



NOTICE OF OPEN MEETING
MAY BOARD OF TRUSTEES
GoToMeeting - <https://global.gotomeeting.com/join/529546853>
May 25, 2021 at 1:00 PM
www.nbutexas.com

AGENDA

NOTICE: Governor Abbott has temporarily suspended certain requirements of the Open Meetings Act in response to the COVID-19 public health disaster. Specifically, governmental entities are permitted to meet by telephone or video conference, provided the meetings are audible to members of the public and allow for two-way communication. The suspension of certain requirements of the Open Meetings Act is intended to reduce in-person meetings and the spread of COVID-19, while maintaining government transparency.

The NBU Board of Trustees' meeting scheduled for May 25, 2021, at 1:00 p.m., will be held by video conference. Members of the public may join the meeting from a computer, tablet, or smartphone at <https://global.gotomeeting.com/join/529546853>. Members of the public may also participate in the video conference by telephone at (866) 899-4679. The access code for the video conference link and dial-in telephone number is 529-546-853. Both the link and telephone number are free of charge. Members of the public will be allowed to participate during the Public Comment period and discuss any item on the Agenda. Public comment will not be allowed during any other part of the meeting unless approved by the Board President.

A recording of the video conference will be made available to the public on NBU's website at <http://www.nbutexas.com/About-Us/Schedule-of-Meetings-and-Agendas> after the meeting.

PLEDGE OF ALLEGIANCE AND INVOCATION

Board Trustee Bob Gray

PUBLIC COMMENT

NBU EMPLOYEE RECOGNITIONS

ITEMS FROM THE CHAIR

1. Report from the Ad Hoc Governance and Personnel Committee

ITEMS FROM STAFF

1. CEO's Update
 - a. Water Main Break near Comal River
 - b. NBU Headquarters Road Access
 - c. Re-Entry Plan

2. Financial Update and Report

3. Quarterly Investment Report

CONSENT ITEMS FOR ACTION

1. Approve Minutes of the NBU Regular Board Meeting of April 29, 2021
2. Approve 2020 Fourth Quarter Charge-Off Accounts
3. Approve the Change Order Log from March 15, 2021, through April 15, 2021
4. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2020, through April 15, 2021
5. Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Harper Brothers Construction, LLC for the Construction of the 24-Inch McQueeney Road Water Line Project
6. Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with JM Pipeline, LLC for the Construction of the Nautilus Tract Offsite Sewer Project
7. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Landa Pump Station Phase 2 Project
8. Authorize CEO or His Designee to Negotiate and Execute a Contract with Siemens Industry, Inc. and a Contract with Siemens Energy, Inc. for the Installation and Purchase of Eleven (11) Substation Breakers
9. Authorize CEO or His Designee to Negotiate and Execute a Contract with Lambda Construction I, Ltd. For Foundation Additions at the E.C. Mornhinweg, TXI, and Hortontown Substations
10. Authorize CEO or His Designee to Negotiate and Execute an Amendment to the Services and Goods Agreement with Precision Calibrate for Large Water Meter Testing and Repair Services
11. Adopt Resolution #2021-146 by the Board of Trustees of New Braunfels Utilities (i) Approving Amendments to Chapter 130, Article II, Section 130-30 of the Code of Ordinances of the City of New Braunfels Providing the Right to Board Members to Waive Annual Compensation and to Revoke Such Waiver and Reinstate Annual Compensation At Any Time and (ii) Authorizing Presentation of Same to the City Council of New Braunfels for Its Consideration and Passage

ACTION ITEMS

1. Discuss and Consider Adoption of Resolution #2021-147 Relating to the Issuance of the “City of New Braunfels, Texas, Utility System Revenue Refunding Bonds, Series 2021” and Resolving Other Matters Incident and Related Thereto
2. Discuss and Consider Approval and Authorization to Select the Underwriting Team for the City of New Braunfels, Texas, Utility System Revenue Refunding Bonds, Series 2021
3. Discuss and Consider Approval for the Headwaters at the Comal Board of Directors to Appoint Jordan Matney as a Class C Board Member of the Headwaters at the Comal

- [4.](#) Discuss and Consider Approval of Proposed Revisions to the NBU Board Governance Policies

