05/23/2023 02:00 PM (CT) |
| Deadline for DIR to receive Respondent References | 05/23/2023 02:00 PM (CT) |
| Evaluations, Clarifications, and Amended Responses | 06/01/2023 – 6/30/2023 |
| Negotiations and Awards | 07/01/2023 – until completed |



TEXAS DEPARTMENT OF INFORMATION RESOURCES

Addendum

| | |
|-----------------------------|-----------------|
| SOLICITATION NUMBER: | DIR-CPO-TMP-570 |
| ADDENDUM NUMBER: | 5 |

Addendum Date: May 17, 2023

If you should have any questions regarding this Addendum, please contact:

Vania Ramaekers
 Department of Information Resources
 300 W. 15th Street, Suite 1300
 Austin, Texas 78701
 Email: vania.ramaekers@dir.texas.gov

Notice is given to Respondents desiring to submit a response to the above referenced solicitation that additional information is required:

This Addendum modifies the solicitation for Software (COTS) and Related Services, Solicitation No. DIR-CPO-TMP-570, released February 2, 2023. It contains the answers to vendor questions received through May 3, 2023.

In the submission of its response to this solicitation, Respondents shall submit this signed “page one” of the Addendum, acknowledging receipt of the Addendum.

Respondent Acknowledgment of Receipt

 (Printed entity name)

 (Printed name of authorized representative)

 (Signature of authorized representative)

 (Date)

Question and Answer Document

The following table outlines vendor questions, references Request for Offer (RFO) sections and page numbers, and the Department of Information Resources (DIR) response to questions (question are organized in order received):

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|----|--|--------|--|---|
| 1. | Package 2 Itemized Pricing Sheet | NA | Will DIR provide approvals to the software publishers which DIR has established publisher agreements for volume license programs to speak to the bidders regarding contracts and pricing? | No. An authorized Value-Added Reseller for Adobe, Novell, or Microsoft must have VAR agreements in place with the manufacturer prior to submitting as a VAR respondent. |
| 2. | General | NA | Which vendors attended the pre-proposal conference? | Please reference Addendum 1 Attachment B, Solicitation Conference Attendee List. |
| 3. | General | NA | Will the selected vendor have the opportunity to provide exceptions and/or alternative contract language during contract negotiations, or will vendors need to provide those within their respective proposals? | Proposed exceptions will only be accepted with the solicitation response, respondents will complete Exhibit A1 Exception Table. |
| 4. | 3.9.4.1 and Package 2 Itemized Pricing Sheet | NA | Questions A, B and C: RFO Section 3.9.4.1: In of the RFO, TDIR distinguishes between the list price and the MSRP price to be listed in the pricing tabs in Package 2. But in tab 1- (products detail) of Package 2, the list price and MSRP price are listed in the same column (see Column F? MSRP or List Price?). This elicits the following: 1a -Please clarify the difference between MSRP and List Price as it is interpreted by DIR. | DIR does not have an interpretation for a business model decision. The industry definition for a Manufacturer's suggested retail price (MSRP) is the price that the maker of a product recommends for it in customer-facing retail stores. An MSRP is sometimes informally known as the "sticker price." The reseller will determine the price to be charged to a customer. The MSRP is designed to keep prices at the same level from store to store. Typically, a business model establishment set their list price at or below the MSRP. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|----|--|--------|--|--|
| 5. | 3.9.4.1 and Package 2 Itemized Pricing Sheet | NA | Question A: 2a - The difference between MSRP and List Price is described in the RFO. However, it is not clear what the key difference is. Is the List Price only the price to be provided by a prime Vendor who is a reseller, and the MSRP is for any reseller regardless of Vendor status? | The respondent is the one that decides their company's business model and pricing structure. DIR has added the List price option, to accommodate the market current business models. Respondents will simply determine what is between the MSRP or List Price to match their company pricing structure and delete the other one. |
| 6. | 3.9.4.1 and Package 2 Itemized Pricing Sheet | NA | Question B: Which one (MSRP or List Price) should be entered into Column F? Are there circumstances under which DIR would prefer to see the MSRP or the List Price? | DIR has no preference between MSRP or List Price, however if using List Price, the respondent should be prepared to provide supporting documentation on how they determined the list price. |
| 7. | 3.9.4.1 and Package 2 Itemized Pricing Sheet | NA | Question C: How should the Vendor or Reseller indicate which (MSRP or List Price) is being used in Column F? | Simply use the pricing structure determined by your company and delete the other. |
| 8. | Package 2 Itemized Pricing Sheet | NA | Tab 4 - Volume Discount: Volume discounts are built into our pricing model. We offer discounts as our customers expand the use of our system. These tiers of use will be captured in the line items we will provide on Tabs 1 and 3. Therefore, is? tab 4- volume discount? in Package 2 required, or can it be omitted since our entire pricing model will be captured on tabs 1-3? | Tab 4 Volume pricing is not required. Respondents will leave the tab blank. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|-----|--|--------|--|--|
| 9. | Package 2 Itemized Pricing Sheet | NA | <p>Tabs 5a and 5b: It appears that tabs 5a and 5b of package 2 (VAR Product volume discount and VAR Products pricing sheet) only apply to the software publishers shown. Is that a correct assumption? If we are not one of those listed, can we omit those tabs as well? a. If tabs 5a and 5b are required, can DIR please elaborate on what is required in those tabs as differentiated from the information provided in the other tabs?</p> | <p>The tabs for VAR pricing only apply to the software publishers shown. Respondents will leave Tab 5a and 5b blank if it does not apply to your company.</p> |
| 10. | Package 3A DIR Standard Terms and Conditions | NA | <p>Could the State please provide Package 3a? Standard Terms and Conditions in MS Word format to facilitate any redlines proposed by vendors?</p> | <p>The RFO requirement is for vendors to list their exceptions in Exhibit A1 exception table. The Terms and Conditions red lined is not an acceptable method for proposing exceptions.</p> |
| 11. | Exhibit A | NA | <p>RFO 570, proposal signature requirements: On the Pre-Solicitation Webinar, it was stated that Exhibit A must be hand-signed. The RFO does not specify whether the other documents must be hand signed or they may be electronically signed. Will DIR accept electronic signatures for the other RFO documents to be signed (ie HUB Form, Release of Liability, Off Premise Certification, etc.)?</p> | <p>A DocuSign or other electronically verifiable signature will be accepted. A typed name in the required signature location will not be accepted as a "signed".</p> |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|-----|----------------------------------|--------|--|---|
| 12. | Package 2 Itemized Pricing Sheet | NA | Value Added Resellers (VAR) Our software solution works on top of Microsoft licensed products. Should we include the pricing for the underlying Microsoft products in the Products Detail tab in the spreadsheet or the 5b VAR Products Pricing Sheet? If a single VAR is awarded the sale of all Microsoft products (as stated in 2.2) we would assume that the license line item for the Microsoft license would follow their pricing. | Respondents which are also Microsoft resellers, will not include product pricing under tab 5a and 5b, for regular license sales. Tab 5a and 5b are for Volume Value Added Resellers only. Respondents will list regular resellers Microsoft products under tab 1. |
| 13. | Package 2 Itemized Pricing Sheet | NA | If a single VAR is awarded the sale of all Microsoft products (as stated in 2.2) we would assume that the license line item for the Microsoft license would follow their pricing. | No, The awarded pricing will not be mandated for other DIR Contracts or Customers. The awarded contract pricing will be available to DIR customers, and products which solutions work on top of Microsoft products will require coordination with DIR customer existing licenses and their own determination on how to procure the necessary software licenses for the proposed project solution. |
| 14. | General | NA | VPAT/ACR/LOA Q1) Does it comply with the requirement to also add those OEMs for which we just have LOAs but not VPAT/ACRs? or Shall we just add the OEMs for which we have all three LOA/VPAT/ACR? | This question is not clear, because this RFO does not have an OEM requirement. Vendor should not propose products for which an ACR (completed VPAT) is not available. You can add them later once you have all the necessary documentation. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|-----|-------------------------|--------|--|--|
| 15. | General | NA | VPAT/ACR/LOA - Q2) In the case of selling SaaS-based solutions through our company's AWS/Microsoft/Google marketplace? Would it be necessary to provide LOA/VPAT/ACR for all 2000+ vendors we sell through the marketplace or just VPAT for AWS/GOOGLE/Microsoft since we propose to sell these software/SaaS solutions there? | <p>(a) Under this RFO the VAR volume resellers will only be submitting responses for 3 products (Novell, Microsoft, or Adobe) all other brands will be part of your regular response.</p> <p>(b) If a vendor is a reseller for 2000 different COTS software brands, the vendor will be required to provide a LOA and an ACR (completed VPAT) for each brand being proposed.</p> |
| 16. | General | NA | VPAT/ACR/LOA - Q3) Many vendors, including Microsoft, Google, VMware, etc., have a large repository of ACRs/VPATs; can we just link to their web page where they have these documents, or do you want them downloaded and sent to you separately? | <p>Links can be provided under Package number 2 of the RFO response documents, next to the product list; or you may create a document and named it ACR/VPAT links either way it will be accepted The document must be accessible and all links must be for the current version of the product. An ACR or Accessibility Conformance Report is the completed VPAT (template). DIR requires the ACR or a link to the ACR. NOTE: DIR will not be responsible for links that do not work, and strongly encourages vendors to print ACRs and submit them to be sure.</p> |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|-----|---|--------|--|---|
| 17. | Package 3A Standard Terms and Conditions Section 10.7 | 28 | Use of Subcontractors Question: Does the RFO/DIR distinguish between contractors who provide general services in support of our platform (e.g., AWS for cloud hosting) from subcontractors hired specifically to perform under this agreement or purchase orders made pursuant to it? | Yes, DIR does distinguish between contractors and subcontractors. The contractor is the prime vendor which is responding to this RFO to provide DIR customers with products and services. A Subcontractor is a company hired by the prime vendor to provide a product or a service to a DIR customer through the Prime Contractor which needs to also be listed under the Respondent HUB Subcontracting Plan. In relation to AWS cloud hosting services. Cloud hosting services is out of scope for this RFO. |
| 18. | Package 2 Itemized Pricing Sheet | NA | Pricing spreadsheet If we are not VAR, do we specifically state we are not VAR? | Respondents will leave Tab 5a and 5b blank if it does not apply to your company. |
| 19. | Exhibit C | NA | Question 7: Customer Marketing and Support Looking for clarification - Where does the maintained webpage live? Is this a Vendor page within the DIR system or should we plan to have page on "the Vendor's" website? | Yes, the vendor will be required to have a link on the DIR web site to their own webpage for the DIR Contract as detailed in Package 3A Standard Terms and Conditions Section 7 Contract Fulfilment and Promotion. |
| 20. | Exhibit A Section: 16(B)(xx) | 8 | What constitutes a "cancelled contract" for the purposes of this question? (i.e., Is this as broad as any customer who has terminated use of our product?) | A cancelled Contract is one that its cancelation was "with cause" (due to lack of or poor performance by the responder) This section does not require disclosure of contracts that expired after a customer declined to exercise an optional contract renewal. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|-----|---|--------|--|--|
| 21. | Package 3B Sample Contract Template Section 11(a) | 7 | May we link our Master Service Agreement (MSA) with the Customer in the purchase order, or must the totality of the terms and conditions be attached to every purchase order? | An agreement document which is accepted and becomes an appendix under an awarded contract will be incorporated when listed under the Purchase order, however customers may have their own internal process for documentation and review which DIR does not have any control under. |
| 22. | Exhibit E VPAT | NA | Can we submit our completed version of the VPAT rather than completing your template? | DIR will accept an existing ACR (completed VPAT) if the product has not changed since the last accessibility test to WCAG standards. If the product has been updated a new VPAT needs to be completed with updated testing results. (Note: this was answered was on Addendum 3 Q. 27) |
| 23. | General | NA | Are the Related Services for implementing Oracle software only to be entered into the pricing sheet? | Services will be listed under Tab # 3 regardless of the software products or brands. |
| 24. | General | NA | Can we upload a narrative under? Other? in the portal? | Yes, but make sure to follow the page limitation for each required document. |
| 25. | General | NA | Regarding the Bid Stamp Portal: Under? Document Uploads? the list includes a Vendor Qualifications form and a Non-Disclosure Agreement, but I don't find those in any of the packages. | The vendor portal provides a drop-down menu, and it does not mean that this RFO requires every one of the listed options. Only upload the documents related to this RFO, there is a list in Exhibit A Respondent Information section 16. A (iii) All Responses must be received by DIR on or before the date and time specified in Section 3.3 of this RFO. No late Responses will be reviewed. Check list below page 5 of 11. |

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| 26. | General | NA | Does DIR prefer to have only forms uploaded for this response or are we allowed to upload a Cover Letter or any other narrative under? Other?? | DIR does not penalize vendors for providing cover letters, or other additional documents. It is important to know that a signed cover letter is not a substitute for the required signed Exhibit A document which must be uploaded and signed. In addition, documents that are not a part of the required response may not be used as a part of the evaluated submission criteria. |
| 27. | General | NA | There is no mention in the portal. Document Uploads? forms drop-down list of Exhibit A1-Exceptions, Exhibit G-EDGAR, and Exhibit I-Certification of Off-Prem. Are these to be uploaded under? Other?? | Vendors may use other for any required document that is not listed under the drop-down menu. |
| 28. | General | NA | Where it says Vendor References there is a button to click that says? Request Reference.? Is it preferable that DIR send the reference form directly to our contacts? We had planned to do that ourselves. | Respondents may choose to do it themselves; DIR does not guarantee that the references forms will be sent and that customers will receive them. It is a system email, and it tends to go into junk mail. |
| 29. | General | NA | There is a place to check that you are uploading a redacted copy. I cannot find any mention of this in the RFO. Is this required? | No, redacted forms are not a requirement for this RFO. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|-----|-------------------------|--------|--|--|
| 30. | General | NA | We are a software reseller. We provide related services. However, we use partners for things like Training, ADP, etc. Where to we include information about our third-party vendors? | The Software RFO does not require that third party services be listed separately. Services will be listed in Tab 3. Under the description you may reference the sub-contractor you are using to provide certain services. Note: to use a Sub contractor (third party vendor) the vendor must be listed under the respondents HUB subcontracting plan. |
| 31. | General | NA | Can Vendors/manufacturers submit individual VPATs for each of the software they are offering or should all VPAT information be entered into the VPATs (word) document you've provided and be one per manufacturer? | Vendors can submit existing and current ACRs...they do not need to be in the Word document provided. Vendors are responsible for providing ACRs (completed VPATs) for their proposed products. ACRs can be provided by the manufacturer, or the vendor can complete a VPAT for a product but must use information based on product testing against the WCAG success criteria. NOTE: most software brands have their ACRs posted on their official web sites. DIR will accept ACR URLs too. |
| 32. | RFO – Section 4.2.1 | 29 | In the event one of our vendors is currently in process for completing an audit for their VPAT documentation and know they will not have the assessment completed in time for submission, would DIR accept notation that the VPAT is in process and can be provided upon completion? | Yes, DIR will accept a VPAT with a note that it's currently being audited, and a final version will be provided upon completion. However, remember there is no award of a specific brand of software unless there is an approved ACR (completed VPAT), which can be completed during negotiations. Until the ACR(s) is provided an evaluation score will be provided for the as-is response. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 33. | RFO Section 3.7.1 | 17-18 | Does DIR have requirements for the Accessibility Statement that would be required in the event that our vendor is unable to provide or obtain an ACR? | An accessibility statement is not provided in lieu of an ACR (completed VPAT). If a product is not fully compliant based on tested results against WCAG success criteria, the vendor can provide an accessibility statement stating the deficiencies against corresponding success criteria, when the deficiencies will be corrected, and what accommodations or alternate means will be provided until the deficiencies are corrected. ACRs not provided with the submission can be provided later. However, remember there is no award of a specific brand of software unless an approved ACR is provided (which can be completed during negotiations), and until the ACR(s) is provided, an evaluation score will be provided for the as-is response. |
| 34. | RFO Section 3.3 | 11-12 | Will DIR consider conducting a second question and answer period after the first set of Q&A has been formally released? Conducting a second Q&A period will allow Respondents to clarify any new/remaining questions after the first Q&A has been released. | See Addendum 4 Posted 4/13/2023 |
| 35. | Exhibit B Table 4 | 6 | To further clarify the provided answer in Addendum 3, question 70, are you looking for sales made through other cooperative purchasing/state contracts? | Vendors will provide total sales to date by State for sales which falls under the scope of this RFO. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 36. | RFO Section 3.9.4.1 | NA | Do the "Combined Solutions" on Tab 2 of the Pricing Form need to be entered into the Automated Pricing Form in Bid stamp since product is involved? Section 3.9.4.1 is not entirely clear on this:" Automated Pricing Form: The products shall be categorized by brand, product category, product family or whatever group of Respondent's choice. Please note only products shall be included on this Automated Pricing Form in Bid Stamp VIS, no services shall be included." | The combined solutions detail will be entered in Tab 1 Product detail, the average discount of all the solutions will be entered in bid stamp. A combined solution can include services; however, the total solution is entered in Tab 1, and the average discount for the each solution is entered in bid stamp. Do not separate the services from a complete solution package. Vendors will follow the Bid Stamp pricing form structure. Which is the same as Tab 2 of Package 2 Bid Stamp Brand Average Discount, once you complete the tab based on the instructions, vendor will enter a discount for each brand / or product. |
| 37. | HUB Plan | NA | Are we allowed to propose multiple HUBs in our response? | Yes |
| 38. | General | NA | I'm trying to download the documents in RFO 570, but when I click the links, a pop up appears but never downloads a document. The pre-bid to this does download its document, I'm pretty sure this isn't from my end. | No, DIR does not email these files because of the file sizes. Addendum 2, Attachment B will provide directions on how to download the documents from ESBD. You also may contact the comptroller's office for assistance. |
| 39. | General | NA | Some of the manufacturers we want to include in our response do not have VPAT certifications. The manufacturers' applications are the type that DIR customers have no direct interaction with. Only the manufacturer's authorized IT staff interface with the applications. In these cases, are VPATs still required? | ACRs are required for all products. Users include customers, employees, and contractors. Vendor can note that user interfaces are not impacted by non-compliance with WCAG 2.0 AA but must also have a plan in place for accommodation in the event a state actor uses the product. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|-----|---|--------|---|---|
| 40. | General | NA | What is the specific Microsoft 365 products you were looking for? This would help me to better price the products for you. | DIR is not looking for any specific product, the respondents will propose all products that they are interested in selling to DIR customer base. |
| 41. | General | NA | 209-45-*E-Mail Software - Which specific email level of Microsoft 365 were you looking for? This information would better help me to provide a quote. | This is not a request for a quote, this is a Solicitation. DIR is not looking for any specific product, the respondents will propose all products that they are interested in selling to DIR customer base. |
| 42. | Package 3A Standard Terms and Conditions Section 10.4 | 27 | If a vendor currently has a provisional certification for TX-RAMP, can the provisional certification be extended beyond 18 months with a good-standing action plan to be compliant? | Please contact the TX-RAMP group regarding renewals of TX-RAMP certifications, meanwhile you can respond with what you have. If a contract is awarded vendors will maintain their certification active status throughout the 5-year contract terms. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 43. | Exhibit C | NA | As a reseller of multiple software products and services we want to make sure we provide DIR with an adequate response to each question in Exhibit C. Since Exhibit C questions take 3 pages, we find it hard to provide complete responses having only 2 pages to work with. We request DIR kindly exclude the space used for DIR questions in Exhibit C from the 5-page limit. In other words, we would like to use the full 5 pages for our responses and information. If this case completed Exhibit would be 8 pages, excluding the required attachments. | Exhibit C provided 3 pages is the questions DIR requires the Respondents to answer, to reflect the Marketing Plan strategy that is proposing, the total of 5 pages is to avoid Respondents providing DIR with a lengthy document that does not answer the questions. Respondents may attach organizational charts, Service Level Agreements Samples, which does not count as part of the 5 pages requirements. |
| 44. | Package 3A Standard Terms and Conditions Section 10.4 | 27 | Can all a vendor's products be included in the contract if that vendor does not have TX-RAMP certification (provisional or full certification) for the products at the time of the award? | Yes |
| 45. | Package 3A Standard Terms and Conditions Section 10.4 | 27 | Can all of a vendor's products be included in the contract if that vendor has only provisional certifications for some but not all of the products? | Yes |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|-----|-------------------------|--------|---|---|
| 46. | Addendum 4 | NA | The only notification that we can find about NO. RFO-CPO-TMP-570 Software (COTS) and Related Services and its impact on contract holders of RFO-416, RFO-449, and RFO-401 was the "LAST NOTICE" email dated Wednesday, April 12, 2023. TX DIR Software Cooperative contracts are integral components of our customer and partner procurement eco-system; we respectfully request that the Deadline be extended by two (2) weeks to Tuesday, June 6, 2023. | This RFO has been posted on the ESBD since 2/2/2023 and the pre-solicitation notice was posted on the ESBD 12/20/2022. DIR will not be extending this RFO opening date again. May 23, 2023, is the drop deadline for responses to be submitted through the VIS portal (BidStamp). |
| 47. | Exhibit J | NA | Can we fill in the top portion of the document and send it to the customer to complete? We realize the customer must send directly to the DIR email alias. | Yes, the vendor is required to complete the top of the form, before sending the forms out to customers. Yes, customers will email the reference form to DIR RFO email. |
| 48. | Exhibit K | NA | Is the VADSIR document required to be completed for DIR-CPO-TMP-570? | The VADSIR is required for development services which may arise during a project or implementation, e.g., for software upgrades etc... Resellers of COTS software does not need to complete this form. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 49. | Exhibit F | NA | Who completes this form and signs it? The Respondent or the customer who is providing a customer reference? | The Release of Liability form is for the Respondent to complete and submit with the response package. The Respondent is providing DIR with a release of Liability for DIR to contact and use the reference forms being provided. See the top of the form direction in red which reads "THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE AND SUBMITTED WITH THE RESPONDENT'S RESPONSE" (Note: this question was answered under Addendum 3 Question 54) |
| 50. | Exhibit I | NA | If we install or configure software at a customer location and the engineer performing this work is in their personal vehicle, which boxes do we check off on this Exhibit? | None, you will not need to provide this from with your response. however, you will need to provide all the required insurance listed under the DIR Standard Terms and Conditions Section 10:15 Required Insurance Coverage. (Note: this question was answered under Addendum 2 Question 111) |
| 51. | General | NA | I have tried two different browsers to upload documents and I am receiving this error message below. Please advise: Error: Error occurred while loading a Visualforce page. | Please ensure you do not have any special characters in the Document Name. Also, the document file name must be less than 80 characters. |
| 52. | Exhibit J | NA | For the Software Product /Services Category list in Appendix J, is it ok to list multiple categories? | This RFO does not have an Appendix J, however there is an Exhibit J Reference form, yes, the vendor can request references for multiple categories. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 53. | Addendum 2 -Q59 | NA | RFO Section 2.5 Out of Scope Services; Addendum 2, Q&A Item 59 - Can DIR please clarify whether awardees may provide Related Services to DIR customers for preexisting customer software so long as the awardee includes said product in their awarded product catalog? (i.e., Does a DIR customer need to purchase licensing in order to purchase Related Services?). The wording in response to Q&A Item 59 is difficult to follow. | <p>1. Can a DIR current customer purchase related services from a Contract / Contractor that did not sale them the software product?</p> <p>a. Yes</p> <p>2. Can a vendor sale service to a DIR customer for a product they do not sale under their awarded contract?</p> <p>a. Yes, however, the services being provided must be one of the services awarded under such contract. (i.e... if you are doing maintenance or support services, your contract must have these services under contract.)</p> <p>3. Does a vendor need to have a brand / software product awarded under a contract to provide services to a DIR vendor for such brand or product?</p> <p>a. No, however, the services being provided must be part of the awarded services listed under such contract.</p> <p>4. Can a vendor respond to this RFO and provide services only? Without being a reseller for any software cots product?</p> <p>a. NO. This is not a service only solicitation.</p> |
| 54. | RFO & Addendum 2- Q59 | NA | RFO Section 2.5 Out of Scope Services; Addendum 2, Q&A Item 59 - If DIR customers must purchase licensing in order to purchase Related Services, is there a specific value ratio that awardees must abide by (e.g., \$1.00 of related services for every \$1.00 of purchased licensing)? | The answer in Addendum 2 Question 59 still stands, regarding vendors ability to respond to this RFO providing services only. This is not allowed . Please review the answer to the question 53 above, it does clarify this issue. |