PRESENTATION ITEMS

- [1.](#) Presentation and Update on the 100% NBU HQ Schematic Design from Marmon Mok
- [2.](#) Presentation and Quarterly Update on the Headwaters at the Comal
- [3.](#) Presentation and Update of the Strategic Plan - Third Quarter, FY 2021
- [4.](#) Presentation on the New Braunfels Utilities (NBU) Customer Satisfaction Survey Results for Fiscal Year 2021 from GreatBlue Research

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)
2. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, or Other Matters Protected by Attorney Client Privilege; Power Supply Resources – Competitive Matters
(Section 551.071 – Texas Government Code; Section 551.086 – Texas Government Code)
 - a. Consider Matters Associated with Pricing Information, Risk Management, Claims Notices, Contracts Relating to, and Actions Taken by ERCOT in Response to the February 2021 Winter Storm
3. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, or Other Matters Protected by Attorney Client Privilege
(Section 551.071 – Texas Government Code)
 - a. Discuss the Utility Construction Cost Sharing Agreement for the Copper Ridge Subdivision and Related Amendments and Modifications, all among NBU, Southerland Communities NB Land Properties, Ltd., and Southerland Copper Ridge, LLC
 - b. Consider Matters Associated with *New Braunfels Utilities v. The Heirs of Nellie May Luckett*, et. al., No. C2021-0488C (274th Dist. Ct., Comal County, Tex. Mar. 26, 2021)
4. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, or Other Matters Protected by Attorney Client Privilege; Personnel Matters
(Section 551.071 – Texas Government Code; Section 551.074 – Texas Government Code)
 - a. Deliberate Plan and Strategy for Implementation of Executive Agreement for Chief Executive Officer

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

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

ADJOURN

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

CERTIFICATE OF POSTING

I, Ian Taylor, Secretary to the Board of Trustees, do hereby certify that this Notice of Meeting was posted at the City of New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas, and New Braunfels Utilities Main Office, 263 Main Plaza, New Braunfels, Texas, on the **21st day of May, 2021**, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.



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

Board Agenda Item Report

May 25, 2021

ITEMS FROM THE CHAIR

**NBU[®] NEW BRAUNFELS
UTILITIES**

Board Agenda Item Report

May 25, 2021

**Report from Ad
Hoc Governance
and Personnel
Committee**

**NBU[®] NEW BRAUNFELS
UTILITIES**

Board Agenda Item Report

May 25, 2021

ITEMS FROM STAFF

Board Agenda Item Report

May 25, 2021

CEO's Update



Board Agenda Item Report

May 25, 2021

**Financial Update
and Report**





Meeting Date: May 25, 2021

Agenda Type: Items from Staff

From: Kimberly Huffman
Accounting Manager

Reviewed by: Dawn Schriewer
Chief Financial Officer

Submitted by: Dawn Schriewer
Chief Financial Officer

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Review Financial Update and Report – April 2021

BACKGROUND

During the month of April, NBU's service territory experienced higher rainfall and lower temperatures. The average temperature was 65.2 degrees, which was 3.6 degrees less than the historical average temperature of 68.8 degrees. Rainfall totaled 2.97 inches for the month of April, which was .07 inches higher than the historical average rainfall of 2.9 inches.

For the month of April 2021, NBU recorded a change in net position after contributions CNPAC of \$3,128,000, which represents an increase of \$3,258,000 compared to the budgeted monthly CNPAC of (\$130,000). Operating service revenues of \$12,482,000 were less than budget by \$267,000, or 2%, for the month of April. A \$281,000 decrease in electric revenue, \$29,000 decrease in water revenue, and a \$43,000 increase in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$440,000 were greater than budget by \$38,000 for the month of April. Purchased power costs were \$515,000 less than budget. A decrease in other operating expenses of \$1,408,000 resulted in total operating expenses to be \$1,923,000, or 15%, less than the budgeted amount of \$12,711,000. The net revenue and operating expense variances contributed to a favorable net operating income variance of \$1,694,000 from budget. Net non-operating items had a \$233,000 favorable variance compared to budget. Impact fees were less than budget by \$235,000, services income was greater than budget by \$234,000, capital participation fees were less than budget by \$68,000, and developer contributions were greater than budget by \$1,400,000. April 2021 Year-to-Date (YTD) CNPAC was \$2,248,000 which was \$6,562,000 greater than the budgeted amount of (\$4,314,000).

FINANCIAL IMPACT

Electric

The Electric Line of Business reported total operating revenues of \$8,844,000, a \$241,000 decrease, or 3%, from the April budgeted amount of \$9,085,000. The net rate realized per kWh was \$0.0684, which was <1% less than the budgeted rate of \$0.0685. April kWh sales were 123.6 million kWh, a 4.0 million kWh decrease, or 3%, in comparison to the budgeted amount of 127.6 million kWh. Purchased power costs totaled \$4,967,000, which was \$515,000 less than the budgeted amount of \$5,482,000. Other

operating expenses were less than budget by \$615,000. These items resulted in the Electric Line of Business reporting net operating income of \$1,908,000 which was \$889,000 greater than the budgeted amount of \$1,019,000. Net non-operating items provided a favorable variance from budget of \$151,000. Services income was greater than budget by \$199,000. The Electric Line of Business reported April 2021 CNPAC of \$1,599,000 and YTD CNPAC of (\$11,186,000). These amounts were \$1,239,000 greater and \$14,503,000 less than their respective April 2021 Month-to-date (MTD) and April 2021 YTD budget amounts.

Water

The Water Line of Business reported total operating revenues of \$2,093,000, a \$35,000 decrease, or 2%, from the April budgeted amount of \$2,128,000. In April, water gallons sold of 348,491,000 was greater than the budgeted amount of 325,968,000 (a 22,523,000 gallon variance from budget, or 7%). NBU's net realized price per 1,000 gallons in April was \$5.90, which was less than the budgeted amount of \$6.40. Operating expenses for April were \$2,125,000, which was \$331,000 less than the budgeted amount of \$2,456,000. The net effect of lower revenues and lower operating expenses contributed to Water's net operating income of (\$32,000) being \$296,000 greater than the budgeted amount of (\$328,000). Net non-operating items provided a favorable variance of \$177,000 from budget. Impact fees of \$290,000 were less than budget by \$128,000, and services income was greater than budget by \$23,000. The Water Line of Business reported April 2021 CNPAC of \$81,000 and YTD CNPAC of \$8,687,000. These amounts were \$368,000 and \$12,801,000 greater than their respective April 2021 MTD and April 2021 YTD budget amounts.

Wastewater

The Wastewater Line of Business reported total operating revenues of \$1,985,000, a \$47,000 increase, or 2%, from the April budgeted amount of \$1,938,000. Total operating expenses of \$1,727,000 were \$462,000 less than the budgeted amount of \$2,189,000. As a result, the Wastewater Line of Business reported net operating income of \$258,000, which was \$509,000 greater than the budgeted amount of (\$251,000). Net non-operating items provided an unfavorable variance of \$95,000 from budget. Impact fees were less than budget by \$107,000, and since we did not receive any capital participation fees in the month, they were less than budget by \$68,000. Developer contributions were greater than budgeted by \$1,400,000. The Wastewater Line of Business reported April 2021 CNPAC of \$1,448,000 and YTD CNPAC of \$4,747,000. These amounts were \$1,651,000 and \$8,264,000 greater than their respective April 2021 MTD and April 2021 YTD budget amounts.