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| 55. | Exhibit K | NA | Exhibit H - If related services are limited to COTS configuration of SaaS products, and a comprehensive SaaS VPAT was submitted as part of a response package, would a respondent be required to submit a VADSIR? | Exhibit H - PDAA is a required self-assessment regardless of response offerings. The PDAA is not related to nor a substitute for ACR(s) or VADSIR(s). Exhibit H is not specific to a product or development service. The PDAA is a self-assessment of accessibility maturity for the vendor organization and is required. Failure to complete and submit a PDAA may result in disqualification. |
| 56. | Exhibit H | NA | Exhibit H - If a VADSIR is not applicable, should Exhibit H be completed by noting that each response item is "not applicable?" Or should the respondent submit documentation on company letterhead articulating why the VADSIR is not applicable? | Exhibit H - PDAA is a required self-assessment of accessibility maturity for the vendor organization and is not specific to a products or development service in the response. Failure to complete and submit a PDAA may result in disqualification. The VADSIR is only required for development services. Vendors may submit a note that they are not providing development services and (therefore) will not be submitting a VADSIR. |
| 57. | Exhibit E | NA | Exhibit E - Published VPAT documentation is extensive. We understand that we may submit a link to Publisher VPAT / ACR documentation via Bid Package 2. May respondents also submit links to a Publisher's VPAT documentation library on company letterhead? We understand that we are responsible for ensuring that links function correctly. | The document providing ACR links on a product owner's website must be accessible and all links must be for the current version of the product. |
| 58. | Package 3A Standard Terms and Conditions Section 7.14 | NA | DIR Cost Avoidance: If we are the OEM, do we need to complete this report? | No, the vendor does not conduct the Cost Avoidance analysis. DIR will be conducting this analysis during contract negotiations. The form referenced under this section is not part of the response requirements it is part of the negotiations process. |

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| 59. | Package 3A Standard Terms and Conditions Section 9.2.5 | NA | Accurate and Timely Submission of Reports: If there are 0 dollars in a reporting period, is the report still required? | Yes |
| 60. | Exhibit J | NA | will there be an update to Appendix J with 5/23/23 deadline? | The Exhibit J reference form will not be updated. Customers may submit references up to 5/23/23. |
| 61. | RFO Section 3.9.3.7 | 21-22 | Exhibit J Respondent References and Exhibit F Respondent Release of Liability, Information derived from Respondent References, included on the Exhibit J Reference Form, will likely contain information that is confidential and exempt from disclosure under the Texas Public Information Act (PIA). Question: Will DIR treat any confidential records received from canceled contracts in accordance with the requirements of the Public Information Act? | DIR will comply with the Public Information Act. Respondent should clearly mark all information it believes is confidential as directed in Section 3.14, Public Information, of the RFO. Please be aware that the Office of the Texas Attorney General (OAG) has the sole authority to determine whether information is confidential and not subject to disclosure under the Public Information Act. DIR shall comply with all decisions of the OAG. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 62. | RFO Section 3.9.3.7 | 21-22 | <p>Exhibit J Respondent References and Exhibit F Respondent Release of Liability, Information derived from Respondent References, included on the Exhibit J Reference Form, will likely contain information that is confidential and exempt from disclosure under the Texas Public Information Act (PIA). Question: Does the Release of Liability exempt DIR from any liability for disclosing confidential and exempt information outside the requirements of the PIA or will DIR honor the requirements of the PIA notwithstanding the Release of Liability?</p> | <p>Respondent Release of Liability is unrelated to the Public Information Act. DIR will comply with the Public Information Act. Respondent should clearly mark all information it believes is confidential as directed in Section 3.14, Public Information, of the RFO. Please be aware that the Office of the Texas Attorney General (OAG) has the sole authority to determine whether information is confidential and not subject to disclosure under the Public Information Act. DIR shall comply with all decisions of the OAG.</p> |
| 63. | RFO Section 3.9.3.7 | 21-22 | <p>Exhibit J Respondent References and Exhibit F Respondent Release of Liability, pages 21-22. Information derived from Respondent References, included on the Exhibit J Reference Form, will likely contain information that is confidential and exempt from disclosure under the Texas Public Information Act (PIA). Does the Release of Liability exempt DIR from any liability for disclosing confidential and exempt information outside the requirements of the PIA or will DIR honor the requirements of the PIA notwithstanding the Release of Liability?</p> | <p>Please see response to Question 62.</p> |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 64. | RFO Section 3.9.3.8 | 22 | Information derived from canceled contracts will likely contain information that is confidential and exempt from disclosure under the Texas Public Information Act (PIA). Will DIR treat any confidential records received from canceled contracts in accordance with the requirements of the Public Information Act? | Please see response to Question 61. |
| 65. | RFO Section 3.9.3.8 | 22 | Information derived from canceled contracts and canceled contracts references will likely contain information that is confidential and exempt from disclosure under the Texas Public Information Act (PIA). Does the Release of Liability exempt DIR from any liability for disclosing confidential and exempt information outside the requirements of the PIA or will DIR honor the requirements of the PIA notwithstanding the Release of Liability? | Please see response to Question 62. |
| 66. | General | NA | Is there a way to check if reference forms have been received by TX DIR? Will they show up in the Response Section of Bid Stamp under references? | No, the reference mailbox, like the solicitation does not open until 5/23/23. |

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| 67. | Exhibit B | NA | Exhibit B, question one (page 1) requests a company history no longer than two pages. Question 3 (page 1) limits its response to three pages. The Answer to question 39 in Addendum 3 (page 13) says the entirety of Section B must not exceed five pages, but there are multiple other questions that require a response. Can you please clarify the permissible length of Section B? | Exhibit B, Question 1 is allowed 2 pages, the remaining questions will be allowed 3 additional pages for a total of 5 pages. Limit. However, if Question 1 takes less than 2 pages, the vendor still have a 5 page limit. |
| 68. | Addendum 1 | NA | "DIR is here by removing the submission requirements for End User License Agreements (EULA), Software Service Level Agreements and any other type of software agreement currently listed under the RFO as part of required response documentation." When should Respondent submit any required EULAs and associated software agreements ("Required Respondent Contracts") for review by DIR during the RFP process? At which stage of the RFP process will DIR review and respond to Required Respondent Contracts? | DIR will request additional agreements during negotiations, vendors should indicate in their response package which software has EULA or other agreements. |

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| 69. | General | NA | We are experiencing an error uploading certain files (PDAA - excel, Exhibit F - reference release form). I have successfully uploaded other Adobe PDF files. Are certain types of files excluded from uploading? The system requests we send an email for help. | The file name is too long. It needs to be less than 80 characters. If you shorten it to be PDAA after Exhibit H, it will upload fine. |
| 70. | RFO Section 3.9.7 | NA | Can Exhibit D: HUB Subcontracting Plan be submitted in a PDF format? It states it should be in docx format in the RFP, but the plan downloaded from the Comptroller website is in PDF format. | The HSP PDF file is editable, https://comptroller.texas.gov/purchasing/vendor/hub/forms.php . |
| 71. | General | NA | When should Vendor submit any requested redlines to the Sample Contract? | Redline exceptions should all be submitted with your response under Exhibit A1 Exception Table. |
| 72. | RFO Section 3.9.5 | NA | RFO Section 3.9.5 Exceptions to Requirements (including Appendix A Standard Terms and Conditions) For purposes of exceptions, please clarify what is considered the RFO document. Are exceptions able to be considered for both the Appendix A (Standard Contract Terms and Conditions Cooperative Contracts) and Appendix B (Contract for Product Services and Related Services)? | Respondents are to provide all exceptions under Exhibit A Exception Table for DIR Terms and Conditions as well as the Contract Sample document. No additional exceptions will be considered after the Solicitation opens. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 73. | RFO Section 3.9.5 | NA | RFO Section 3.9.5 Exceptions to Requirements (including Appendix A Standard Terms and Conditions) Please clarify that the exception table set forth in the Word document labeled "02-RFO-DIR-CPO-TMP-570 Package 1 EXHIBIT A1 Exceptions Table" should be used as a reference to create an excel document per the instructions rather than updating the exception Word document provided. | NO, under a previous addendum DIR has clarified that the document to be used for listing exceptions is the Exhibit A1Exception Table provided and to disregard the spreadsheet mentioned on the RFO. |
| 74. | RFO Section 2.2 | NA | Section states, "The authorized Resellers will provide the software and related services for Adobe, Microsoft, and Novell ONLY." Question - Will this contract be used to procure any/all types of software and related services or is its restricted only to MS, Adobe and Novell solutions and services? | No, this solicitation is not restricted to the volume license VAR software, this Solicitation is for all types of COTS software and related services, the VAR volume license program is just one part of the RFO scope. |
| 75. | General | NA | As a reseller, am I able to add new software solutions / new brands to my contract post award? | Yes, see section 4. of the contract sample template. |

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| 76. | RFO Section 2.5 | 7 | <p>We are a company that provides our own software products, and we are also a reseller/integrator for other manufacturers' software products.</p> <p>One of these manufacturers has its own TX DIR software contract. As a reseller and integrator for this manufacturer, can we include our cloud hosting services for the manufacturer's software on this TX DIR contract? From our point of view, these cloud hosting services for the manufacturer's software would not be "service only" (which is excluded in this solicitation), since agencies can purchase the software on the manufacturer's TX DIR contract and the cloud hosting services for that software on our TX DIR contract.</p> | <p>1. Can a DIR current customer purchase related services from a Contract / Contractor that did not sale them the software product? a. Yes</p> <p>2. Can a vendor sale service to a DIR customer for a product they do not sale under their awarded contract? a. Yes, however, the services being provided must be one of the services awarded under such contract. (i.e... if you are doing maintenance or support services, your contract must have these services under contract.)</p> <p>3. Does a vendor need to have a brand / software product awarded under a contract to provide services to a DIR vendor for such brand or product? a. No, however, the services being provided must be part of the awarded services listed under such contract.</p> <p>4. Can a vendor respond to this RFO and provide services only? Without being a reseller for any software cots product? a. NO. This is not a service only solicitation.</p> <p>Cloud hosting services is out of scope for this RFO.</p> |

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| 77. | Package 3C Sample Service Agreement Section 5.2 | 3 | <p>Can you please clarify the following statement: "This requirement [adjusting the TX DIR price to a lower price offered to another customer] applies to products or services quoted by Successful Respondent for a quantity of one (1) but does not apply to volume or special pricing purchases." Can you describe a scenario in which a "quantity of one (1)" would apply vs. "volume or special pricing purchases"? Typically, COTS SaaS software is sold under a tiered subscription model in which each tier will be a license for a volume range of users or some other unit of measure (TB of data storage, transactions, etc.) We are trying to understand when a "quantity of one (1)" would be applicable.</p> | <p>Please consult with your legal counsel regarding interpretation of contract terms and conditions.</p> |

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| 78. | General | NA | I'm a reseller offering several different software products from different software publishers. As a result, each software company has its own set of terms and conditions and End User Licensing Agreements (EULA) that are typically required to be signed by the customer before issuing a license. Can you please confirm if 1) the DIR wants and/or needs to approve each company's EULAs and T&Cs and 2) will customers of the DIR contract be required to adhere to the EULAs and T&C of the product offering they are seeking to procure? | Please review Contract Sample Document Section 11, first paragraph and any agreements that do not follow under the conditions stated under this section will be addressed during negotiations. |
| 79. | General | NA | Some of my software publishing companies are still working on completing their VPAT. Can they submit a draft initially and the final during the negotiations phase? | In progress ACRs and ACRs not provided with the submission can be provided later. However, remember there no award of a specific brand of software unless an approved ACR is provided (which can be completed during negotiations), and until the ACR(s) is provided, an evaluation score will be provided for the as-is response. |
| 80. | Package 2 Itemized Pricing Sheet | NA | For the Function field on Tab 1 (Products Detail) of the pricing sheet, can we list more than one function if our software fits into multiple categories, or do we need to duplicate the product and create a separate line item for each function? Or are we limited to a single function per product? | No, you can list as many functions as you need to fit the software being provided. |

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| 81. | General | NA | The manufacturer for which we are submitting products as part of our response would like to present its Software License Agreement to DIR Legal for negotiation and approval. How do we incorporate that license into our RFO response for DIR Legal review during the negotiation phase? | Please review Contract Sample Document Section 11, first paragraph and any agreements that do not follow under the conditions stated under this section will be addressed during negotiations. |
| 82. | General | NA | Software License Agreement is an undefined term. Can you please define or remove capitalization? | This is a sample contract document, the format is not an issue, please focus on reviewing the Contract Terms and Conditions, and determine if your company requires any exceptions to these terms. If you do, please list them on Exhibit A1 exceptions Table. |
| 83. | Package 3A Standard Terms and Conditions Section 3.9 | NA | There is a note that "Customers" should "make Successful Respondent aware" of US-only data location requirements. How does a Customer make the respondent aware? Is it in writing? | DIR has a large customer base, with some of them out of the state of Texas and their rules about data location may not apply, also for the State of Texas regulations may only apply to State Agencies, and not all of DIR customers need to adhere to the legislative requirements for data location. |
| 84. | Package 2 Itemized Pricing Sheet | NA | Several of the Products listed in the VAR Products Pricing Sheet (Tab 5b) are no longer supported / eligible for order. Should responding vendors update the spreadsheet to include the most current Product Number, or respond with not applicable? | This question was answered in both Addendum 2 and Addendum 3, and during the Pre-Solicitation Conference recorded audio. Yes, DIR expects vendors to update the list, that is just examples of past item list. |

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| 85. | Package 2 Itemized Pricing Sheet | NA | Is the "Additional Discount Based on Aggregate Sales" portion of the Volume Discount (Tab 4) based on annual spend, or spend for the entire life of the contract? | Most vendors use the annual expenditure, however respondents may determine the total sales timeline, before offering additional discounts. |
| 86. | Package 2 Itemized Pricing Sheet | NA | Can responding vendors add additional "Publisher Categories" underneath the VAR Products Volume Discount (Tab 5a)? | VAR qualified vendors, may add categories if such categories are acceptable to the DIR volume license agreements with the manufacturers of Microsoft, Adobe, and Novell. |
| 87. | Exhibit J | NA | Reference Form What should go in "Group" [sic] in the section to be completed by the Vendor? | See Addendum 3 Question 21 |

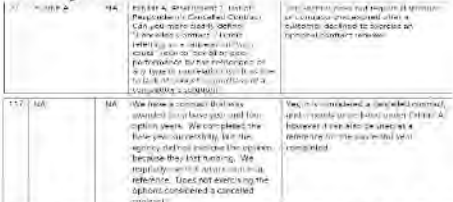
| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 88. | Exhibit J | NA | <p>Reference Form The portion to be completed by the Customer refers to "Comprehensive Web Development and/or Managed Services" in the header and several questions. Web Development Services is only one of the categories of this FRO, and it is not applicable to our company. It will confuse our Customers, and they will most likely answer "NA" because they did not receive Web Development Services from us. Would DIR consider revising the form to say: "Offerings (Products and/or Services)" instead of "Comprehensive Web Development and/or Managed Services"? Otherwise, are we allowed to modify this portion to align with the products and services we provided to our Customers?</p> | <p>The revised form was part of Addendum 1, please download.</p> |