LINK TO STRATEGIC PLAN

Maintain a Competitive Bond Rating

EXHIBITS

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

NEW BRAUNFELS UTILITIES
OVERVIEW COMPARISON TO BUDGET & PRIOR FISCAL YEAR
APRIL 2021 YTD

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV
ELECTRIC					
Sales Volume (MWh)	Actual	1,257.8			
	Budget	1,280.9	(23.1)	-2%	
	Prior Year	1,250.4	7.4	1%	
Revenues (\$M)	Actual	\$ 159.3			
	Budget	\$ 96.4	\$ 63.0	65%	
	Prior Year	\$ 98.3	\$ 61.0	62%	
Gross Margin (\$M)	Actual	\$ 9.4			
	Budget	\$ 32.6	\$ (23.2)	-71%	
	Prior Year	\$ 25.6	\$ (16.2)	-63%	
Operating Income (\$M)	Actual	\$ (7.2)			
	Budget	\$ 9.2	\$ (16.4)	*	
	Prior Year	\$ 9.1	\$ (16.3)	*	
WATER					
Sales Volume (Million Gallons)	Actual	3.4			
	Budget	3.1	0.3	11%	
	Prior Year	3.3	0.1	3%	
Revenues (\$M)	Actual	\$ 18.2			
	Budget	\$ 18.2	\$ 0.0	0%	
	Prior Year	\$ 15.7	\$ 2.5	16%	
Gross Margin (\$M)	Actual	\$ 14.1			
	Budget	\$ 12.9	\$ 1.2	9%	
	Prior Year	\$ 12.1	\$ 2.1	17%	
Operating Income (\$M)	Actual	\$ 0.3			
	Budget	\$ (4.5)	\$ 4.8	*	
	Prior Year	\$ (0.1)	\$ 0.4	*	
WASTEWATER					
Revenues (\$M)	Actual	\$ 15.8			
	Budget	\$ 16.4	\$ (0.6)	-4%	
	Prior Year	\$ 13.3	\$ 2.4	18%	
Operating Income (\$M)	Actual	\$ 2.4			
	Budget	\$ (4.0)	\$ 6.4	*	
	Prior Year	\$ 1.3	\$ 1.1	83%	
COMBINED					
Operating Expenses (\$M)**	Actual	\$ 25.9			
	Budget	\$ 37.5	\$ (11.5)	-31%	
	Prior Year	\$ 23.8	\$ 2.2	9%	
Operating Income (\$M)	Actual	\$ (4.4)			
	Budget	\$ 0.8	\$ (5.3)	*	
	Prior Year	\$ 10.3	\$ (14.7)	*	
Change in Net Position Before Contributions (\$M)	Actual	\$ (15.7)			
	Budget	\$ (12.3)	\$ (3.4)	-27%	
	Prior Year	\$ 2.0	\$ (17.7)	*	
Impact Fees (\$M)	Actual	\$ 12.7			
	Budget	\$ 5.8	\$ 6.8	*	
	Prior Year	\$ 13.7	\$ (1.0)	-7%	
Change in Net Position After Contributions (\$M)	Actual	\$ 2.2			
	Budget	\$ (4.3)	\$ 6.6	*	
	Prior Year	\$ 19.6	\$ (17.3)	-89%	

*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****APRIL 30, 2021**

Amounts Shown in Thousands

	APRIL 30 2021	MARCH 31 2021	Variance	% Change
ASSETS				
UTILITY PLANT				
Utility Plant in Service	\$ 766,185	\$ 762,573	\$ 3,612	0%
Less: Accumulated Depreciation	(285,385)	(283,372)	(2,013)	1%
Construction in Progress	218,546	212,097	6,448	3%
TOTAL UTILITY PLANT	\$ 699,346	\$ 691,299	\$ 8,047	1%
CURRENT & ACCRUED ASSETS				
Cash & Temporary Investments	\$ 17,974	\$ 56,838	\$ (38,864)	-68%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	9,760	8,718	1,043	12%
Accounts Receivable - Other	12,445	13,191	(746)	-6%
Accrued Unbilled Revenue	10,274	10,639	(364)	-3%
Inventory	3,020	3,163	(143)	-5%
Prepaid Expenses	10,631	9,991	640	6%
Accrued Interest Receivable	50	40	9	23%
Rents Receivable	262	246	17	100%
TOTAL CURRENT & ACCRUED ASSETS	\$ 64,417	\$ 102,825	\$ (38,408)	-37%
RESTRICTED ASSETS & DEFERRED DEBITS				
Restricted Funds	\$ 26,064	\$ 24,762	\$ 1,302	5%
Designated Funds	17,696	17,648	48	0%
Long-Term Investments	-	-	-	0%
Pension Deferred Outflows	5,799	6,144	(344)	-6%
Power Cost Adjustments - Under-Recovered	44,133	47,197	(3,064)	0%
Mid-Basin Regulatory Asset	1,339	1,290	49	4%
Other Deferred Debits	-	-	-	0
TOTAL RESTRICTED ASSETS & DEFERRED DEBITS	\$ 95,031	\$ 97,041	\$ (2,010)	-2%
TOTAL ASSETS	\$ 858,794	\$ 891,164	\$ (32,370)	-4%
LIABILITIES & NET POSITION				
BONDS PAYABLE				
Long-Term Debt	\$ 210,749	\$ 210,737	\$ 12	0%
Unamortized Bond Discount/Premium	14,579	14,722	(142)	-1%
TOTAL BONDS PAYABLE	\$ 225,328	\$ 225,459	\$ (130)	0%
CURRENT & ACCRUED LIABILITIES				
Accounts Payable	\$ 3,044	\$ 8,325	\$ (5,281)	-63%
Accrued Purchased Power	6,590	39,186	(32,596)	-83%
Commercial Paper Payable	45,250	45,250	-	0%
Note Purchase Payable	50,000	50,000	-	100%
Customer Deposits	8,666	8,553	113	1%
Accrued Payroll & Benefits (Including Compensated Absences)	3,142	3,124	18	1%
Accrued Interest Expense	2,931	2,179	753	35%
Current Portion of Long Term Debt	5,030	5,030	-	0%
Other Payables	1,672	1,788	(116)	-6%
TOTAL CURRENT & ACCRUED LIABILITIES	\$ 126,326	\$ 163,435	\$ (37,109)	-23%
NONCURRENT LIABILITIES & DEFERRED CREDITS				
Accumulated Provision for Pension	\$ 14,400	\$ 14,400	\$ -	0%
Pension & OPEB Deferred Inflows	2,595	2,595	-	0%
Power Cost Adjustments - Over-Recovered	615	1,002	(387)	-39%
Other Deferred Credits	91	78	13	17%
TOTAL NONCURRENT LIABILITIES & DEFERRED CREDITS	\$ 17,701	\$ 18,075	\$ (374)	-2%
TOTAL LIABILITIES	\$ 369,355	\$ 406,968	\$ (37,613)	-9%
NET POSITION				
Reserve for Restricted Assets	\$ 25,223	\$ 22,945	\$ 2,278	10%
Reserve for Intergovernmental	9,845	10,017	(172)	-2%
Unrestricted Assets	250,462	249,441	1,022	0%
Contributed Capital	203,909	201,794	2,115	1%
TOTAL NET POSITION	\$ 489,439	\$ 484,196	\$ 5,242	1%
TOTAL LIABILITIES & NET POSITION	\$ 858,794	\$ 891,164	\$ (32,370)	-4%