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| 89. | Exhibit J | NA | <p>We have submitted two questions regarding Exhibit J – Reference Form through BidStamp VIS today. The Customer section of the Form makes frequent references to “Comprehensive Web Development and/or Managed Services”. Comprehensive Web Development and/or Managed Services is only one of the categories under the RFO. This will confuse our customers because our company is not providing this type of service. Since the Reference Form is time sensitive, we would like to confirm we are allowed to change the definition of products and/or services on the Form to match what we provided to our Customers. Otherwise, if possible, we request the Form to be revised in time for the next Addendum issuance.</p> | Yes, the form can be changed to your company project. The revised form was part of Addendum 1, please download. |
| 90. | General | NA | COTS Call Center Software is part of this RFO. | Yes |

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| 91. | General | NA | Is it possible to provide a "CATALOG" and then simply state in the detail table that we will provide a 15% discount on all software in the catalog and 10% on all services in the catalog? | Under the Tab 1 Product Detail on one line, you may list your software brand, functionality and note that the entire software catalogue will be at the same discount, also list a few of the products and the pricing as indicated, you do not need to enter the entire catalogue line. Then carry over the brand and discount information to Tab 2, create the price form in BidStamp enter one line and the Discount. Later during negotiations DIR may request a copy or a list of the catalogue products for our records, and you will need to make the catalogue available to the customers through the WEB site requirements, but these are down the road. For now, enter Tab1 one line, Tab 2 one line and just make sure to list all services you provide under Tab 3 and any additional available volume discount in Tab 4. |
| 92. | General | NA | If so, I can't find anything in the documentation related to providing the "CATALOG". Just states above to provide a "Link". If a link, does this CATALOG need to be a public facing link that is accessible to everyone? Or can it be on our website, behind a password protected area. We do not typically make this information available to the public. | The catalogue link option on Addendum 1 revised price sheet if it still there please disregards the requirement. Regarding making information available with password protected area, that is not allowed however the contract allowed for other methods of providing pricing without revealing your catalogue-based pricing. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 93. | General | NA | <p>We develop police software, and I am not sure how to respond to the EIR Accessibility documents. Our software is what the police officers using on their laptops in their squad cars. As such, our users have certain physical ability requirements for the job. How should I respond to the EIR Accessibility paper if it really doesn't apply for our users?</p> | <p>Accessibility laws and rules are to protect a comprehensive set of disabilities not just physical disabilities. While your user base may not have physical disabilities, they may have neurological, cognitive, color-blindness, etc. State of Texas agencies and institutions of higher education are required to follow TCG 2054 subchapter M which states that "each state agency shall develop, procure, maintain, and use accessible electronic and information resources that conform to the rules adopted under this subchapter." The adopted rules for electronic and information resources are in Texas Administrative Code (TAC) 213. There is no provision for users without disabilities.</p> <p>Product offerings in your response require an ACR (completed VPAT) for each product. When a product is tested against WCAG 2.0 AA success criteria, there may be features that are not required to comply with success criteria. Consult the WCAG guidelines and success criteria for your products. Your response also requires a completed PDAA (exhibit H).</p> |

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| 94. | General | NA | <p>In the top portion of the form, what dates of performance and contract dollar figure does the State want us to list? The data for the customer providing the reference, or the data for the opportunity we're applying for. It isn't clear to me from the instructions, the form itself, or the pre-solicitation conference slides.</p> | <p>The top of the Reference form is for the responding vendor to fill out. Vendor Name _____ (your company name) Software Product/Services Category _____ (What project did you do/or software did your sale to/for this customer that you are asking for a reference about?) Prime Contractor _____ (Did your Company use a Contractor if so list them here or did your company do the work, if so, leave blank) Subcontractor(s) _____ (Did your Company use a Contractor if so list them here or did your company do the work, if so, leave blank) Dates of Performance: Starting Date _____ Ending Date _____ (The project you did for this customer time ordered and time delivered) Total Est. Contract Dollar Amount _____ (enter the cost of the project you did for this customer, the project you are requesting a reference for?)</p> <p>In case your sale to this customer on a ongoing basis and do not have an specific item or project you are requesting a reference for, just enter "on going" on the fields that request specific project information.</p> |

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| 95. | General | NA | <p>These two answers from today's Addendum 3 seem to conflict with each other. (Question 27 and 117) Both refer to not exercising an option due to loss of funding. Can you please clarify?</p>  <p>The screenshot shows two questions and their answers. Question 117 asks if a contract can be exercised if funding is lost. The answer is 'No, the contract must require an optional contract renewal.' Question 118 asks if a contract can be exercised if funding is lost. The answer is 'No, the contract must require an optional contract renewal.'</p> | Question 117 - This section does not require disclosure of Contracts that expired after customers declined to exercise an optional renewal. These types of cancelled contracts can be used as references. |
| 96. | General | NA | VPAT If a vendor has a VPAT completed annually, and it is version 2/3 or higher, can this be submitted in lieu of using the form supplied with the RFO? Or, do you want respondents to complete this requirement using the State-supplied form? | The blank form in the solicitation does not need to be used for completing a VPAT. Respondents can submit an existing ACR as long as the version is 2.3 or higher. |
| 97. | Exhibit A Section 13A | NA | Please clarify that the State wants vendors to complete both the table provided in Exhibit A at line 13(d) AND Exhibit A1-Exceptions Spreadsheet. Does the State want vendors to supply a response to the State at Part 15? | No, vendors will fill in Par 13 d with a NA if there are no exceptions or See Exhibit A1 for proposed exceptions. |
| 98. | Exhibit A Section 15 | NA | Proof of Financial Stability Does the State want vendors to supply a response to the State at Part 15? | No, this is an information statement. |
| 99. | Exhibit A | NA | Does the State want vendors to include their Dun & Bradstreet report as evidence of financial stability? | No, DIR will pull the reports during the Financial Review phase of the evaluations |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
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| 100. | Exhibit A Section 16 | NA | Does the State want vendors to complete the non-exhaustive checklist within their response to Exhibit A? | Yes, the check list in Exhibit A, is for the vendors acknowledge that they understand those forms are required and must be uploaded as part of your response to this solicitation. |
| 101. | Exhibit B | NA | The four defined technology categories are: Software, SaaS, Related Services. Complete solution software/hardware and services. If a vendor offers SaaS with related services (e.g., platform configuration), should the vendor indicate they are applying as SaaS and Related Services, or Complete solution software/hardware and services? | If you are providing a platform configuration, what is the COTS software product being sold? Platform Configuration is a delivery method for software therefore, the respondent will list the software being provided via a platform configuration delivery method. If a respondent provides a complete solution option which includes hardware, software, and services via a platform configuration delivery method, this can be a line under Tab 1 product detail. and a line under Tab 2 as average discount line for the complete solution to be entered into bidstamp pricing form. |
| 102. | Exhibit C Question 8 | NA | In order to ensure we're correctly identifying people/role in the required organization chart, can you please clarify what type of activities you define as being part of "resource sourcing responsibility"? | The organization chart of the support team for this contract. Resource sourcing is the person responsible for helping a customer find the correct products and services to meet their needs. (the person from your organization who responds to quote request) |

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| 103. | RFO Section 2.7 | NA | VPAT If a vendor has a VPAT completed annually, and it is version 2/3 or higher, can this be submitted in lieu of using the form supplied with the RFO? Or do you want respondents to complete this requirement using the State-supplied form? | Accessibility documentation is reviewed according to digital accessibility technical standards as defined in 1 TAC 206, 1 TAC 213, and in the Worldwide Web Consortium WCAG 2.0 AA. Response content and conformance to WCAG standards are all reviewed. The packet is scored for completeness and credibility. Credibility is determined by how a product and/or service conforms to WCAG 2.0 AA or higher, explanations for non-conformance, how development aligns with industry best practices for accessibility, and the accessibility maturity of an organization. A missing PDAA may result in disqualification. An ACR is required for each product offering in the response and a VADSIR is required for development services in the response. |
| 104. | Exhibit J and F | NA | The Respondent may not submit the reference form to DIR. Completed Exhibit J Reference Forms submitted by the Respondent will NOT be considered. DIR may contact References for clarification at DIR's discretion. For each reference provided, Respondent shall provide a signed RFO Exhibit F Respondent Release of Liability. Should the respondent send to the reference both Exhibit F Respondent Release of Liability and Exhibit J Reference Form together? And should the reference return both Exhibit F and Exhibit J to TX DIR? | The Exhibit J Reference Form Should be sent to respondent's customers references. The form is completed and provided by the customer via the email address on the form. Exhibit F respondent Release of liability will be fill out for each reference, and for each Cancelled contracts and submitted as part of the vendor's response. |

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| 105. | General | NA | VPAT If a vendor has a VPAT completed annually, and it is version 2/3 or higher, can this be submitted in lieu of using the form supplied with the RFO? Or do you want respondents to complete this requirement using the State-supplied form? | The blank form in the solicitation does not need to be used for completing a VPAT. Respondents can submit an existing ACR as long as the version is 2.3 or higher. |
| 106. | General | NA | Please clarify that the State wants vendors to complete both the table provided in Exhibit A at line 13(d) AND Exhibit A1-Exceptions Spreadsheet. | No, the table in Exhibit A line 13 is for the vendor to indicate if there is any exception. The detail exception and suggested red line is done in the Exhibit A1 table provided. |
| 107. | General | NA | Proof of Financial Stability All Respondents responding to this RFO and all Respondents that will enter into a contract with DIR must be and remain current in payment of all taxes, including Sales and Franchise Taxes. In general, the Comptroller of Public Accounts must identify the Respondent to be "in good standing" and a Respondent with which the state is authorized to do business. Does the State want vendors to include their Dun & Bradstreet report as evidence of financial stability? | No, just the number reference as shown on Exhibit A question no. 3. |
| 108. | General | NA | Do we need a Texas Vendor ID (VID) in order to submit our response? | No, you do not need a Texas ID number to respond by will need one to complete the full award process for a contract if you make it through the evaluation process to negotiations. |

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| 109. | General | NA | <p>Related to HUB Subcontract Plan (HSP) – Quick Checklist We have one TX “certified HUB” we intend to award all of the subcontracting work to and we intend to complete GFE Method A (Attachment A). We interpret the instructions of the form that there is NO minimum number of HUBs. Can you confirm this is correct.</p> | <p>You are correct that there is no minimum number of HUBs, please be aware that the subcontracting percentage should not equal 100% as you will still be doing administrative work.</p> |
| 110. | General | NA | <p>Please if the estimated deadline is Response Due Date: 4/28/2023.</p> | <p>See Addendum 4 - All responses to this Solicitation are to be entered into BidStamp by May 23, 23 at 2pm CST the system will not allow any response to be uploaded after the deadline.</p> |
| 111. | General | NA | <p>A vendor's core product is software that we develop in-house. We have software at the server level (back office) and device level (registers). We load our software (via IP) to devices such as registers that we resell from other manufacturers. For example, HP sells tablets which we resell as part of our POS solution. Per the requirements of the RFP, we need to get a Resell Letter from the Manufacturer. In my example, do we need a letter from HP? I ask this because HP hardware is neither our core product nor our software.</p> | <p>DIR will need a reseller authorization letter for all products that you resell to DIR customers, weather you are selling your software products or complete solutions with tablets or other types of peripheral's products.</p> |

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| 112. | General | NA | We have many parts that make up our complete product suite. Should a client want to buy from Transact Campus utilizing the Texas DIR contract and a part number is not on the price list we supply, what happens? For example, we have dynamic price lists, with items such as cables and peripherals that change often. Can we sell one of those items if it is not on the published price list? I know GSA has % rules on mixed contracted prices. | When selling a complete solution vendors will provide the customers with all pieces of the solution needed to have a working product, however the main product for this RFO is the COTS software and that needs to be listed under the price list as individual items, any other pieces to the solution will be included in the turnkey solution % discount entered the price list as well. |
| 113. | General | NA | If a manufacturer is bidding as a sub under a prime bidder, do they also have to submit all documentation such as VPAT, customer references, etc.? Or does just the prime (e.g., SHI/Insight) submit? | A prime is responsible to make sure all requirements are met for any product being proposed under their response to this RFO. |
| 114. | General | NA | Do all subs have to be in full TXRAMP compliance by April 28 or can they be in process, especially if on a prime/disty contract? | No, please see Q&A under Addendum 2, for detail on better understanding the TXRAMP requirements. |
| 115. | General | NA | What is the code for data management/governance software please? | The NIGP code for any software not clearly specified by type is 208/11 Application Software, (Not Otherwise Classified) |

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| 116. | General | NA | This is the Class/Item Code(s): 20832-*Customer Relationship Management Software (Crm). I was wondering where I could see this particular requirement pertaining to the Class/Item Code - 20832. | The COTS software must be ready to use, no customization is allowed to the core code of any product being proposed under this RFO. There are no requirements for 208-32 the requirements for RFO 570 Software COTS and related services, is that it be a COTS software, no other requirements exist for this type of software. |
| 117. | Exhibit H | NA | 4b - In the VADSIR document you list "24hour / 7day/week toll free phone support number" as an example of alternate means. Is this considered a type of alternate means for question 4b in the PDAA response as well?" | The questions in the PDAA are specific to the vendor's organizational practices and the questions on the VADSIR are related to the development services offering in the response. |

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| 118. | General | NA | <p>As part of Transact's normal course of business we send out Order Forms that include references to a set of Master Terms, that include licensing terms among other things, and that apply to all products we offer to our customers as well as a Product Schedule that includes terms and conditions that are applicable to the identified product lines. For example, for our Mobile Credential product, we are required to flow down terms and conditions that are mandated to us by Apple and Google. Also, for our Payments products there are banking terms and conditions that have to be included.</p> <p>1. The additional umbrella Master Terms that we would need to have added to the terms and conditions included in the RFP.</p> | <p>You should add these terms you required to the list of exceptions as additional terms, also you can submit your agreements as part of the response for consideration, however I strongly recommend that you review the Section 11 of the Sample contract (Package 3) which address other terms and conditions. Also, Apple and Google are current branded contract with DIR and have their Terms and Conditions already negotiated for DIR customers, you may want to clarify with them that the agreed upon terms of the current contract will be the same for resellers.</p> |
| 119. | General | NA | <p>The Product Schedule which needs to be included to cover our individual product offerings.</p> | <p>Not sure how this is different from the products list you will enter in Tab 1 detail pricing list. You also may submit the product schedule as part of your response as an attachment to the price list or just as additional documentation.</p> |

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| 120. | General | NA | <p>Previous Question: We have many parts that make up our complete product suite. Should a client want to buy from Transact Campus utilizing the Texas DIR contract and a part number is not on the price list we supply, what happens? For example, we have dynamic price lists, with items such as cables and peripherals that change often. Can we sell one of those items if it is not on the published price list? I know GSA has % rules on mixed contracted prices.</p> <p>Previous Answer: When selling a complete solution vendors will provide the customers with all pieces of the solution needed to have a working product, however the main product for this RFO is the COTS software and that needs to be listed under the price list as individual items, any other pieces to the solution will be included in the turnkey solution % discount entered the price list as well.</p> <p>Clarification Question: I also want to confirm that your reference below in Question 3, 'turnkey solution % discount entered the price list' is the tab: 2: Bidstamp Brand Average tab in the Pricing Sheet.</p> | <p>Vendors providing complete solutions will list the line "turnkey solution or complete solution in Tab 1, including a sample of what a complete package will include and what provide a sample cost for these types of packages, then enter the line in Tab 2 turnkey solution or complete solution and the discount % that these packages will have. If there are different discounts for the hardware, equipment and software, list these in Tab 1 and the total average of these discounts in Tab 2.</p> |

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| 121. | General | NA | I do not see a link to the pre-solicitation conference video for DIR-TSO-TMP-570 on the ESBD site for the bid. Could you please share the link to the video or any details on where I can find the video to review? Any assistance would be greatly appreciated. | Please review Addendum 1 it has the complete directions on how to access the conference on DIR YouTube channel. |
| 122. | General | NA | Is BidStamp able to accept .zip files? We have a couple vendors who have 20+ VPATs with no link. If not, is there an alternate way to enter vs. all individually.? | Please review the Pre-solicitation conference video or slide no. 41. Directions on how to submit large zip files through the RFO email is the alternative to submit many files. "For vendors with a high number of VPAT Documents, may submit all documents in a zip file, through the RFO email rfodir-cpo-tmp-570@dir.texas.gov prior to the RFO closing date and time, DIR will move these files to the response folder after the RFO opens. " |
| 123. | General | NA | The majority of these manufacturers will be able to agree to DIR's terms and conditions outright, but a few will request to submit exceptions that are specific to their product and service offerings. | Please refer to Section 2.8, Proposed Changes and Exceptions, of the RFO for instructions on taking exception to DIR's standard terms and conditions. All exceptions, including those requested by Respondent's authorizing manufacturers, must be noted as directed in the Response to the RFO. Respondent will not be able to take any additional exceptions after submitting its Response. |

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| 124. | General | NA | We would like to submit two separate responses to accommodate both groups of manufacturers; however, per responses to questions 104 and 105, "DIR will not consider multiple responses from the same company." | Please refer to Section 2.8, Proposed Changes and Exceptions, of the RFO for instructions on taking exception to DIR's standard terms and conditions. All exceptions, including those requested by Respondent's authorizing manufacturers, must be noted as directed in the Response to the RFO. Respondent will not be able to take any additional exceptions after submitting its Response. |
| 125. | General | NA | Can DIR provide guidance/direction for how we can respond on behalf of manufacturers with exceptions that are specific to their product and service offerings? Will it be viable to include separate versions of the Exceptions Table (Exhibit A1) for manufacturers that require exceptions? Yes, see above | Please consult with your legal counsel regarding the drafting of your exceptions. Respondents may only submit one version of the Exceptions Table, as only one set of terms and conditions will be used for each awarded contract. Respondent's requested exceptions may note differences between manufacturers, if necessary. |

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| 126. | General | NA | Does DIR have requirements for the Accessibility Statement that would be required if our vendor is unable to provide or obtain an ACR? | An accessibility statement is not provided in lieu of an ACR (completed VPAT). If a product is not fully compliant based on tested results against WCAG success criteria, the vendor can provide an accessibility statement stating the deficiencies against corresponding success criteria, when the deficiencies will be corrected, and what accommodations or alternate means will be provided until the deficiencies are corrected. ACRs not provided with the submission can be provided later. However, remember there no award of a specific brand of software unless an approved ACR is provided (which can be completed during negotiations), and until the ACR(s) is provided, an evaluation score will be provided for the as-is response. |
| 127. | General | NA | We do have an EIN, and we have included that on Attachment A. Should I put the EIN in the TX VID# area on the HSP? | Yes, your EIN will go in the TX VID# in Section 1a. |
| 128. | General | NA | We are in the process of applying to be added to the DIR for the above referenced contract number. | NOTE: DIR does not have an application process for vendors. Vendors must respond to a solicitation, be responsive and responsible during the administrative evaluation process, after technical evaluations are conducted then vendors that make it to negotiations will have a chance to be awarded a DIR Contract. |

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| 129. | General | NA | Questions regarding the accessibility plan requirements since we don't manufacture, produce, or own IP for any software. We are just a reseller for several best in breed technology providers. | <p>Accessibility requirements are for resellers as well as manufacturers of any type of COTS software, therefore each product being proposed under this solicitation will require an ACR (completed VPAT). Product manufacturers should have an ACR for each product based on testing against WCAG 2.0 AA or higher success criteria, and most of them post the ACR(s) on their website, as well as provide them to their authorized resellers.</p> <p>(Addendum 3 Question 27) DIR will accept an existing ACR (completed VPAT) if the product has not changed since the last accessibility test to WCAG standards. If the product has been updated, a new ACR is required demonstrating how the new version conforms to WCAG success criteria.</p> |
| 130. | General | NA | Is it possible to have a call with you or a designated person to work through this so we can submit in accordance with your requirements? | <p>Addendum 1 Pre-Solicitation Conference Slide No. 44, you may contact Marie for discussions with accessibility, she also offers training for vendors.</p> <p>CONTACT: Marie Cohan, Statewide Digital Accessibility Technology Planning, Policy, and Governance (512) 463-6186 marie.cohan@dir.texas.gov</p> <p>NOTE: DIR is now offering Accessibility Training for vendors; you can register by emailing statewideaccessibility@dir.texas.gov</p> |