NEW BRAUNFELS UTILITIES
Statement of Revenues & Expenses
For the Period Ending April 30, 2021
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
VOLUME/RATES								
Electric Sales kWh	123,657	127,627	(3,970)	-3%	1,257,827	1,280,910	(23,083)	-2%
Electric Sales Rate Per kWh	\$ 0.0684	\$ 0.0685	\$ (0.0001)	0%	\$ 0.1245	\$ 0.0728	\$ 0.0517	71%
Purchased kWh	156,357	133,034	23,323	18%	1,369,169	1,298,282	70,887	5%
Purchased Rate per kWh	\$ 0.0318	\$ 0.0412	\$ (0.0094)	-23%	\$ 0.1095	\$ 0.0491	\$ 0.0604	*
Gallons Sold	348,491	325,968	22,523	7%	3,407,653	3,074,902	332,752	11%
Rate per Gallon Sold	\$ 5.90	\$ 6.40	\$ (0.50)	-8%	\$ 5.22	\$ 5.78	\$ (0.56)	-10%
OPERATING REVENUES								
SERVICE REVENUE								
Electric Service	\$ 8,459	\$ 8,740	\$ (281)	-3%	\$ 156,586	\$ 93,265	\$ 63,321	68%
Water Service	2,057	2,086	(29)	-1%	17,797	17,777	20	0%
Wastewater Service	1,966	1,923	43	2%	15,579	16,237	(658)	-4%
TOTAL SERVICE REVENUE	\$ 12,482	\$ 12,749	\$ (267)	-2%	\$ 189,962	\$ 127,279	\$ 62,683	49%
OTHER OPERATING REVENUE								
Electric Other	\$ 76	\$ 83	\$ (7)	-8%	\$ 731	\$ 751	\$ (20)	-3%
Water Other	29	34	(5)	-15%	311	300	11	4%
Wastewater Other	19	15	4	27%	172	134	38	28%
Transmission System Revenue	288	216	72	33%	1,953	1,941	12	1%
Electric Pole Attachments	21	46	(25)	-54%	50	413	(363)	-88%
Water Tower Antenna Lease	7	8	(1)	-13%	74	74	-	0%
TOTAL OTHER OPERATING REVENUE	\$ 440	\$ 402	\$ 38	9%	\$ 3,291	\$ 3,613	\$ (322)	-9%
TOTAL OPERATING REVENUE	\$ 12,922	\$ 13,151	\$ (229)	-2%	\$ 193,253	\$ 130,892	\$ 62,361	48%
OPERATING EXPENSES								
ELECTRIC								
Purchased Power	\$ 4,967	\$ 5,482	\$ (515)	-9%	\$ 149,938	\$ 63,774	\$ 86,164	*
Electric O&M Expenses	348	938	(590)	-63%	3,156	8,209	(5,053)	-62%
Electric Depreciation & Amortization	867	859	8	1%	7,575	7,732	(157)	-2%
Electric Support Services Allocated Operating Expenses	754	787	(33)	-4%	5,842	7,406	(1,564)	-21%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 6,936	\$ 8,066	\$ (1,130)	-14%	\$ 166,511	\$ 87,121	\$ 79,390	91%
WATER								
Purchased Water	\$ 405	\$ 579	\$ (174)	-30%	\$ 4,072	\$ 5,214	\$ (1,142)	-22%
Water O&M Expenses	608	677	(69)	-10%	4,709	6,434	(1,725)	-27%
Water Depreciation & Amortization	524	600	(76)	-13%	4,656	5,402	(746)	-14%
Water Support Services Allocated Operating Expenses	588	600	(12)	-2%	4,408	5,584	(1,176)	-21%
TOTAL WATER OPERATING EXPENSE	\$ 2,125	\$ 2,456	\$ (331)	-13%	\$ 17,845	\$ 22,634	\$ (4,789)	-21%
WASTEWATER								
Wastewater O&M Expenses	\$ 651	\$ 567	\$ 84	15%	\$ 4,391	\$ 5,562	\$ (1,171)	-21%
Wastewater Depreciation & Amortization	622	1,167	(545)	-47%	5,530	10,506	(4,976)	-47%
Wastewater Support Services Allocated Operating Expenses	454	455	(1)	0%	3,416	4,255	(839)	-20%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 1,727	\$ 2,189	\$ (462)	-21%	\$ 13,337	\$ 20,323	\$ (6,986)	-34%
TOTAL OPERATING EXPENSES	\$ 10,788	\$ 12,711	\$ (1,923)	-15%	\$ 197,693	\$ 130,078	\$ 67,615	52%
NET OPERATING INCOME								
ELECTRIC	\$ 1,908	\$ 1,019	\$ 889	87%	\$ (7,191)	\$ 9,249	\$ (16,440)	*
WATER	\$ (32)	\$ (328)	\$ 296	-90%	\$ 337	\$ (4,483)	\$ 4,820	*
WASTEWATER	\$ 258	\$ (251)	\$ 509	*	\$ 2,414	\$ (3,952)	\$ 6,366	*
TOTAL NET OPERATING INCOME	\$ 2,134	\$ 440	\$ 1,694	*	\$ (4,440)	\$ 814	\$ (5,254)	*
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 61	\$ 60	\$ 1	2%	\$ (307)	\$ 536	\$ (843)	*
Intergovernmental Expense	(724)	(697)	(27)	4%	(6,442)	(6,271)	(171)	3%
Interest and Amortization Expense	(726)	(921)	195	-21%	(5,811)	(8,285)	2,474	-30%
Other	164	100	64	64%	1,324	897	427	48%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (1,225)	\$ (1,458)	\$ 233	-16%	\$ (11,236)	\$ (13,123)	\$ 1,887	14%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 909	\$ (1,018)	\$ 1,927	*	\$ (15,676)	\$ (12,309)	\$ (3,367)	\$ 0
CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 413	\$ 648	\$ (235)	-36%	\$ 12,681	\$ 5,836	\$ 6,845	*
Services	406	172	234	*	2,721	1,547	1,174	76%
GBRA Capital Participation Fee	-	68	(68)	-100%	0	612	(612)	-100%
Developer Contributions	1,400	0	1,400	0%	2,522	0	2,522	0%
TOTAL CAPITAL CONTRIBUTIONS	\$ 2,219	\$ 888	\$ 1,331	*	\$ 17,924	\$ 7,995	\$ 9,929	*
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 3,128	\$ (130)	\$ 3,258	*	\$ 2,248	\$ (4,314)	\$ 6,562	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
ELECTRIC LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending April 30, 2021
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance
ELECTRIC OPERATING REVENUES				
ELECTRIC SERVICE REVENUE				
Electric Service	\$ 8,459	\$ 8,740	\$ (281)	-3%
TOTAL ELECTRIC SERVICE REVENUE	\$ 8,459	\$ 8,740	\$ (281)	-3%
OTHER ELECTRIC OPERATING REVENUE				
Electric Other	\$ 76	\$ 83	\$ (7)	-8%
Transmission System Revenue	288	216	72	33%
Electric Pole Attachments	21	46	(25)	-54%
TOTAL OTHER ELECTRIC OPERATING REVENUE	\$ 385	\$ 345	\$ 40	12%
TOTAL ELECTRIC OPERATING REVENUE	\$ 8,844	\$ 9,085	\$ (241)	-3%
ELECTRIC OPERATING EXPENSES				
Purchased Power & Other Power Supply	\$ 4,967	\$ 5,482	\$ (515)	-9%
Transmission & Distribution	323	674	(351)	-52%
Customer Service	1	247	(246)	-100%
Administrative & General	24	17	7	41%
Depreciation & Amortization	867	859	8	1%
Support Services Allocated Operating Expenses	754	787	(33)	-4%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 6,936	\$ 8,066	\$ (1,130)	-14%
ELECTRIC NET OPERATING INCOME	\$ 1,908	\$ 1,019	\$ 889	87%
NONOPERATING REVENUES (EXPENSES)				
Interest Income	\$ 28	\$ 28	\$ -	0%
Intergovernmental Expense	(601)	(579)	(22)	4%
Interest and Amortization Expense	(166)	(302)	136	-45%
Other	109	72	37	51%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (630)	\$ (781)	\$ 151	19%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 1,278	\$ 238	\$ 1,040	*
ELECTRIC CAPITAL CONTRIBUTIONS				
Services	\$ 321	\$ 122	\$ 199	*
Developer Contributions	\$ -	\$ -	\$ -	0%
TOTAL ELECTRIC CAPITAL CONTRIBUTIONS	\$ 321	\$ 122	\$ 199	*
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 1,599	\$ 360	\$ 1,239	*