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| 131. | General | NA | <p>After thoroughly reviewing the Addendum 3 Questions and Answers for RFO DIR-CPO-TMP-570, we need a clarification about the information we are required to provide for Exhibit B, Respondent History and Experience, Question #6 in Table 4: 6) Using Table 4, indicate whether your company holds a contract for use by public entities (state agencies, local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO. In Addendum 3, in Question/Answer 70, the answer states: "Vendors will provide total sales to date by State for sales which falls under the scope of this RFO." In Addendum 2, in Question/Answer 61, the answer states: "DIR is requesting a list of Current Active Contracts a respondent has with any other entity in or out of the State of Texas. DIR is not looking for respondents' Account information." In light of the original instructions for Question #6 plus the two Q&As in Addenda 2 and 3, we have come to the conclusion that DIR is asking for us to list the entity names, total sales amounts, and scopes of state-wide contracts – similar to this DIR RFO – through which public entities within those states</p> | <p>First note: These two questions are not asking the same question. Question # 70 Addendum, 3 (Exhibit B, Respondent Experience, Question 6, Table 4. Sales to Other State Public Entities. Are you asking for a list of all contracts with other entities in other states? If so, each one individually or aggregate by state? From what time? Last 12 months? Longer?) This question is regarding: Are we asking for all contracts with other states besides Texas? Do you need individual or aggregate by state? How far back? Question #61 Addendum, 2 (03-RFO-DIR-CPO-TMP-570 Package 1 Exhibit B Respondent Experience - Question 6 - Are you looking for a list of all state/local accounts outside of Texas that a respondent has a contract with?) This Questions is asking about state and local accounts – which may or may not have sales? Is that correct? A. So no, you are not, correct? If our conclusion is not correct, could you please explain what information we are required to provide for Exhibit B, Question #6? Answer: Using Table 4, indicate whether your company holds a contract for use by public entities (state agencies, local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO. Vendors will provide total sales by state for products sold which fall under the RFO scope. Do not enter each individual contract. You can combine the sales by state by customer, or show only the highest dollar amount contracts, or even a total by state by market type. The key to this question is to determine the amount of</p> |
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| | | | (state, county, municipal, education, etc.) can purchase the same products/services that we are proposing to DIR. | business your company has with other government entities in other states. So, the data can be listed, as follows: (just an example) You may add a note at the end of the table that explains what you are providing in table 4, which is a sample of the 6000 contracts with public sector (state, county, municipal) entities, you may give it a total dollar amount for all contracts together as well. |
| 132. | General | NA | How will we know when/if a customer has returned the reference forms, to DIR? | They will send in through the RFO email on the form. Vendors should check with their customers if they have turned it in. Also, you can have the references cc you when they send it in, so you got a record of it. |
| 133. | General | NA | How often will the awarded Contractor be allowed to update their Catalog Brand(s) pricing? | See package 3 sample contract section 5.3. |
| 134. | General | NA | When will the awarded Contractor be allowed to make pricing updates to their awarded Brands? | See package 3 sample contract section 5.3. |
| 135. | General | NA | How often will the awarded Contractor be allowed to add new products to their awarded Brand(s)? | See package 3 sample contract section 4. |
| 136. | General | NA | When will the awarded Contractor be allowed to add new products to their awarded Brand(s)? | See package 3 sample contract section 4. |
| 137. | General | NA | We have the Pre-Solicitation video but thought we had heard that there was a you tube video specifically on the Cost component? | The Pre-Solicitation Conference is what is on YouTube see the link under Addendum 1. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|------|-------------------------|--------|---|--|
| 138. | General | NA | Thank you, we have completed watching that one. I was told there was a video specifically on "Cost/Pricing"? | No, the solicitation conference has a section on Bidstamp slides 50-61 and Pricing slides 62-72 |
| 139. | General | NA | Where will we submit all our documents for this contract? | Someone in your company needs to request an account or update the account you currently have. Please review Addendum 1 – Pre-Solicitation Conference Slides 50-61 which goes over the Vendor Information Systems (VIS) Portal – BidStamp process and how to upload the response documents. |
| 140. | General | NA | And do you have any additional information that can help? | This Solicitation (RFO) has a total of 17 original documents, 4 addendums, plus 1 video on YouTube that helps vendors with the RFO response. Please make sure you review and have all the correct documents before starting to fill out the solicitation response forms. Exhibit A – Respondents information form has this check list to assist with the needed documentation for a complete RFO response. |
| 141. | General | NA | Also, I see there is a "Vendor References" tab, and you can input a reference email. Should I be putting the email address of those ppl I reached out to provide a reference with the form provided? | The reference forms were supposed to be e-mailed out to customers, and they are to be submitted to DIR by the customers via the email provided in the form. Do not use bid Stamp for this purpose. |
| 142. | Exhibit J | NA | I had sent Exhibit J - Reference Form to our references for completion, but I am now seeing. Exhibit F - Respondent Release of Liability ... should I also send them Exhibit F for completion, or is that for us to complete? | This form is for the vendor to provide a list of the customers providing references and cancelled contracts -Vendor release of liability for DIR to contact these customers. Exhibit F should be completed and submitted with the response. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|------|-------------------------|--------|--|--|
| 143. | General | NA | Regarding the pricelist, what would you suggest we enter for MSRP as it is constantly fluctuating for some of our cloud products? | Cloud Services is not part of the Scope of this RFO. |
| 144. | General | NA | Would we be able to have a sanitized example of a populated Exhibit E: VPAT portion of the package? Some guidance on how to approach this portion would be very helpful. | Vendors are responsible for providing ACRs (completed VPATs) for their proposed products. ACRs can be provided by the manufacturer, or the vendor/reseller can complete a VPAT for a product but must use information based on product testing against the WCAG success criteria. NOTE: most software brands have their ACRs posted on their official web sites. DIR will accept ACR URLs too. |
| 145. | General | NA | Can DIR provide a list of software brands currently under contract for COTS? | Yes, see Attachment A of this Addendum |
| 146. | Exhibit D | NA | Hub Subcontracting Plan (HSP) - Are we allowed to submit our HSP prior to the submittal deadline for review? If so, who do we send it to? | Yes, the HUB team will provide a precursory review. Please email a copy of your HSP to the HUB office @ dir.hub@dir.texas.gov. |
| 147. | General | NA | Should I have any of my references send the email to the email address listed in the document in any certain format or have any specific title line? | The email header may read. Subject: (Vendor name) – Reference DIR-CPO-TMP-570 |
| 148. | General | NA | I just wanted to make sure I am doing the references part correctly. Do we need a certain number of references? I am not sure if that is listed somewhere or if I am missing it. | Please see RFO Section 3.9.3.7 for the minimum number of references. |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|------|-------------------------|--------|---|---|
| 149. | General | NA | Does agreeing to section 5 intellectual property matters imply the Texas DIR has rights or ownership over our Intellectual property and trademarks? | Please consult with your legal counsel for questions regarding interpretation of contract terms and conditions. |
| 150. | General | NA | Contract modifications: Can an awarded contract be modified during the life of the contract to add additional COTS solutions? | Yes, see Package 3b Contract Template Section 4. |
| 151. | Exhibit I | NA | Certification of OFF Premise Customer Services Do we need to fill this out if we only conduct installation and training on customer premises? Otherwise, we are off premise | Yes |
| 152. | General | NA | What are all of the required documents to submit for this RFO? | Exhibit A Section 16 has the required documentation check list. |
| 153. | General | NA | What is an LOA and when does this need to be submitted by? | See Addendum 2 Question 9 |

| # | RFO Section or Document | Page # | Vendor Question | DIR Answer |
|------|-------------------------|--------|---|--|
| 154. | General | NA | What is an LPAT and when does this need to be submitted by? | The solicitation references the VPAT not an LPAT. A VPAT is a product template to document how a product is tested against WCAG 2.0 AA or higher success criteria. The completed VPAT is called an Accessibility Conformance Report, and this is the required document for each product offering in the vendor's response. ACRs are to be submitted with the response by 5/23/23. For VPATs in-progress, the completed VPAT (ACR) can be submitted later; however, there is no award of a specific brand of software unless an approved ACR is provided (which can be completed during negotiations), and until the ACR(s) is provided, an evaluation score will be provided for the as-is response. |

Addendum 2 Attachment Documents:

1. Attachment A – Current Brand Report

| DIR Current Brands |
|---------------------------|
| 3D Analytics |
| 4iq |
| 911 Datamaster |
| A10 |
| Abbyy |
| Accedian Networks |
| Accela |
| Accelion |
| ACL GRC |
| ACL Robotics |
| ACL Services |
| Acquia |
| Actifio |
| Activepdf |
| Acuo |
| Adaptus |
| ADF |
| Adjacent Technologies |
| AdvoLogix |
| AeroDefense |
| AFS |
| Agari |
| AgileAssets |
| AINS |
| Akamai |
| AKG |
| AlertMedia |
| Alfresco |
| Algosec |
| AlienVault |
| Alike |
| Alteryx |
| Amazon Web Services (AWS) |
| AMK |
| Analytics |
| Anaplan |

| DIR Current Brands |
|---------------------------|
| Anomali |
| Apcon |
| AppDynamics |
| Appian |
| Appian Graphics |
| Application Perfect |
| Appsian |
| Apttus |
| Aqua Security Software |
| Archer |
| Archibus |
| Arctic Wolf |
| Arcusys |
| Armis |
| ASG Technologies |
| ASOC |
| Assured Data |
| Atlas Sound |
| Atlassian |
| AttackIQ |
| Attivo |
| Aurea |
| Authentic8 |
| Autodesk |
| AutoDev Studio |
| Avanan |
| Avatier |
| Avepoint |
| Avepoint Inc |
| Aviatrix |
| Avteq |
| Aware |
| AWS |
| Axiom |
| Axiom Memory Solutions |
| Axiom Pro |

| DIR Current Brands |
|--------------------------------------|
| Axis |
| B2GNOW |
| Barco |
| Barracuda |
| BasicGov |
| BBCY |
| Beezy |
| Beyond Trust |
| Biamp |
| Big Analytixs |
| BigID |
| Binti |
| Bitdefender |
| Bitglass |
| BitSight |
| Blackberry Enterprise Mobility Suite |
| BlackBoard |
| blancco |
| Bluecat Networks |
| BMI Imaging |
| Bomgar |
| Bonfire |
| Bosch |
| Boss Solutions |
| Box |
| Box Inc. |
| Bracket Labs |
| Bradford Networks |
| Bravium |
| Broadcom |
| BSS Audio |
| BullWall |
| Buurst |
| CA Technologies |
| Cables2Go |
| Cambridge Sound |

| DIR Current Brands |
|---------------------------|
| Carbonite |
| Case Commons |
| CBM Archives |
| Cellebrite |
| Centrify |
| ChainAnalysis |
| ChameleonDocs |
| Check Point Software |
| CheckMarx |
| Chief Manufacturing |
| Cimcor |
| Citrix |
| CityBase |
| CityInnovate |
| Clariti |
| Claroty |
| Clear Story Data |
| ClearBlade |
| Clock Audio |
| CloudBees |
| Cloudbyz |
| cloudera |
| CMA |
| CodeRED |
| Cofense |
| Cohesity |
| Collabnet |
| ColorCodeIT |
| Colortokens |
| Column Case |
| Community |
| Commvault |
| Comodo |
| ComplianceSeal |
| Confluent |
| Contrast |

| DIR Current Brands |
|---------------------------|
| ControlUp |
| Copado |
| Corel |
| Cornerstone OnDemand |
| Courthouse JMS |
| Courthouse Tablet |
| Creston |
| Crowdstrike |
| Crown |
| Cumulus |
| Cutting Edge |
| Cyber-Ark Software |
| Cyber-Ark Software |
| CybeReady |
| Cygilant |
| Cylance |
| D2IQ |
| Da-Lite |
| DarkOwl |
| Data Systems |
| Databank IMX |
| DataDog |
| DataXport.Net |
| Decision Lens |
| Delphix |
| Demisto |
| Dexaga |
| Digital Defense |
| Digital Guardian |
| Digitech |
| Discover Technologies |
| Docker |
| Document Logistix |
| DocuSign |
| DOMA |
| Domo |

| DIR Current Brands |
|---------------------------|
| Draper |
| Drawloop |
| Dronedeploy |
| Dropbox |
| Druva |
| DUO |
| Dynatrace |
| eCivis |
| Ekahau |
| Elastic |
| Elasticsearch |
| Elearningforce |
| Embarcadero |
| Endgame |
| Ensilo |
| Entco |
| Ephesoft |
| erwin Inc. |
| eSentire |
| Eset |
| Eset (SaaS) |
| Evoko |
| Exabeam |
| Experian |
| ExtraHop |
| Extron |
| F5 |
| FactGem |
| FICO |
| Fidelis Security |
| FieldFlex |
| FireEye |
| FirstAware |
| Five9 |
| FleetAI |
| Flexera |

| DIR Current Brands |
|---------------------------|
| Flosum |
| Fluxx |
| FM Works |
| ForeScout |
| ForgeRock |
| Formatta |
| Formstack |
| Fortinet |
| Foxit |
| F-Secure |
| FSR Inc. |
| Fujitsu |
| GAIN |
| Genesys |
| Gigamon |
| Gimmel |
| GitLab |
| Globalflyte |
| Globalscape |
| GNT |
| GoGuardian |
| GovQA (WebQA) |
| Granicus |
| Graphical WorkFlow |
| Graylog |
| Groundwork |
| Guardicore |
| Hashicorp |
| Haystax |
| HCL Software |
| HeadLight |
| HID Global |
| HID-CrossMatch |
| HID-Digital Persona |
| HiveIO |
| Hootsuite Media |

| DIR Current Brands |
|---------------------------|
| Hyland Software |
| Hytrust |
| IBI |
| IBM |
| iboss |
| ID.me |
| Idaptive |
| Ideagen |
| IdentityIQ |
| Idera |
| IGEL |
| IKUSI |
| Illusive Networks |
| ImageSilo |
| ImageSoft |
| Impero |
| Imperva |
| Imprivata |
| Impulse Point |
| Infoblox |
| Infocus |
| Infocyte |
| Infor |
| Informatica |
| Inspyrus |
| Intello |
| Invincea |
| IP360 |
| IronNet |
| ISM |
| Ivanti |
| Ixia |
| Ixia - Keysight |
| Jama Software |
| JAMF |
| JazzNet |

| DIR Current Brands |
|--------------------------------|
| JBL |
| K2 |
| Kapalya |
| Kaypala |
| Kenna |
| KnowBe4 |
| KnowWho |
| Kofax |
| KOM |
| KOMpliance |
| KPMG |
| Kronos |
| Lab Gruppen |
| Lakeside |
| Laserfiche |
| Lastline |
| Leaptree |
| LeaseAccelerator |
| Liberty AV Solutions |
| Liferay |
| Linkedin |
| Liquidware Labs |
| Listen Technologies |
| LogMeIn (GotoMeeting products) |
| LogRhythm |
| Lookout, Inc. |
| Malwarebytes |
| MapAnything |
| MarkLogic |
| Marshall Furniture |
| MB&A |
| McAfee |
| Medallia |
| Meridian |
| Merit International |
| Metalogix |

| DIR Current Brands |
|---------------------------|
| M-Files |
| Micro Focus |
| Microsoft |
| MicroStrategy |
| MicroView |
| Middle Atlantic |
| Mimecast |
| MKinsight |
| MobileIron |
| MongoDB |
| Mulesoft |
| Nasuni |
| NetAbstraction |
| NetApp |
| NetFlow |
| NetFoundry |
| Netscout |
| Netskope |
| Network Kinetix |
| Neverfail |
| New Relic |
| NextRequest |
| Nintex |
| NNData |
| NOVASTOR |
| Novell |
| Ntrepid |
| Nuance |
| NUIX |
| Nutanix |
| Nuvolo |
| Nvidia |
| Obsidian |
| Okta |
| Omada |
| Onapsis |

| DIR Current Brands |
|---------------------------|
| OnBase |
| OnData |
| One Identity |
| OneView |
| OnSolve |
| OpenCounter |
| OpenGov |
| OpenText |
| OutSystems |
| Paessler |
| PaexerHealth |
| PagerDuty |
| Palo Alto |
| PaperFlow |
| PaperVision |
| Paxera |
| PDS |
| Pegasystems |
| Pentana Audit |
| Perceptive |
| Persimmony |
| Pitney Bowes |
| Planar |
| PlatCore |
| Pluralsight |
| Polycom |
| Polyverse |
| Pondera |
| Portswigger |
| Precisely |
| Precision Hawk |
| Preempt Security |
| Premier Mounts |
| Preservica |
| PrinterLogic |
| Prism |

| DIR Current Brands |
|---------------------------|
| Procore |
| Proofpoint |
| Pulse Secure |
| Puppet |
| Qfiniti |
| Qlik |
| QlikTech |
| Qognify |
| QSC |
| Quadric Software |
| Qualtrics |
| Qualys |
| Quantexa |
| Quest |
| Questica |
| Radiant RFID Software |
| RangeForce |
| Rapid7 |
| ReadSpeaker |
| Recorded Future |
| Red Hat |
| Red River |
| RedSeal |
| REI Systems |
| Remediant |
| RestNSX |
| Revenue Grid |
| ReversingLabs |
| RGB Spectrum |
| RockSolid |
| RSA |
| S2 |
| Sailpoint |
| Salesforce |
| Salesforce |
| Samsung |

| DIR Current Brands |
|---------------------------|
| SAP |
| SAS Institute |
| Saviynt |
| Sayari |
| Scale Computing |
| Screen Innovations |
| SDL Government |
| SeamlessDocs |
| Sectigo |
| SecureAuth |
| Secureworks |
| Security Scorecard |
| Securonix |
| Seltis |
| SentinelOne |
| SerentityEHS |
| ServiceNow |
| ServiceNow |
| Sharegate |
| ShortPoint |
| Shure |
| Signal Sciences |
| SimpliGov |
| Siren.io |
| Skuid |
| Skybox |
| Skybox Security |
| Slack |
| Smartsheet |
| Snow Software |
| SnowFlake |
| Socrata |
| Software AG |
| Solarwinds |
| Sophos |
| Sound Control |

| DIR Current Brands |
|---------------------------|
| Soundcraft |
| SPIDR Tech |
| Spirion |
| Splunk Software |
| Spyrus |
| StaveApps |
| STEALTHbits |
| Storagecraft |
| SummonsDirect |
| Sumo Logic |
| Symantec |
| Syn-Apps |
| Syncscort |
| TABLEAU SOFTWARE |
| Tanium |
| Tannoy |
| Team Northwoods |
| TeamMate |
| Techsmith |
| TechSoft 3D |
| TEG Technologies, LLC |
| Telemessage |
| Tenable |
| Teradici |
| Tetra4D |
| Thales |
| Thales Security |
| ThinkSmart |
| ThinkTime |
| Thoughtspot |
| ThreatCare |
| Thycotic |
| TIBCO |
| TimelinePI |
| TimeTrade |

| DIR Current Brands |
|---------------------------|
| TITUS |
| Titus by HelpSystems |
| TransUnion |
| Trend Micro |
| Trifacta |
| Trimble |
| Tripwire |
| Trustwave |
| Tufin |
| Turning Technologies |
| TV One |
| Twistlock |
| Tyler Jury |
| Tyler Jury Manager |
| UIPath |
| Unifi |
| Unitrends |
| Unqork |
| User1st |
| V3 Cybersecurity |
| Vaddio |
| Valimail |
| Valo |
| Varonis |
| Veeam |
| Veritas |
| Veritone |
| VIA |
| Viavi |
| Visix |
| Vlocity |
| VMware |
| Vormetric |
| Voyager Analytics |
| Wasabi |
| WhiteCanyon |

| DIR Current Brands |
|---------------------------|
| WhiteHat Security |
| Wickr |
| Williams Sound |
| Wiremold |
| Workday |
| Workiva |
| Worksoft |
| XAQT |
| Xcential |
| Xerox |
| XM Cyber |
| Zencity |
| ZENOSS |
| Zerto |
| Zimperium |
| Zoom |
| Zscaler |

Program Signature Form

| | | |
|------------------|----------------------|----------------------|
| MBA/MBSA number | <input type="text"/> | <input type="text"/> |
| Agreement number | 4942672 | |

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

| Contract Document | Number or Code |
|----------------------------------|-----------------|
| Enterprise Enrollment (Indirect) | X20-10636 |
| Product Selection Form | 2684156.005_PSF |

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

| Customer |
|--|
| Name of Entity (must be legal entity name)* New Braunfels Utilities |
| Signature* |
| Printed First and Last Name* |
| Printed Title |
| Signature Date* |
| Tax ID |

* indicates required field

| Microsoft Affiliate |
|---|
| Microsoft Corporation |
| Signature |
| Printed First and Last Name |
| Printed Title |
| Signature Date (date Microsoft Affiliate countersigns) |
| Agreement Effective Date (may be different than Microsoft's signature date) |

Optional 2nd Customer signature or Outsourcer signature (if applicable)

| Customer |
|--|
| Name of Entity (must be legal entity name)* |
| Signature* |
| Printed First and Last Name* |
| Printed Title |
| Signature Date* |

** indicates required field*

| Outsourcer |
|--|
| Name of Entity (must be legal entity name)* |
| Signature* _____ |
| Printed First and Last Name* |
| Printed Title |
| Signature Date* |

** indicates required field*

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
 Dept. 551, Volume Licensing
 6880 Sierra Center Parkway
 Reno, Nevada 89511
 USA

Enterprise Enrollment

State and Local

Enterprise Enrollment number
(Microsoft to complete)

91424592

Framework ID
(if applicable)

Previous Enrollment number
(Reseller to complete)

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (6) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. **Order requirements.**

- a. **Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) **Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) **Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. **Adding Products.**
 - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.
- (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
- 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - 2) For Enterprise Online Services in a given Product pool that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as (a) the initial order minimum requirements are maintained and (b) all then-active users of each Online Service are included the total quantity of Licenses remaining after the reduction. An Enrolled Affiliate may reduce Licenses for Online Services on or before the Enrollment anniversary date and place a reservation order for such licenses within 90 days after the anniversary date; however, any licenses ordered as described in this section will be invoiced to the Enrolled Affiliate for the time period the licenses were made available.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.
- Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional

Products. This update statement must be signed by Enrolled Affiliate's authorized representative.

- (vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.
- (vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft may invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
 - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
 - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. **Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Unless otherwise expressly agreed to by the parties and except for Online Services designated in the Product Terms as being exempt from fixed pricing, Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. **Payment terms.**

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. **End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.
- c. **If Enrolled Affiliate elects not to renew.**
- (i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.
- (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
- 1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term option that allows Online Services to continue month-to-month (“Extended Term”) is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
- 2) **Cancellation during Extended Term.** At any time during the first twelve months of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, Microsoft may condition the continued use of each Online Service on the acceptance of new terms by the Enrolled Affiliate. Enrolled Affiliate will be notified in writing of any new terms at least 60 days before any such changes take effect. Enrolled Affiliate acknowledges and agrees that after the notice described in this section, its continued use of each Online Service after the effective date provided in the notice will constitute its acceptance of the new terms. If Enrolled Affiliate does not agree to the new terms, it must stop using the Online Services and terminate the Extended Term as provided in this section. Enrolled Affiliate’s termination under this section will be effective at the end of the month following 30 days after Microsoft has received the notice.
- (iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate’s Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the “Termination for cause” section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- e. **Early termination.** Any early termination of this Enrollment will be subject to the “Early Termination” Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. **Government Community Cloud.**

- a. **Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.
- b. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

Enrollment Details

1. Enrolled Affiliate's Enterprise.

Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

- Enrolled Affiliate only
- Enrolled Affiliate and the following Affiliate(s):

Unless specifically identified above, all Affiliates of Customer, either existing at the execution of this Enrollment or created or acquired after the execution of this Enrollment, will be excluded from the Enterprise. To request that an additional Affiliate be included in Customer's Enterprise, Customer must identify an Affiliate to Microsoft in writing and provide any required documentation. Microsoft will reasonably review requests under this paragraph and may approve the inclusion of an Affiliate in Customer's Enterprise in its sole discretion.

1. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* New Braunfels Utilities

Contact name: First* Bill **Middle** **Last*** Ryan

Contact email address* billryan@nbutexas.com

Street address* 263 Main Plaza

City* New Braunfels

State* TX

Postal code* 78130-5135 -

(Please provide the zip + 4, e.g. xxxxx-xxxx)

Country* United States

Phone* 830-629-8477

Tax ID

** indicates required fields*

- b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name: First* Bill Middle Last* Ryan
Contact email address* billryan@nbutexas.com
Street address* 263 Main Plaza
City* New Braunfels
State* TX
Postal code* 78130-5135 -
(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 830-629-8477

Language preference. Choose the language for notices. English
 This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.
** indicates required fields*

c. Online Services Manager. This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name: First* Bill Middle Last* Ryan
Contact email address* billryan@nbutexas.com
Phone* 830-629-8477

This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.
** indicates required fields*

d. Reseller information. Reseller contact for this Enrollment is:

Reseller company name* SHI International Corp.
Street address (PO boxes will not be accepted)* 290 Davidson Ave
City* Somerset
State* NJ
Postal code* 08873
Country* United States
Contact name* Kimara Lindsay
Phone* 888-764-8888
Contact email address* MSTeam_@SHI.com
** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

| |
|--|
| <p>Signature* <i>Kimara Lindsay</i></p> <hr/> <p>Printed name* Kimara Lindsay Printed title* Date*</p> |
|--|

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
- (i) Additional notices contact
 - (ii) Software Assurance manager
 - (iii) Subscriptions manager
 - (iv) Customer Support Manager (CSM) contact

1. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing? Yes, No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

Electronically Submitted

Proposal ID

2684156.005

Enrollment Number

Language: English (United States)

| Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order: | | | | |
|--|-------------------|-----------------|---------------------|---------------------|
| Profile | Qualified Devices | Qualified Users | Device / User Ratio | CAL Licensing Model |
| Enterprise | 310 | 310 | 1.0 | User Licenses |

| Products | Enterprise Quantity |
|------------------------------------|---------------------|
| Office Professional Plus | |
| Office Professional Plus | 450 |
| Client Access License (CAL) | |
| Core CAL | |
| Core CAL | 310 |
| Windows Desktop | |
| Windows E5 per User | 310 |

| Enrolled Affiliate's Product Quantities: | | | | |
|--|---|---|---|--|
| Price Group | 1 | 2 | 3 | 4 |
| Enterprise Products | Office Professional Plus + M365 Apps for Enterprise + Office 365 (Plans E3 and E5) + Microsoft 365 Enterprise | Client Access License + Office 365 (Plans E1, E3 and E5) + Microsoft 365 Enterprise | Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise | Win E3 + Win E5 + Win VDA + Microsoft 365 Enterprise |
| Quantity | 450 | 310 | 310 | 310 |

| Enrolled Affiliate's Price Level: | |
|---|-------------|
| Product Offering / Pool | Price Level |
| Enterprise Products and Enterprise Online Services USL: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4. | D |
| Additional Product Application Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1. | D |
| Additional Product Server Pool: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3. | D |
| Additional Product Systems Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 4. | D |

| Notes | |
|--|-------------|
| <p>Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:</p> | |
| Quantity of Licenses and Software Assurance | Price Level |
| 2,399 and below | A |
| 2,400 to 5,999 | B |
| 6,000 to 14,999 | C |
| 15,000 and above | D |
| <p>Note 1: Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.</p> | |
| <p>Note 2: Unless otherwise indicated in associated Agreement documents, the CAL selection must be the same across the Enterprise for each Profile.</p> | |
| <p>Note 3: Enrolled Affiliate acknowledges that in order to use a third party to reimage the Windows Operating System Upgrade, Enrolled Affiliate must certify that it has acquired qualifying operating system licenses. The requirement applies to Windows Enterprise OS Upgrade. See Product Terms for details.</p> | |
| <p>Note 4: If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.</p> | |

Additional Terms and Conditions under Texas DIR-CPO-5237

between

SHI Government Solutions, Inc.
(“Vendor” or “SHI GS”)
1301 South MoPac Expressway,
Suite 375
Austin, Texas 78746

and

New Braunfels Utilities
(“Customer” or “NBU”)
263 Main Plaza
New Braunfels, Texas 78130

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Vendor and Customer agree as follows. Effective as of the date of the last signature below (the “Effective Date”), this Texas Department of Information Resources (“DIR”) Contract DIR-CPO-5237 (“DIR Contract”) for cooperative purchases for specific services from SHI Government Solutions, Inc. is incorporated by reference into and made part of these Additional Terms and Conditions (the “Agreement”). The Agreement will govern the purchases and orders and each statement of work (SOW) that are provided to NBU from Vendor that are made during the term of DIR Contract with Vendor for Microsoft Volume Licensing. The Customer is an eligible purchaser of the offerings under the DIR Contract, which is publicly available on the DIR website at:

<https://dir.texas.gov/contracts/dir-cpo-5237>

This Agreement shall become effective on the Effective Date and shall remain in effect for a term of 36 months. Cumulative purchases under this Agreement shall not exceed \$1,154,996.04.

Per the DIR Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the DIR Contract. Within five (5) business days of the execution of this Agreement and upon future request from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

This Agreement and all of the rights and obligations of the parties shall be governed by and enforced under the laws of the State of Texas and the United States, as applicable. In the unlikely event any such situation may be necessary, the exclusive venue for any litigation under this Agreement shall be in a court of competent jurisdiction in Comal County, Texas. The parties agree to communicate and cooperate to resolve any concerns prior to filing litigation. Any mediation will be conducted by a mediator selected by both parties, and mediation shall be located in New Braunfels, Texas.

NBU and Vendor agree to reference the applicable current DIR Contract for quotations, purchase orders, and SOWs that are for offerings available from Vendor under the DIR Contract. The parties also agree to cooperate to resolve any administrative issues for proper processing of orders and billing related to this Agreement. This Agreement is entered into on behalf of the parties by their below authorized representatives:

Vendor:
SHI Government Solutions, Inc

Signature:

Name:

Position:

Date:

Customer:
New Braunfels Utilities

Signature:

Name:

Position:

Date:



Pricing Proposal
Quotation #: 24880686
Reference #: Net New EA
Created On: 5/21/2024
Valid Until: 8/30/2024

TX-New Braunfels Utilities

Inside Account Manager - Public Sector

Jeffrey Jones
P.O. BOX 310289
NEW BRAUNFELS, TX 78131
United States
Phone: 8306088868
Fax:
Email: JJones@nbutexas.com

Victor Arias
290 Davidson Ave.
Somerset, NJ 08873
Phone: (732)-317-6938
Fax:
Email: Victor_arias@shi.com

All Prices are in US Dollar (USD)

| Product | Qty | Your Price | Total |
|---|-----|------------|--------------|
| 1 Office Professional Plus ALng LSA Platform Microsoft - Part#: 269-12445 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 450 | \$177.90 | \$80,055.00 |
| 2 Core CAL ALng LSA Platform UCAL Microsoft - Part#: W06-01066 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 310 | \$84.02 | \$26,046.20 |
| 3 Azure Monetary Commitment Provision (Commerical) Microsoft - Part#: AAA-35418 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 1 | \$0.00 | \$0.00 |
| 4 CIS Suite Datacenter Core ALng LSA 2L Microsoft - Part#: 9GS-00495 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 280 | \$383.82 | \$107,469.60 |
| 5 Exchange Server Ent ALng LSA Microsoft - Part#: 395-02412 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 4 | \$1,681.03 | \$6,724.12 |
| 6 SQL Server Standard Core ALng LSA 2L Microsoft - Part#: 7NQ-00302 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 82 | \$1,487.48 | \$121,973.36 |

| | | | | | |
|----|---|-----|------------|----|--------------|
| 7 | Win E5 Sub Platform Per User Microsoft - Part#: AAA-22360 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 310 | \$112.92 | \$ | Item 20. |
| 8 | Win OLS Activation User Sub Add-on E5 Microsoft - Part#: AAA-51068 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 310 | \$0.00 | | \$0.00 |
| 9 | Win Remote Desktop Services CAL ALng LSA UCAL Microsoft - Part#: 6VC-01252 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 1 of 3 | 140 | \$55.18 | | \$7,725.20 |
| 10 | Office Professional Plus ALng LSA Platform Microsoft - Part#: 269-12445 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 450 | \$177.90 | | \$80,055.00 |
| 11 | Core CAL ALng LSA Platform UCAL Microsoft - Part#: W06-01066 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 310 | \$84.02 | | \$26,046.20 |
| 12 | Azure Monetary Commitment Provision (Commerical) Microsoft - Part#: AAA-35418 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 1 | \$0.00 | | \$0.00 |
| 13 | CIS Suite Datacenter Core ALng LSA 2L Microsoft - Part#: 9GS-00495 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 280 | \$383.82 | | \$107,469.60 |
| 14 | Exchange Server Ent ALng LSA Microsoft - Part#: 395-02412 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 4 | \$1,681.03 | | \$6,724.12 |
| 15 | SQL Server Standard Core ALng LSA 2L Microsoft - Part#: 7NQ-00302 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 82 | \$1,487.48 | | \$121,973.36 |
| 16 | Win E5 Sub Platform Per User Microsoft - Part#: AAA-22360 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 310 | \$112.92 | | \$35,005.20 |

| | | | | | |
|----|---|-----|------------|--------------|----------|
| 17 | Win OLS Activation User Sub Add-on E5 Microsoft - Part#: AAA-51068 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 310 | \$0.00 | | Item 20. |
| 18 | Win Remote Desktop Services CAL ALNg LSA UCAL Microsoft - Part#: 6VC-01252 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 2 of 3 | 140 | \$55.18 | \$7,725.20 | |
| 19 | Office Professional Plus ALNg LSA Platform Microsoft - Part#: 269-12445 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 3 of 3 | 450 | \$177.90 | \$80,055.00 | |
| 20 | Core CAL ALNg LSA Platform UCAL Microsoft - Part#: W06-01066 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 3 of 3 | 310 | \$84.02 | \$26,046.20 | |
| 21 | Azure Monetary Commitment Provision (Commerical) Microsoft - Part#: AAA-35418 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 3 of 3 | 1 | \$0.00 | \$0.00 | |
| 22 | CIS Suite Datacenter Core ALNg LSA 2L Microsoft - Part#: 9GS-00495 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 3 of 3 | 280 | \$383.82 | \$107,469.60 | |
| 23 | Exchange Server Ent ALNg LSA Microsoft - Part#: 395-02412 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 3 of 3 | 4 | \$1,681.03 | \$6,724.12 | |
| 24 | SQL Server Standard Core ALNg LSA 2L Microsoft - Part#: 7NQ-00302 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 3 of 3 | 82 | \$1,487.48 | \$121,973.36 | |
| 25 | Win E5 Sub Platform Per User Microsoft - Part#: AAA-22360 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 3 of 3 | 310 | \$112.92 | \$35,005.20 | |
| 26 | Win OLS Activation User Sub Add-on E5 Microsoft - Part#: AAA-51068 Contract Name: Adobe/Microsoft Software & Related Services Contract #: DIR-CPO-5237 Note: Year 3 of 3 | 310 | \$0.00 | \$0.00 | |
| 27 | Win Remote Desktop Services CAL ALNg LSA UCAL | 140 | \$55.18 | \$7,725.20 | 1149 |

Microsoft - Part#: 6VC-01252
Contract Name: Adobe/Microsoft Software & Related Services
Contract #: DIR-CPO-5237
Note: Year 3 of 3

Item 20.

Total \$1,154,996.04

Additional Comments

This quote has been marked as budgetary, as certain pricing may require approval from Microsoft. Please note, SHI is unable to process Purchase Orders against budgetary quotes. Kindly reach out to your SHI sales team for a Final Quote once you have determined your required counts and licenses.

Please note, if Emergency Connectivity Funds (ECF) will be used to pay for all or part of this quote, please let us know as we will need to ensure compliance with the funding program.

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

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

BACKGROUND

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

On January 25, 2024, NBU received two (2) bids for the Project during the public bidding process. The project team evaluated the bids and recommended the selection of Skyblue Utilities, Inc. (“Skyblue”) for the Project. Skyblue was the lowest responsible bidder and submitted a base bid of \$810,231.45, Additive Alternate Number 1 of \$217,847.49, and Additive Alternate Number 2 of \$207,490.27. However, due to language in the bid bond from Skyblue that could not be resolved, the contract award has been withdrawn, and the second bidder, Spiess Construction Co., Inc. (“Spiess”), has been recommended for award of the contract. Spiess submitted a base bid of \$1,214,670.00, Additive Alternate Number 1 of \$542,070.00, and Additive Alternate Number 2 of \$208,290.00.

NBU staff requests that the Board of Trustees approve the Construction Contract Agreement (the “Contract”) with Spiess 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 Spiess for the Project is \$1,965,030.00. The Project is budgeted within the fiscal year 2024 through fiscal year 2026 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency in the amount of \$200,000, which is approximately 10% of the total contract amount, will be added to the project construction budget. The total Contract amount plus contingency is \$2,165,030.00.

LINK TO STRATEGIC PLAN

Customers and Community

Stewardship

EXHIBITS

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

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



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

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

Date: Friday, May 31, 2024

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

Dear Mr. Perry,

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

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

It was discovered that Skyblue Utilities could not meet the requirements for bonding or qualification to contract with NBU. HMT Engineering and Surveying’s Opinion of Probable Construction Cost for the total bid, which includes the base bid, alternate number 1, and alternate number 2 was \$1,229,664.15.

As such, we have reviewed Spiess Construction’s references and project experience. We have been informed that they have experience constructing wastewater lines to NBU Specification with the Castell Ave. 24-Inch Water Line West Project per conversations with the Freese & Nichols, construction manager.

Therefore, HMT recommends that NBU award the construction contract for this project to Spiess Construction Inc. in the amount of \$1,965,030. Please call me if you have any questions or need any additional information.

Sincerely,

Chris Van Heerde, PE
Managing Partner
HMT Engineering & Surveying



05/31/2024

THIS AGREEMENT (the “Agreement” or the “Contract”) is between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **SPIESS CONSTRUCTION CO., INC.**, a California corporation authorized to transact business in the State of Texas (the “Contractor”).

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

ARTICLE 1 - WORK

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

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

1.02 The Work is generally described as follows:

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

ARTICLE 2 - THE PROJECT

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

Infrastructure Replacement Package 1

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

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

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

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Days to Achieve Substantial Completion and Final Payment*

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

4.03 *Damages*

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

4.04 *Special Damages*

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

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

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

ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

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

6.03 *Final Payment*

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

ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS

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

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

and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

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

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

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

8.02 *Assignment of Contract*

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

8.03 *Successors and Assigns*

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

8.04 *Severability*

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

8.05 *Governing Law*

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

8.06 *Venue*

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

8.07 *Prohibition on Contracts with Companies Boycotting Israel*

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

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

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

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

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

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

- A. If the Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Contractor represents the following:
 - 1. it is not owned by or the majority of stock or other ownership interest in the Contractor is not held or controlled by:
 - a. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or

b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

2. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

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

8.10 *Prohibition on Contracts with Companies Boycotting Energy Companies*

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

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

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

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

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

8.12 *Texas Public Information Act*

A. The Contractor recognizes that this Project is publicly owned, and NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of NBU’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to NBU’s audit rights.

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

8.13 *Electronic Signatures*

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

ARTICLE 9 - INSURANCE

9.01 *Evidence of the Contractor's Insurance*

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

Bidding Requirements, Contracts Forms & Conditions of the Contract
CONTRACT AGREEMENT

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

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

NBU:

By: _____

Printed Name: Ryan Kelso

Title: Chief Executive Officer

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

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

SPIESS CONSTRUCTION CO., INC.:

By: Scott A. Coleman

Printed Name: Scott A. Coleman

Title: President

[CORPORATE SEAL]

Attest: Laura De...

Title: Assistant Secretary

Address for giving notices:

201 S. Broadway Street #140

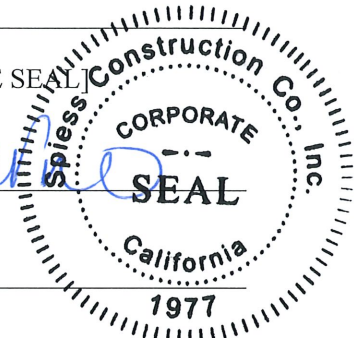
Orcutt, CA 93455

License No.: n/a
(Where Applicable)

Agent for service or process:

Scott A. Coleman

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



RESOLUTION OF BOARD OF DIRECTORS OF
SPIESS CONSTRUCTION CO., INC.

RESOLVED, That any of the following persons, Scott A. Coleman, President; Jeff L. Davidson, Secretary/Treasurer; Frank L. Forthun, Vice-President; Laura Jevne, Assistant Secretary, Jamie Jones, Project Manager; Garrett Coleman, Project Manager; acting together or individually, are hereby authorized to bid on any private or public works construction project on behalf of said Corporation; are authorized and instructed to execute such Bid Proposals, Contracts, Change Orders; and other documents as may be necessary and on behalf of said corporation.

I, Jeff L. Davidson, do hereby certify that I am the duly elected and qualified Secretary and Keeper Of the records and corporate seal of Spiess Construction Co., Inc. a corporation organized and existing under the laws of the State of California, and that the above is a true and correct copy of the resolution duly adopted at a meeting of the Board of Directors thereof, convened and held in accordance with the law and Bylaws of said Corporation on the 7th day of November 2023, and such resolution is now in full force and effect.

IN WITNESS WHEREOF, I have affixed by name as Secretary and have caused the corporate seal of said Corporation to be hereunto affixed the 7th day of November 2023.



Jeff L. Davidson, Secretary/Treasurer

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 |

Bidding Requirements, Contracts Forms & Conditions of the Contract
CONTRACT AGREEMENT

Item 21.

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| | | ○ 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 Employer's Liability | Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ Statutory Limits ▪ \$1,000,000 Each Accident and Disease ▪ Alternate Employer endorsement | <ul style="list-style-type: none"> ▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page ▪ 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) | Amounts of coverage shall be no less than: <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 | Amounts of coverage shall be no less than: <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 |

| | | |
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| | | <p>Owner.</p> <ul style="list-style-type: none"> ▪ 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. |
| <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 |

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Item 21.

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|---|--|--|----------|---|----------|-----------------------------------|-------------|---|-------------|---------|----------|------------|----------|---|-------------|--------------------|-----------|----------------------------------|----------|----------------------------|----------|---------|----------|--|
| | | <p>or an extended reporting period on a Claims Made policy or the purchase of occurrence-based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.</p> | | | | | | | | | | | | | | | | | | | | | | |
| <p>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 parties, with that other insurance being excess, secondary and non-contributing. ■ The policy must provide coverage for: <table border="0" style="margin-left: 20px;"> <tr> <td>○ Agreed Value</td> <td>Included</td> </tr> <tr> <td>○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse</td> <td>Included</td> </tr> <tr> <td>○ Debris removal additional limit</td> <td>\$1,000,000</td> </tr> <tr> <td>○ Earthquake and Earthquake Sprinkler Leakage</td> <td>\$5,000,000</td> </tr> <tr> <td>○ Flood</td> <td>Included</td> </tr> <tr> <td>○ Freezing</td> <td>Included</td> </tr> <tr> <td>○ Mechanical breakdown including hot & cold testing</td> <td>\$1,000,000</td> </tr> <tr> <td>○ Ordinance or law</td> <td>\$ 25,000</td> </tr> <tr> <td>○ Pollutant clean-up and removal</td> <td>Included</td> </tr> <tr> <td>○ Preservation of property</td> <td>Included</td> </tr> <tr> <td>○ Theft</td> <td>\$10,000</td> </tr> </table> ● Deductible shall not exceed 2% subject to \$50,000 minimum ○ All Risks of Direct Damage, Per Occurrence, except | ○ 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 | <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 and wiring, excavations, grading, backfilling or filling; ○ 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 |
| ○ 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 | | | | | | | | | | | | | | | | | | | | | | | |

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| | <ul style="list-style-type: none"> ○ Named Storm | \$100,000 | <ul style="list-style-type: none"> 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. |
| | <ul style="list-style-type: none"> ○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence ○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V | | |

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

New Braunfels Utilities
 355 FM 306
 New Braunfels, TX 78130

PROJECT: Infrastructure Replacement Package 1

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

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

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

Base Bid Items (Spur, Plum, Grape)

| <u>Item No.</u> | <u>Spec. No.</u> | <u>DESCRIPTION</u> | <u>UNIT</u> | <u>QUANTITY</u> | <u>UNIT COST, \$</u> | <u>TOTAL, \$</u> |
|-----------------|------------------|---|-------------|-----------------|----------------------|----------------------|
| 1 | - | Mobilization | LS | 1 | 60,000 ⁻ | 60,000 ⁻ |
| 2 | 703 | Traffic Control Plan | LS | 1 | 35,000 ⁻ | 35,000 ⁻ |
| 3 | 632 | Gravel Filter Bags | LF | 30 | 20 ⁻ | 600 ⁻ |
| 4 | 604 | Areas to be Reseeded and Restored (includes topsoil) | SY | 350 | 1 ⁻ | 350 ⁻ |
| 5 | TxDOT 340 | Pavement to be Removed and Replaced | SY | 900 | 60 ⁻ | 54,000 ⁻ |
| 6 | TxDOT 531 | Concrete Sidewalk to be Removed and Replaced | SY | 10 | 200 ⁻ | 2,000 ⁻ |
| 7 | - | Remove and Dispose of Existing Sewer Pipe and Laterals | LF | 1500 | 50 ⁻ | 75,000 ⁻ |
| 8 | - | Remove Existing Manhole | EA | 6 | 4,000 ⁻ | 24,000 ⁻ |
| 9 | 510 | Fill and Abandon Existing Sewer Pipe | LF | 100 | 50 ⁻ | 5,000 ⁻ |
| 10 | 510 | Cap and Abandon Existing Sewer Pipe | LS | 1 | 7,500 ⁻ | 7,500 ⁻ |
| 11 | CNB | Remove and Replace Existing Concrete Curb and Gutter | LF | 120 | 100 ⁻ | 12,000 ⁻ |
| 12 | 510 | Pressure Rated 8" PVC Sanitary Sewer Pipe (All depths, includes Excavation, Backfill, Bedding, and TV Inspection) | LF | 60 | 550 ⁻ | 33,000 ⁻ |
| 13 | 510 | 8" PVC Sanitary Sewer Pipe (All depths, includes Excavation, Backfill, Bedding, and TV Inspection) | LF | 1250 | 490 ⁻ | 612,500 ⁻ |
| 14 | 510 | Concrete Encasement | LF | 55 | 310 ⁻ | 17,050 ⁻ |
| 15 | 509 | Trench Excavation Protection | LF | 1310 | 1 ⁻ | 1,310 ⁻ |

Exhibit B to Contract Agreement
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BID FORM

| <u>Item No.</u> | <u>Spec. No.</u> | <u>DESCRIPTION</u> | <u>UNIT</u> | <u>QUANTITY</u> | <u>UNIT COST, \$</u> | <u>TOTAL, \$</u> |
|-----------------|------------------|---|-------------|-----------------|----------------------|----------------------|
| 16 | 510 | 6" Sanitary Sewer Services and Cleanouts | EA | 13 | 3,700 ⁻ | 48,100 ⁻ |
| 17 | 506 | Standard Sanitary Sewer Manholes with Concrete Collar | EA | 6 | 9,900 ⁻ | 59,400 ⁻ |
| 18 | 506 | Extra Depth Manhole | VF | 1 | 500 ⁻ | 500 ⁻ |
| 19 | SAWS 864 | Temporary Bypass Pumping | LS | 1 | 150,000 ⁻ | 150,000 ⁻ |
| 20 | 510 | Remove and Relocate Existing Water Service | EA | 5 | 3,000 ⁻ | 15,000 ⁻ |
| 21 | SAWS 540.6 | Construction Exits (Install/Remove) | SY | 80 | 20 ⁻ | 1,600 ⁻ |
| 22 | SAWS 540.9 | Temporary Sediment Control Fence | LF | 140 | 4 ⁻ | 560 ⁻ |
| 23 | SAWS 540.10 | Curb Inlet Gravel Filters | LF | 10 | 20 ⁻ | 200 ⁻ |

TOTAL BASE BID (Add Items 1 through 23):

\$ 1,214,670⁻

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

Additive Alternate No. 1 Bid Items (Rosedale)

| <u>Item No.</u> | <u>Spec. No.</u> | <u>DESCRIPTION</u> | <u>UNIT</u> | <u>QUANTITY</u> | <u>UNIT COST, \$</u> | <u>TOTAL, \$</u> |
|-----------------|------------------|--|-------------|-----------------|----------------------|----------------------|
| 24 | - | Mobilization | LS | 1 | 25,000 ⁻ | 25,000 ⁻ |
| 25 | 703 | Traffic Control Plan | LS | 1 | 30,000 ⁻ | 30,000 ⁻ |
| 26 | 642 | Silt Fence | LF | 150 | 4 ⁻ | 600 ⁻ |
| 27 | 604 | Areas to be Reseeded and Restored (includes Topsoil) | SY | 50 | 1 ⁻ | 50 ⁻ |
| 28 | TxDOT 340 | Pavement to be Removed and Replaced | SY | 200 | 60 ⁻ | 12,000 ⁻ |
| 29 | TxDOT 531 | Sidewalk Removed and Replaced | LS | 1 | 2,000 ⁻ | 2,000 ⁻ |
| 30 | - | Remove and Dispose of Existing Sewer Pipe and Laterals | LF | 100 | 50 ⁻ | 5,000 ⁻ |
| 31 | - | Remove Existing Manhole | EA | 2 | 4,000 ⁻ | 8,000 ⁻ |
| 32 | 510 | Fill and Abandon Existing Sewer Pipe | LF | 250 | 50 ⁻ | 12,500 ⁻ |
| 33 | 510 | Pressure Rated 8" PVC Sanitary Sewer Pipe (All depths, Backfill, Bedding, and TV Inspection) | LF | 40 | 1,000 ⁻ | 40,000 ⁻ |
| 34 | 510 | 8" PVC Sanitary Sewer Pipe (All depths, Backfill, Bedding, and TV Inspection) | LF | 260 | 1,000 ⁻ | 260,000 ⁻ |
| 35 | 509 | Trench Excavation Protection | LF | 300 | 1 ⁻ | 300 ⁻ |
| 36 | 510 | 6" Sanitary Sewer Services and Cleanouts | EA | 2 | 3,700 ⁻ | 7,400 ⁻ |
| 37 | 506 | Standard Sanitary Sewer Manholes with Concrete Collar | EA | 3 | 9,900 ⁻ | 29,700 ⁻ |
| 38 | 506 | Extra Depth Manhole | VF | 2 | 500 ⁻ | 1,000 ⁻ |
| 39 | SAWS 864 | Temporary Bypass Pumping | LS | 1 | 100,000 ⁻ | 100,000 ⁻ |
| 40 | 510 | Remove and Relocate Existing Water Service | EA | 2 | 3,000 ⁻ | 6,000 ⁻ |

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

| <u>Item No.</u> | <u>Spec. No.</u> | <u>DESCRIPTION</u> | <u>UNIT</u> | <u>QUANTITY</u> | <u>UNIT COST, \$</u> | <u>TOTAL, \$</u> |
|-----------------|------------------|-------------------------------------|-------------|-----------------|----------------------|--------------------|
| 41 | SAWS 540.6 | Construction Exits (Install/Remove) | SY | 80 | 20 ⁻ | 1,600 ⁻ |
| 42 | SAWS 540.9 | Temporary Sediment Control Fence | LF | 230 | 4 ⁻ | 920 ⁻ |

TOTAL ADDITIVE ALTERNATE NO. 1 (Add Items 24 through 42): \$ 542,070⁻

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

Additive Alternate No. 2 Bid Items (3567 IH 35 North)

| <u>Item No.</u> | <u>Spec. No.</u> | <u>DESCRIPTION</u> | <u>UNIT</u> | <u>QUANTITY</u> | <u>UNIT COST, \$</u> | <u>TOTAL, \$</u> |
|-----------------|------------------|---|-------------|-----------------|----------------------|---------------------|
| 43 | - | Mobilization | LS | 1 | 10,000 ⁻ | 10,000 ⁻ |
| 44 | 639 | Rock Berm | LF | 30 | 20 ⁻ | 600 ⁻ |
| 45 | 604 | Areas to be Reseeded and Restored (includes Topsoil) | SY | 350 | 1 ⁻ | 350 ⁻ |
| 46 | - | Remove and Replace Existing Fence | LF | 85 | 50 ⁻ | 4,250 ⁻ |
| 47 | - | Remove and Dispose of Existing Sewer Pipe and Laterals | LF | 490 | 50 ⁻ | 24,500 ⁻ |
| 48 | - | Remove Existing Manholes | EA | 2 | 4,000 ⁻ | 8,000 ⁻ |
| 49 | 510 | 8" PVC Sanitary Sewer Pipe (All depths, Backfill, Bedding, and TV Inspection) | LF | 490 | 100 ⁻ | 49,000 ⁻ |
| 50 | 506 | Standard Sanitary Sewer Manhole with Concrete Collar | EA | 2 | 9,900 ⁻ | 19,800 ⁻ |
| 51 | 506 | Extra Depth Manhole | VF | 3 | 500 ⁻ | 1,500 ⁻ |
| 52 | 509 | Trench Excavation Protection | LF | 490 | 1 ⁻ | 490 ⁻ |
| 53 | SAWS 864 | Temporary Bypass Pumping | LS | 1 | 85,000 ⁻ | 85,000 ⁻ |
| 54 | SAWS 540.1 | Rock Filter Dams (Install/Remove) (Type 1) | LF | 30 | 20 ⁻ | 600 ⁻ |
| 55 | SAWS 540.6 | Construction Exit (Install/Remove) | SY | 80 | 20 ⁻ | 1,600 ⁻ |
| 56 | SAWS 540.9 | Temporary Sediment Control Fence | LF | 650 | 4 ⁻ | 2,600 ⁻ |

TOTAL ADDITIVE ALTERNATE NO. 2 (Add items 43 through 56): \$ 208,290⁻

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

| | |
|--|---------------------------------|
| TOTAL BASE BID | \$ <u>1,214,670⁻</u> |
| TOTAL ADDITIVE ALTERNATE NO. 1: | \$ <u>542,070⁻</u> |
| TOTAL ADDITIVE ALTERNATE NO. 2: | \$ <u>208,290⁻</u> |
| TOTAL BASE BID + ADDITIVE ALTERNATES NO. 1 + ADDITIVE ALTERNATES NO. 2: | \$ <u>1,965,030⁻</u> |

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to delay damages and special damages in the event of failure to complete the Work on time.
6. The following documents are attached to and made a condition of this Bid:
 - a) Required Bid security of five percent (5%) of the Bidder's maximum base bid price and in the form of approved Bid Bond.
 - b) List of BIDDER's primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
7. Communication concerning this Bid shall be addressed to:

New Braunfels Utilities
 Purchasing Manager
 355 FM 306
 New Braunfels, TX 78130
 Phone: 830-608-8867
 Email: Purchasing@NBUTexas.com
8. The terms used in this Bid that are defined in the Standard General Conditions of the Contract included as part of the Contract Documents have the meanings assigned to them in the Standard General Conditions of the Contract.
9. The undersigned acknowledges receipt of the following addenda:

| | |
|----------------------------|----------------|
| Addendum No. 1 dated _____ | Received _____ |
| Addendum No. 2 dated _____ | Received _____ |
| Addendum No. 3 dated _____ | Received _____ |

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

Laura J. Freese

Secretary, *if bidder is a corporation
LAURA JEYNE, ASST. SECRETARY

(Seal)

SPIESS CONSTRUCTION CO., INC.

Company Name of Bidder

Scott A. Coleman

Authorized Signature

24 JANUARY 2024

Date

SCOTT A. COLEMAN, PRESIDENT

Printed Name of Authorized Signature

P.O. BOX 2049

SANTA MARIA, CA 93457

Address

805-937-5859 805-934-4432

Telephone Number/Fax Number

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

END OF DOCUMENT



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve Resolution #2024-185 Authorizing (i) the Transfer of .4388 Acres of Real Property Located at 1032 W. Coll Street, New Braunfels, Texas to the City of New Braunfels (the “City”) in Exchange for .581 Acres of Real Property Located along FM 1044, New Braunfels, Texas (near the intersection of Old Marion Road and FM 1044) from the City to NBU for Construction and Operation of an Elevated Storage Tank (the “EST”); (ii) Acceptance of an Access Easement, Utility Easement, Drainage Easement, and Temporary Construction Easements from the City for Construction and Operation of the EST; (iii) Execution of Any and All Documents Necessary to Effectuate the Conveyances; and (iv) Other Matters in Connection Therewith

BACKGROUND

NBU proposes to transfer operational control of a .4388 acre tract of real property commonly known as 1032 W. Coll Street, New Braunfels, Texas (the “Coll Property”) to the City in exchange for the transfer of operational control of a .581 acre tract of real property located along FM 1044, New Braunfels, Texas near the intersection of Old Marion Road and FM 1044 (the “Tank Site”) from the City to NBU pursuant to the terms of a Memorandum of Understanding (the “MOU”). NBU intends to construct and operate an elevated storage tank (the “EST”) on the Tank Site. The EST is necessary to comply with Texas Commission on Environmental Quality (“TCEQ”) elevated storage capacity requirements in the Morningside pressure zone, which consists of the Voss Farms neighborhood and the Morningside Road and Solms Road areas.

In addition to the Tank Site, NBU is acquiring the following from the City: (i) an access easement thirty (30) feet in width (the “Access Easement”) to access the Tank Site from FM 1044; (ii) a utility easement twenty-five (25) feet in width (the “Utility Easement”) for the construction and operation of a water line and related facilities serving the Tank Site; (iii) a drainage easement fifteen (15) feet in width (the “Drainage Easement”) for the construction and operation of drainage facilities to allow water to drain

from the Tank Site and the EST to a detention pond on an adjacent tract of property owned by the City; and (iv) temporary construction easements for NBU’s use in connection with the initial construction of the EST (the “Temporary Construction Easements” and together with the Access Easement, the Utility Easement and the Drainage Easement referenced collectively as the “Easements”).

The property exchange between the City and NBU will allow (i) the City to designate additional green space in the City limits and (ii) NBU to comply with TCEQ elevated storage capacity requirements. If approved, the closing of the property exchange will take place on a date mutually agreed to by NBU and the City but no later than September 6, 2024. In addition, NBU staff will solicit for the construction of the EST and present the construction contract agreement to the Board in early 2025.

NBU staff requests that the Board approve the transfer of operational control of the Coll Property to the City, the acceptance of operational control of the Tank Site from the City, and the acceptance of the Easements from the City as further described in the Resolution attached hereto.

This item is being presented to the Board because NBU staff must present each conveyance of real property by NBU to the Board for approval.

FINANCIAL IMPACT

NBU and the City will not exchange funds for the properties because the properties are of substantially equivalent value. NBU expects to pay closing costs of less than \$3,000.00.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

Financial Excellence

Stewardship

EXHIBITS

1. Resolution
2. Memorandum of Understanding, together with the form Assignments of Operational Control and form Easements attached to the Memorandum of Understanding as Exhibits

R# 2024 - _____

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES AUTHORIZING (I) THE TRANSFER OF .4388 ACRES OF REAL PROPERTY LOCATED AT 1032 W. COLL STREET, NEW BRAUNFELS, TEXAS TO THE CITY OF NEW BRAUNFELS (“CITY”) IN EXCHANGE FOR .581 ACRES OF REAL PROPERTY LOCATED ALONG FM 1044, NEW BRAUNFELS, TEXAS (NEAR THE INTERSECTION OF OLD MARION ROAD AND FM 1044) FROM THE CITY TO NBU FOR CONSTRUCTION AND OPERATION OF AN ELEVATED STORAGE TANK (THE “EST”); (II) ACCEPTANCE OF AN ACCESS EASEMENT, UTILITY EASEMENT, DRAINAGE EASEMENT, AND TEMPORARY CONSTRUCTION EASEMENTS FROM THE CITY FOR CONSTRUCTION AND OPERATION OF THE EST; (III) EXECUTION OF ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE CONVEYANCES; AND (IV) OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, NBU is a Texas municipally owned utility that provides water, wastewater, and electricity to customers in its service area;

WHEREAS, NBU is required to construct an elevated storage tank in the Morningside pressure zone (the “EST”) in order to meet Texas Commission on Environmental Quality elevated storage capacity requirements;

WHEREAS, the City owns and has exclusive operational control over a 4.016 acre tract of unimproved property along FM 1044 near the intersection of Old Marion Road and FM 1044 (the “FM 1044 Property”);

WHEREAS, the FM 1044 Property is located in the Morningside pressure zone;

WHEREAS, NBU desires to construct and operate the EST on a portion of the FM 1044 Property;

WHEREAS, NBU holds exclusive operational control of a .4388 acre tract of real property commonly known as 1032 W. Coll Street, New Braunfels, Texas (the “Coll Property”);

WHEREAS, the City desires to use the Coll Property for additional green space within the City limits;

WHEREAS, NBU is willing to transfer operational control of the Coll Property to the City;

WHEREAS, in exchange for operational control of the Coll Property, the City is willing to convey the following to NBU: (i) operational control of a .581 acre portion of the FM 1044 Property (the “Tank Site”); (ii) an access easement thirty (30) feet in width (the “Access Easement”) for NBU to access the Tank Site from FM 1044; (iii) a utility easement twenty-five

(25) feet in width (the “Utility Easement”) for the construction and operation of a water line and related facilities serving the Tank Site; (iv) a drainage easement fifteen (15) feet in width (the “Drainage Easement”) for the construction and operation of drainage facilities to allow water to drain from the Tank Site and the EST to a detention pond on an adjacent tract of property owned by the City; and (v) temporary construction easements for NBU’s use in connection with the initial construction of the EST (the “Temporary Construction Easements” and together with the Access Easement, the Utility Easement, and the Drainage Easement referenced collectively as the “Easements”), all as more fully described and depicted in the Memorandum of Understanding (“MOU”) attached hereto as Exhibit A.

WHEREAS, the Board of Trustees has reviewed the MOU, together with the exhibits attached thereto, in relation to the proposed exchange of the Coll Property for the Tank Site and the Easements, and is of the opinion that the same should be approved.

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

SECTION 1. The Board of Trustees hereby approves the transfer of operational control of the Coll Property to the City upon the terms and conditions set forth in the MOU.

SECTION 2. The Board of Trustees hereby further approves the acceptance of the following from the City upon the terms and conditions set forth in the MOU: (i) operational control of the Tank Site; (ii) the Access Easement; (iv) the Utility Easement; (v) the Drainage Easement; and (vi) the Temporary Construction Easements.

SECTION 3. The Chief Executive Officer of NBU or his designee is hereby authorized to negotiate and execute any and all documents necessary to (i) transfer operational control of the Coll Property to the City; (ii) accept operational control of the Tank Site from the City; and (ii) acquire the Easements from the City, including without limitation, the MOU, the Assignments of Operational Control, and the Easements in a form substantially similar to those attached to the MOU. The Board of Trustees also authorizes the Chief Executive Officer or his designee to pay or arrange for payment of any costs reasonably necessary to close the transaction.

SECTION 4. 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 5. 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 6. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 7. 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 8. 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 9. This Resolution shall be in full force and effect from and after its final passage, and it is so resolved.

PASSED, APPROVED, AND ADOPTED, this the ____ day of _____, 2024.

Wayne Peters
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ryan Kelso
Secretary, Board of Trustees
New Braunfels Utilities

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is executed by and between the **CITY OF NEW BRAUNFELS** (the “City”), a home-rule city under the laws of the State of Texas, and **NEW BRAUNFELS UTILITIES** (“NBU”), a municipally-owned water, wastewater, and electric utility (individually referenced as “Party” or collectively referenced as the “Parties”) and intended to be effective as of the Effective Date (defined below).

RECITALS

WHEREAS, the City owns an approximately 4.016 acre tract of unimproved property on FM 1044, more fully described in the attached **Exhibit A** (“FM 1044 Property”), which is under the exclusive operational control of the City;

WHEREAS, the City owns an approximately .4388 acre tract of property commonly known as 1032 W. Coll Street, New Braunfels, Texas 78130, more fully described in the attached **Exhibit B** (“Coll Property”), which is under the exclusive operational control of NBU, as agent of the City;

WHEREAS, in exchange for the transfer of operational control of the Coll Property, the City is amenable to (i) transferring operational control of an approximately .581 acre portion of the FM 1044 Property, more fully depicted in green on the attached **Exhibit C** (the “Tank Site”) to NBU, (ii) conveying an access easement 30 feet in width (the “Access Easement”) on, over, and across the portion of the FM 1044 Property further depicted in pink on Exhibit C (the “Access Easement Property”) to NBU, (iii) conveying a utility easement 25 feet in width (the “Utility Easement”) on, over, under and across the portion of the FM 1044 Property further depicted in solid purple on Exhibit C (the “Utility Easement Property”) to NBU, and (iv) conveying a drainage easement approximately 15 feet in width (the “Drainage Easement”) on, over, and across the portion of the FM 1044 Property outlined in blue on Exhibit C (the “Drainage Easement Property”) to NBU, all upon the terms and conditions set forth herein (the Access Easement, Utility Easement and Drainage Easement are collectively referenced herein as the “Easements”; the Access Easement Property, Utility Easement Property, and Drainage Easement Property are collectively referenced herein as the “Easement Property”);

WHEREAS, in exchange for the transfer of operational control of the Tank Site and conveyance of the Easements, NBU is amenable to transferring operational control of the Coll Property to the City, upon the terms and conditions set forth herein;

WHEREAS, the Parties regard the exchange of the Tank Site and Easements for the Coll Property (referenced herein as the “Property Exchange”) as an even exchange of real property, such that the Parties do not anticipate the exchange of monetary consideration at the closing (“Closing”) of the Property Exchange;

WHEREAS, the Closing is subject to the prior approval of the NBU Board of Trustees (“NBU Board”) and New Braunfels City Council (“City Council”), both of which are conditions precedent to the Parties’ obligations to close the Property Exchange;

WHEREAS, the Parties acknowledge the benefits of the Property Exchange to each of them, in that it enables each Party to assume operational control over a tract of property for which it has an immediate need through the exchange of a comparable tract of property, thereby expediting construction, realizing cost savings, increasing efficiency, and improving their respective asset portfolios; and

WHEREAS, the Parties wish to enter into this non-binding MOU to set out their respective expectations regarding the transaction contemplated hereby.

NOW THEREFORE, in consideration of the representations, covenants, and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. *Recitals.* The Parties acknowledge the truth and accuracy of the Recitals, which constitute a substantive part of this MOU.
2. *Closing.* Unless otherwise agreed by the Parties, the Closing of the Property Exchange will take place at the NBU Main Office located at 263 Main Plaza, New Braunfels, Texas, on a date reasonably agreed by the Parties, no later than 5:00 PM on September 6, 2024.
3. *Obligations at Closing.* On or before the date of Closing, the Parties will take the following actions:
 - (a) The City will take the following steps and/or perform the following actions in connection with the Closing:
 - (i) execute a document assigning operational control of the Tank Site to NBU (“Tank Site Assignment”), in a form substantially similar to the form attached hereto as **Exhibit D**, thereby conveying to NBU operational control of the Tank Site, including all the rights, benefits, and obligations attendant thereto;
 - (ii) execute an express easement document conveying the Access Easement on, over, and across the Access Easement Property to NBU, in a form substantially similar to the form attached hereto as **Exhibit E**;
 - (iii) execute a document conveying the Utility Easement on, over, under and across the Utility Easement Property to NBU, in a form substantially similar to the form attached hereto as **Exhibit F**;

- (iv) execute a document conveying the Drainage Easement on, over, under, and across the Drainage Easement Property to NBU, in a form substantially similar to the form attached hereto as **Exhibit G**;
 - (v) execute the Coll Assignment on behalf of the City; and
 - (vi) execute such other and further documentation as reasonably requested by NBU or if applicable, the title insurance company, to effectuate the conveyances described herein.
- (b) NBU will take the following steps and/or perform the following actions in connection with the Closing:
- (i) execute a document assigning operational control of the Coll Property to the City (“Coll Assignment”), in a form substantially similar to the form attached hereto as **Exhibit H**, thereby conveying to the City operational control of the Coll Property, including all the rights, benefits, and obligations attendant thereto;
 - (ii) execute the Tank Site Assignment on behalf of NBU; and
 - (ii) execute such other and further documentation as reasonably requested by the City or if applicable, the title insurance company, to effectuate the conveyances described herein.
4. *Due Diligence.* Prior to Closing and upon reasonable notice to NBU, the City shall be entitled to access the Coll Property and conduct such inspections as the City deems necessary or desirable concerning the condition of the Coll Property, provided the City restores the Coll Property to the condition it was in on the date on which the City’s inspections commenced if the City’s inspections result in damage to the Coll Property. Prior to Closing and upon reasonable notice to the City, NBU shall be entitled to access the Tank Site and Easement Property and conduct such inspections as NBU deems necessary or desirable concerning the condition of the Tank Site and the Easement Property, provided NBU restores the Tank Site and the Easement Property to the condition the Tank Site and Easement Property were in on the date on which NBU’s inspections commenced if the Tank Site or Easement Property sustain damage.
5. *Conditions Precedent.*
- (a) The Parties’ respective obligations to perform the actions described in Section 3 of this MOU are subject to the prior approval of the NBU Board and City Council, both of which are conditions precedent to the Parties’ obligation to close the Property Exchange contemplated by this MOU.
 - (b) In addition, the City’s obligation to perform the actions described in Section 3(a) of this MOU is subject to the City’s satisfaction of the outcome of the City’s

inspections of the Coll Property, which is a condition precedent to the City's obligation to close the Property Exchange contemplated by this MOU.

- (c) NBU's obligation to perform the actions described in Section 3(b) of this MOU is subject to NBU's satisfaction of the outcome of NBU's inspections of the Tank Site and Easement Property, which is a condition precedent to NBU's obligation to close the Property Exchange contemplated by this MOU.
6. *Termination of MOU.* Either Party may elect to terminate this MOU for any reason or no reason, including but not limited to, failure of any condition precedent, by providing written notice to the other Party prior to Closing. If the City elects to close the Property Exchange contemplated by this MOU, the City acknowledges that it has waived any unsatisfied conditions precedent and elected to take over operational control of the Coll Property in its AS IS, WHERE IS AND WITH ALL FAULTS condition, without representation or warranty. If NBU elects to close the Property Exchange contemplated by this MOU, NBU acknowledges that it has waived any unsatisfied conditions precedent and elected to take over operational control of the Tank Site and accept the Easements in their AS IS, WHERE IS AND WITH ALL FAULTS condition, without representation or warranty.
7. *Closing Costs.* Closing costs shall be addressed as follows:
- (a) NBU shall pay for the Easements to be recorded;
- (b) if the City elects to record the Coll Assignment, the City shall bear the cost of recording the Coll Assignment;
- (c) if NBU elects to record the Tank Site Assignment, NBU shall bear the cost of recording the Tank Site Assignment;
- (d) in the event that either party decides to obtain title insurance or order a title examination for any property they are acquiring under this MOU, the Party requesting the subject title examination and/or title insurance, as applicable, will bear any costs associated with the title examination, title insurance and Closing necessitated thereby; and
- (e) the Parties agree to work together and negotiate in good faith to satisfy and equitably divide any Closing costs not addressed specifically in this MOU, if any, and any other issues that arise prior to Closing.
8. *Legal Description.* NBU will obtain a survey of the Tank Site and the Easement Property at NBU's expense and provide a copy of the resulting survey image(s) and metes and bounds description(s) to the City upon receipt thereof. Upon acceptance by the Parties, the Parties agree to use the metes and bounds description(s) and survey image(s) of the Tank Site and Easement Property generated by NBU's surveyor in any Closing documents relating to the Tank Site and Easement Property.

9. *Temporary Construction Right of Way and Access.* NBU shall also be entitled to utilize the property depicted in red in the attached Exhibit C, as a temporary construction easement for staging and construction purposes during the period of initial construction of the water tank on the Tank Site; and (b) the property referenced as the City Existing Site Access Driveway in the attached Exhibit C, as a means of access during the period of initial construction of the water tank on the Tank Site. This provision survives Closing of the Property Exchange.
10. *Duration.* This MOU shall be effective as of the date last signed below (“Effective Date”) and shall remain in effect until the earlier of the following: (a) Closing, or (b) until either Party elects to terminate this MOU under Section 6 of this MOU.
11. *Plat Note.* The Parties acknowledge NBU is released, waived and discharged from any obligation to comply with General Note No. 6 on the Plat of Grantor’s Property recorded as Document No. 201606027216, Map and Plat Records, Comal County, Texas and no such obligation will be assigned or conveyed from Grantor to Grantee. The provision shall survive closing of this Agreement.
11. *Reasonable Assurance.* Each Party agrees to execute any additional documents or take any additional action reasonably requested by the other Party to effectuate the conveyances described herein and to memorialize the transaction in a manner reasonably satisfactory to third-parties from whom either Party need to obtain approvals or permits for their intended use. This provision survives Closing of the Property Exchange.
12. *Non-Binding.* This MOU is intended to be and at all times and in all circumstances shall be construed as non-binding.

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

IN WITNESS WHEREOF, the City and NBU mutually consent to enter into this MOU as of the Effective Date.

NEW BRAUNFELS UTILITIES

CITY OF NEW BRAUNFELS

Ryan Kelso, CEO

Robert Camareno, City Manager

Date

Date

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney

Connie C. Lock, NBU General Counsel

Exhibit A
FIELD NOTES
FOR
A 4.016 ACRE TRACT

Being a 4.016 acre tract of land situated in the John Thompson Survey No. 21, Abstract No. 608, Comal County, Texas, being part of the remaining portion of a 39.175 acre tract described in Warranty Deed recorded in Doc# 200106034241 and referenced in Designation of Successor Trustee recorded in Doc# 200506037482, both of the Official Public Records of Comal County, Texas, said 4.016 acre tract of land being more particularly described as follows:

BEGINNING: At a ½" iron pin found on the Northeast line of F.M. Highway No. 1044, for the most Southerly corner of a tract of land called 5.01 acres described in Doc# 200106038391 of the Official Public Records of Comal County, Texas, for the most Westerly corner and Point of Beginning of this herein described tract;

THENCE: Leaving said F.M. Highway No. 1044, along the Southerly line of said 5.01 acre tract, N 56° 23' 18" E 449.58 feet to a ½" iron pin with orange cap stamped "Hollmig Engr" set for the most Easterly corner of said 5.01 acre tract, said point being in the Southwest line of Henk Subdivision, Unit One, recorded in Volume 4, Page 5 of the Map and Plat Records of Comal County, Texas, for the most Northerly corner of this herein described tract;

THENCE: Along the Southwest line of said Henk Subdivision, Unit 1 and Henk Subdivision, Unit Two, recorded in Volume 5, Page 51 of the Map and Plat Records of Comal County, Texas, S 25° 14' 12" E 243.01 feet to a ½" iron pin found at the most Southerly corner of said Henk Subdivision, Unit Two, for a corner of this herein described tract;

THENCE: S 64° 32' 02" W 34.25 feet to a ½" iron pin found for an interior corner of this herein described tract;

THENCE: S 23° 46' 27" E 206.57 feet to a ½" iron pin found for the most Easterly corner of this herein described tract;

THENCE: S 68° 22' 22" W 428.93 feet to a ½" iron pin found in the Northeast line of F.M. Highway No. 1044, for the most Southerly corner of this herein described tract;

THENCE: Along the Northeast line of F.M. Highway No. 1044, along the arc of a curve to the left, having a radius of 1950.08 feet, an arc length of 277.75 feet, a central angle of 08° 09' 38", and a chord bearing and distance of N 20° 35' 38" W 277.51 feet to a 1/2" iron pin with orange cap stamped "Hollmig Engr" set at the end of said curve;

THENCE: Continuing along the Northeast line of F.M. Highway No. 1044, N 24° 58' 46" W 80.57 feet to the Point of Beginning and containing 4.016 acres of land, more or less.

Bearings based on Texas State Plane Coordinate System, NAD 83 datum.

The foregoing field notes represent the results of an on-the-ground survey made under my supervision, October 21, 2008. Reference plat prepared of this 4.016 acre tract.

Job #08-728



Drew A. Mawyer
Drew A. Mawyer, RPLS #5348

Exhibit B

Coll Property

Lot 1 & 2, Block 9, City Block 4041, Southwest Addition to the City of New Braunfels, and being the same property conveyed to the City of New Braunfels by deed dated September 12, 1921, recorded as Deed Record Volume 45, Page 13, Official Public Records, Comal County, Texas.

Exhibit C

Current Image of Tank Site and Easements

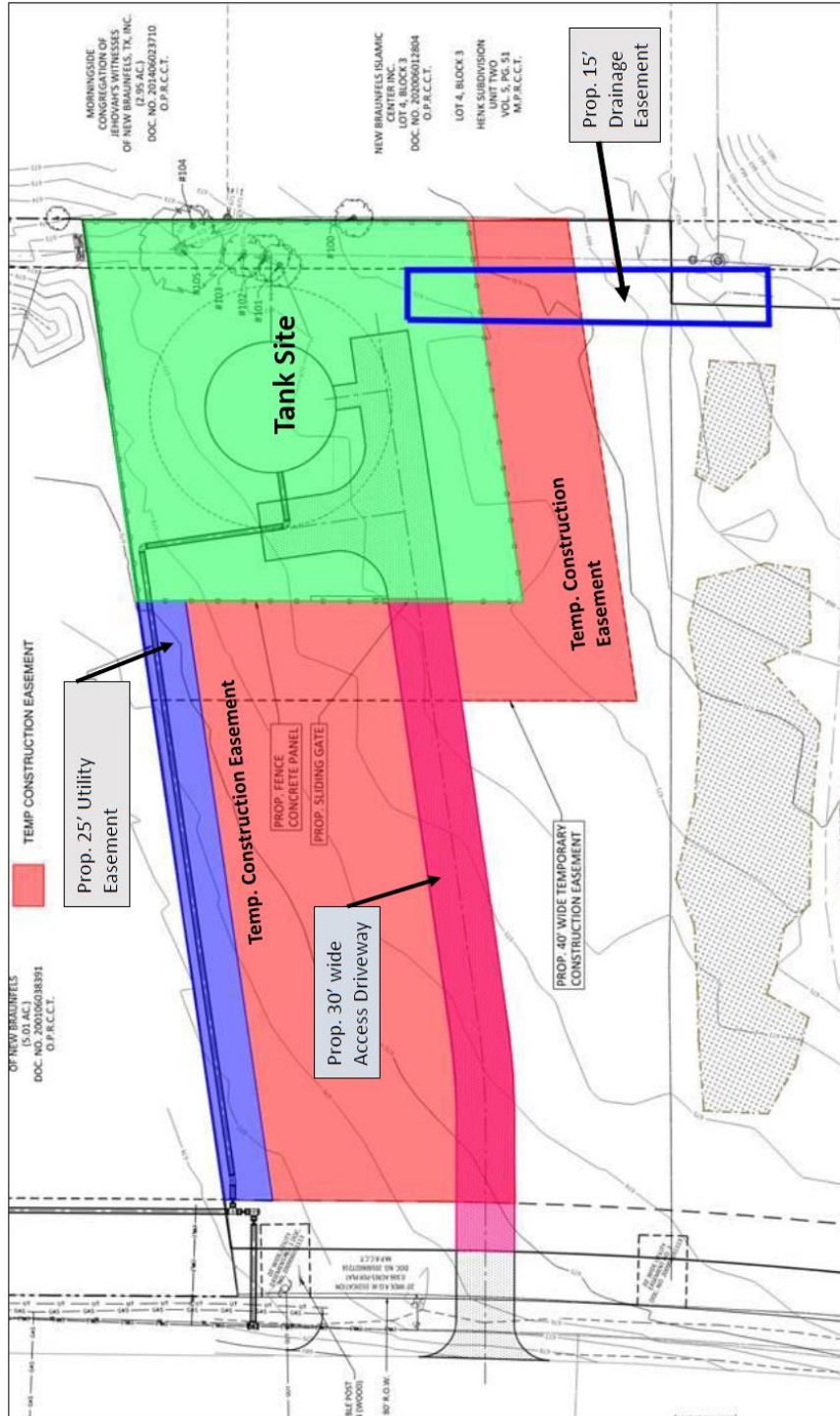


Exhibit D

Form Assignment of Operational Control of Tank Site

ASSIGNMENT OF OPERATIONAL CONTROL

The undersigned, City of New Braunfels (“Assignor”), as Assignor and record title holder of the property described herein, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, does hereby assign, transfer and convey to New Braunfels Utilities (“Assignee”), as Assignee, operational control of and to the following described property, which right Assignor conveys to Assignee AS IS, WHERE IS AND WITH ALL FAULTS without representation or warranty:

[Insert Metes and Bounds Description of Tank Site]

This Assignment of Operational Control (“Assignment”) is made pursuant to a Memorandum of Understanding between Assignor and Assignee dated [Effective Date of MOU], authorized by resolutions of City Council and the Board of Trustees of New Braunfels Utilities, on behalf of Assignor and Assignee, respectively. Assignee joins in the execution of this Assignment to acknowledge receipt and acceptance of same. This document may be executed in multiple counterparts, which together shall constitute one and the same document.

Dated effective the [Closing Date].

ASSIGNOR:

CITY OF NEW BRAUNFELS

By: _____
Robert Camareno, City Manager

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on _____, 20____, by Robert Camareno, as City Manager, of the City of New Braunfels, on behalf of same and in the capacity herein stated.

Notary Public, State of Texas
My Commission Expires _____

ASSIGNEE:

NEW BRAUNFELS UTILITIES

By: _____
Ryan Kelso, CEO

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on _____,
20____, by Ryan Kelso, as CEO of New Braunfels Utilities, on behalf of same and in the capacity
herein stated.

Notary Public, State of Texas
My Commission Expires _____

Exhibit E

Access Easement Form

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

STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF COMAL §

**NEW BRAUNFELS UTILITIES
ACCESS EASEMENT**

Effective Date: [Closing Date]

Grantor: CITY OF NEW BRAUNFELS
 Attn: City Manager
 550 Landa Street
 New Braunfels, Texas 78130

Grantee: NEW BRAUNFELS UTILITIES,
 an agent of the City of New Braunfels
 Attention: CEO
 263 Main Plaza
 New Braunfels, Texas 78130

Easement Property: The property described in *Exhibit "1"* and depicted on *Exhibit "2"* attached hereto and incorporated herein, located in Comal County, Texas.

Easement Purpose: The purpose of the easement conveyed hereby is for providing unobstructed pedestrian and vehicular access to and from the real property described on the attached *Exhibit "3"* ("Servient Property") to and from FM 1044.

Consideration: Good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Grant: Grantor, for the Consideration and subject to the Reservation from Conveyance, grants, sells and conveys to Grantee, and its heirs, successors, and assigns, an easement over, upon and across the Easement Property for the Easement Purpose and for the benefit of Grantee and its heirs, successors, and assigns; to have and hold it to Grantee and its heirs, successors, and assigns, subject to the terms hereof. Grantor binds

Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend all and singular the easements and rights herein conveyed to Grantee, and its heirs, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Such rights and easement shall run with the land and shall be binding upon Grantor and its heirs, successors, and assigns and shall bind and burden the Easement Property.

Reservation from Conveyance: Subject to the limitations hereinafter provided, Grantor reserves the right to continue to use and enjoy the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement conveyed herein by Grantee and its heirs, successors, and assigns for the Easement Purpose.

Terms: The following terms apply to this easement:

1. *Character of Easement.* The easement is non-exclusive. The duration of the easement is perpetual and irrevocable.
2. *Encroachments.* Grantee shall also have the right to remove from the Easement Property, all bushes, trees and parts thereof, any vegetation, and any structures or improvements that are within, under, over, protrude, bisect, encroach, or overhang into the Easement Property and which, in the reasonable opinion of Grantee or its heirs, successors, or assigns, endanger or interfere with the efficient, safe or proper use of the Easement Property for the Easement Purpose.
3. *Improvement.* Grantee shall have the right but not the obligation to improve the Easement Property. Grantee shall further be entitled to construct a fence or gate across the Easement Property in the location depicted on Exhibit C in the Memorandum of Understanding between Grantor and Grantee and referenced as "Prop. Sliding Gate."

[Signatures on following page(s)]

IN WITNESS WHEREOF, the Grantor has executed this document as of the date of the acknowledgment to be effective as of the Effective Date.

GRANTOR:

CITY OF NEW BRAUNFELS

By: _____
Robert Camareno, City Manager

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on _____, 20____, by Robert Camareno, as City Manager of the City of New Braunfels, on behalf of same and in the capacity herein stated.

Notary Public, State of Texas

My Commission Expires _____

Exhibit F

Form of Utility Easement

STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF COMAL §

**NEW BRAUNFELS UTILITIES
UTILITY EASEMENT**

Effective Date: [Closing Date]

Grantor: CITY OF NEW BRAUNFELS
 Attn: City Manager
 550 Landa Street
 New Braunfels, Texas 78130

Grantee: NEW BRAUNFELS UTILITIES,
 an agent of the City of New Braunfels
 Attention: CEO
 263 Main Plaza
 New Braunfels, Texas 78130

Easement Property: The property described in *Exhibit “1”* and depicted on *Exhibit “2”* attached hereto and incorporated herein, located in Comal County, Texas.

Easement Purpose: The purpose of the easement is for erecting, constructing, installing, replacing, repairing, upgrading, operating, using, inspecting, reconstructing, modifying, removing and maintaining (in whole or in part) water lines, wastewater line, electric service, distribution and/or transmission lines, electronic data transmission lines and devices, and preventative maintenance telecommunication devices, together with all pipes, conduits, poles, guy wires, anchors and all necessary or desirable equipment, improvements, structures and appurtenances ancillary or related thereto (collectively, the “Facilities”).

Consideration: Good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Grant: Grantor, for the Consideration and subject to the Reservation from Conveyance, grants, sells, and conveys to Grantee, and its heirs, successors, and assigns, an easement over, under, upon and across the Easement Property for the Easement Purpose and for the benefit of Grantee and its heirs, successors, and assigns; to have and hold it to Grantee and its heirs, successors, and assigns, subject to the terms hereof. Grantor binds Grantor and Grantor’s heirs, successors, and assigns to warrant and forever defend all and singular the easements and rights herein conveyed to Grantee, and its heirs, successors, and assigns, against

every person whomsoever lawfully claiming or to claim the same or any part thereof. Such rights and easement shall run with the land and shall be binding upon Grantor and its heirs, successors, and assigns and shall bind and burden the Easement Property.

Reservation from Conveyance: Subject to the limitations hereinafter provided, Grantor reserves the right to continue to use and enjoy the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement conveyed herein by Grantee and its heirs, successors, and assigns for the Easement Purpose.

Terms: The following terms apply to this easement:

1. *Character of Easement.* Subject to the Reservation from Conveyance, the easement is exclusive. The duration of the easement is perpetual and irrevocable.
2. Grantee shall have the right to remove from the Easement Property, all bushes, trees and parts thereof, any vegetation, and any structures or improvements that are within, under, over, protrude, bisect, encroach, or overhang into the Easement Property and which, in the reasonable opinion of Grantee or its heirs, successors, or assigns, endanger or interfere with the efficient, safe or proper operation, use, access, and maintenance of the Facilities or any other use of the Easement Property for the Easement Purpose.
3. *Easement Facilities.* All matters concerning the design, construction, installation, maintenance, replacement and removal of the Facilities are at the reasonable discretion of Grantee, or, as applicable, its heirs, successors, or assigns. All Facilities or other Grantee improvements constructed within, on, over, across, or under the Easement Property will be and remain the property of Grantee or, as applicable, its heirs, successors, or assigns.

[Signatures on following page(s)]

IN WITNESS WHEREOF, the Grantor has executed this document as of the date of the acknowledgment to be effective as of the Effective Date.

GRANTOR:

CITY OF NEW BRAUNFELS

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on _____, 20____, by _____, as _____, of the City of New Braunfels, on behalf of same and in the capacity herein stated.

Notary Public, State of Texas

My Commission Expires _____

Exhibit G

Form for Drainage Easement

STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF COMAL §

**NEW BRAUNFELS UTILITIES
DRAINAGE EASEMENT**

Effective Date: [Closing Date]

Grantor: CITY OF NEW BRAUNFELS
 Attn: City Manager
 550 Landa Street
 New Braunfels, Texas 78130

Grantee: NEW BRAUNFELS UTILITIES,
 an agent of the City of New Braunfels
 Attention: CEO
 263 Main Plaza
 New Braunfels, Texas 78130

Grantor’s Property: 4.016 acre tract of property on FM 1044, more fully described in the attached *Exhibit “1”* (“Grantor Property”).

Easement Property: The property described in *Exhibit “2”* and depicted on *Exhibit “3”* attached hereto and incorporated herein, located in Comal County, Texas.

EST Property: The property described in *Exhibit “4”* and depicted on *Exhibit “5”* attached hereto and incorporated herein, located in Comal County, Texas.

Adjacent Property: Being a 23.67 acre tract of land out of the John Thompson Survey, Abstract No. 608 in Comal County, Texas, and being the same property described in the Deed filed of record on November 7, 2008 as Document No. 200806041112, Official Public Records, Comal County, Texas.

Easement Purpose: The purpose of the easement is for (i) the drainage, diversion, and flow of storm water and water from an elevated storage tank (“EST”) to be constructed by Grantee on Grantor’s Property to a detention pond on the Adjacent Property; and further for (ii) erecting, constructing, installing, accessing, replacing, repairing, upgrading, operating, using, inspecting, reconstructing, modifying, removing, and maintaining (in whole or in part) a drainage discharge pipe and related equipment and facilities on the Easement Property to allow the drainage, diversion, and flow of storm water and water from the EST to a detention pond on the Adjacent Property, together with all necessary improvements, structures, equipment,

and appurtenances on the Easement Property reasonably necessary or desired to effectuate the Easement Purpose (collectively, the “Facilities”).

Consideration: Good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Grant: Grantor, for the Consideration and subject to the Reservation from Conveyance, grants, sells, and conveys to Grantee, and its heirs, successors, and assigns, an easement over, under, upon and across the Easement Property for the Easement Purpose and for the benefit of Grantee and its heirs, successors, and assigns; to have and hold it to Grantee and its heirs, successors, and assigns, subject to the terms hereof. Grantor binds Grantor and Grantor’s heirs, successors, and assigns to warrant and forever defend all and singular the easements and rights herein conveyed to Grantee, and its heirs, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Such rights and easement shall run with the land and shall be binding upon Grantor and its heirs, successors, and assigns and shall bind and burden the Easement Property.

Reservation from Conveyance: Subject to the limitations hereinafter provided, Grantor reserves the right to continue to use and enjoy the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement conveyed herein by Grantee and its heirs, successors, and assigns for the Easement Purpose.

Terms: The following terms apply to this easement:

1. *Character of Easement.* Subject to the Reservation from Conveyance, the easement is exclusive. The duration of the easement is perpetual and irrevocable.
2. *Encroachments.* Grantee shall have the right to remove from the Easement Property, all bushes, trees and parts thereof, any vegetation, and any structures or improvements that are within, under, over, protrude, bisect, encroach, or overhang into the Easement Property and which, in the reasonable opinion of Grantee or its heirs, successors, or assigns, endanger or interfere with the efficient, safe or proper operation, use, access, and maintenance of the Facilities or any other use of the Easement Property for the Easement Purpose.
3. *Easement Facilities.* All matters concerning the design, construction, installation, maintenance, replacement and removal of the Facilities are at the reasonable discretion of Grantee, or, as applicable, its heirs, successors, or assigns.

[Signatures on following page(s)]

IN WITNESS WHEREOF, the Grantor has executed this document as of the date of the acknowledgment to be effective as of the Effective Date.

GRANTOR:

CITY OF NEW BRAUNFELS

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on _____, 20____, by _____, as _____, of the City of New Braunfels, on behalf of same and in the capacity herein stated.

Notary Public, State of Texas

My Commission Expires _____

Exhibit H

Form Assignment of Operational Control of Coll Property

ASSIGNMENT OF OPERATIONAL CONTROL

The undersigned, New Braunfels Utilities (“Assignor”), as Assignor and party presently exercising operational control of the property described herein as agent of the City of New Braunfels, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, does hereby assign, transfer and convey to the City of New Braunfels (“Assignee”), as Assignee, operational control of and to the following described property, which right Assignor conveys to Assignee AS IS, WHERE IS AND WITH ALL FAULTS without representation or warranty:

Lot 1 & 2, Block 9, City Block 4041, Southwest Addition to the City of New Braunfels, and being the same property conveyed to the City of New Braunfels by deed dated September 12, 1921, recorded as Deed Record Volume 45, Page 13, Official Public Records, Comal County, Texas.

This Assignment of Operational Control (“Assignment”) is made pursuant to a Memorandum of Understanding between Assignor and Assignee dated [Effective Date of MOU], authorized by resolutions of City Council and the Board of Trustees of New Braunfels Utilities, on behalf of Assignee and Assignor, respectively. Assignee joins in the execution of this Assignment to acknowledge receipt and acceptance of same. This document may be executed in multiple counterparts, which together shall constitute one and the same document.

Dated effective the [Closing Date].

ASSIGNOR:

NEW BRAUNFELS UTILITIES

By: _____
Ryan Kelso, CEO

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on _____, 20____, by Ryan Kelso, as CEO of New Braunfels Utilities, on behalf of same and in the capacity herein stated.

Notary Public, State of Texas
My Commission Expires _____

ASSIGNEE:

CITY OF NEW BRAUNFELS

By: _____
Robert Camareno, City Manager

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on _____,
20____, by Robert Camareno, as City Manager, of the City of New Braunfels, on behalf of same
and in the capacity herein stated.

Notary Public, State of Texas
My Commission Expires _____



Meeting Date: June 27, 2024 **Agenda Type:** Consent Items for Action

From: Ashley Van Booven **Reviewed by:** Dawn Schriewer
 Director of Finance Chief Financial Officer

Submitted by: Dawn Schriewer **Approved by:** Ryan Kelso
 Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Ratification of the Statement of Intent to Change Transmission Cost of Service and Wholesale Transmission Rates Application, and in Support Thereof, on April 11, 2024

BACKGROUND

On April 11, 2024, New Braunfels Utilities (NBU) filed with the Public Utility Commission of Texas an application to increase its transmission cost of service (TCOS) and wholesale transmission rates pursuant to 16 Texas Administrative Code (TAC) § 25.192 (Application). In the Application, NBU proposes to implement the rates for wholesale transmission service approved in the proceeding effective on May 16, 2024. The Application requests approval of an annual TCOS of \$3,698,142 and a wholesale transmission service rate of \$0.04182 per kilowatt (kW) per year. If approved, the total increase to NBU's transmission rate base will be \$18,325,360 with a total transmission revenue requirement increase of \$2,031,304. NBU previously made a comprehensive TCOS filing based on a historical test year ending July 31, 2016, in Docket No. 47129, wherein the Commission approved a TCOS in the amount of \$1,666,838. NBU also requests approval of a rate case expense surcharge that would allow the recovery of NBU's rate case expenses from transmission service customers over a twelve-month period. Total rate case expenses incurred as of March 31, 2024, are addressed in the direct testimony of NBU's outside attorney, Mr. Cody Faulk.

NBU staff is requesting ratification from the NBU Board of Trustees for the filing of the Statement of Intent to Change Transmission Cost of Service and Wholesale Rates Application, and in Support Thereof, filed on April 11, 2024.

FINANCIAL IMPACT

Overall revenue increase in NBU's TCOS of \$2.03M annually

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

None



Meeting Date: June 27, 2024 **Agenda Type:** Items from Staff

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

Submitted by: Dawn Schriewer **Approved by:** Ryan Kelso
Chief Financial Officer Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Approval of the Fiscal Year 2025 Budget and Five-Year Operating Plan

BACKGROUND

NBU's Proposed Budget and Financial Operating Plan ("FOP") for fiscal years 2025-2029 was presented at the Budget Workshop that was held on May 30, 2024. The proposed Budget and FOP has not been modified from the material that was presented at the Budget Workshop. The fiscal year 2025 Budget and FOP include the following assumptions: incorporates a growth model that averages out to a 3.9% growth rate for the combined lines of businesses across the five years; sewerage development fee for the Mayfair developer project; the addition of 31.5 new personnel positions for fiscal years 2025, and 21 new positions in fiscal years 2026-2029; and an inflation factor for personnel and non-personnel expenses for all years of the plan due to rising costs. Additionally, the plan includes filling the Power Stabilization Fund to a target balance of \$95.0 Million by fiscal year 2028 based on an evaluation by The Energy Authority. The five-year budget plan includes \$180.0 Million in impact fee revenues, \$27.9 Million in capital contributions, and the inclusion of the Main Office Plaza sale proceeds in fiscal years 2025-2028.

FINANCIAL IMPACT

For fiscal year 2025, Net Revenues Available for Capital Expenditures are projected to be \$38.1 Million, which is a \$16.7 Million change from the FY24 budget of \$21.1 Million. Projected capital expenditures for fiscal year 2025 are estimated to be \$221.4 Million, which is a \$9.8 Million increase from the fiscal year 2024 budget. This is mostly due to shifting out major capital projects in water and support projects like the main headquarters. Overall, the \$221.4 Million funding requirement due to the items above will be provided as follows:

- Utilization of NBU's Commercial Paper Program of \$75.0 Million
- New Bond Issuance of \$36.8 Million
- Impact fees of \$25.2 Million
- Contribution in Aid of Construction and Grants of \$6.3 Million
- Texas Water Development Board Funding of \$40.0 Million
- Revenue and excess funds of \$38.1 Million

The five-year fiscal year 2025 FOP incorporates the following preliminary service revenue requirements:

- Electric revenue requirements of 5.9% effective August 1, 2024. Requirements of 4.6% effective August 1, 2025, 3.8% effective August 1, 2026, 1.2% effective August 1, 2027, and 1.6% effective August 1, 2028.
- Water revenue requirements of 13.4% effective August 1, 2024, 13.6% effective August 1, 2025, 11.8% effective August 1, 2026, 2027, and 2028.
- Wastewater revenue requirements of 7.7% effective August 1, 2024, and each year after for the remainder of the plan (fiscal years 2026-2028).

Over the projected five fiscal years, capital expenditures are estimated to total \$1,058.7 Million, while total borrowings are estimated to be \$645.7 Million. NBU's projected Debt Service Coverage ratio in the last year of the FOP (FY29) is estimated to be 2.40x. NBU's Debt to Capitalization ratio is estimated to increase from 53% (FY 2028 of FY 2024-2028 FOP) to 54% (FY 2029 of FY 2025-2029 FOP) in the last year of the plan.

- The fiscal year 2025 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 2025 beginning on August 1, 2024.

LINK TO STRATEGIC PLAN

Recognized as a Trusted Community Partner Dedicated to Excellence in Service

Maintain a Competitive Bond Rating

EXHIBITS

None