*Denotes variance greater than 100%

	YTD Actual	YTD Budget	Variance	% Variance
ELECTRIC SERVICE REVENUE				
Electric Service	\$ 156,586	\$ 93,265	\$ 63,321	68%
TOTAL ELECTRIC SERVICE REVENUE	\$ 156,586	\$ 93,265	\$ 63,321	68%
OTHER ELECTRIC OPERATING REVENUE				
Electric Other	\$ 731	\$ 751	\$ (20)	-3%
Transmission System Revenue	1,953	1,941	12	1%
Electric Pole Attachments	50	413	(363)	-88%
TOTAL OTHER ELECTRIC OPERATING REVENUE	\$ 2,734	\$ 3,105	\$ (371)	-12%
TOTAL ELECTRIC OPERATING REVENUE	\$ 159,320	\$ 96,370	\$ 62,950	65%
ELECTRIC OPERATING EXPENSES				
Purchased Power & Other Power Supply	\$ 149,938	\$ 63,774	\$ 86,164	*
Transmission & Distribution	2,883	5,841	(2,958)	-51%
Customer Service	136	2,224	(2,088)	-94%
Administrative & General	137	144	(7)	-5%
Depreciation & Amortization	7,575	7,732	(157)	-2%
Support Services Allocated Operating Expenses	5,842	7,406	(1,564)	-21%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 166,511	\$ 87,121	\$ 79,390	91%
ELECTRIC NET OPERATING INCOME	\$ (7,191)	\$ 9,249	\$ (16,440)	*
NONOPERATING REVENUES (EXPENSES)				
Interest Income	\$ (139)	\$ 247	\$ (386)	*
Intergovernmental Expense	(5,359)	(5,207)	(152)	3%
Interest and Amortization Expense	(1,225)	(2,714)	1,489	-55%
Other	836	646	190	29%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (5,887)	\$ (7,028)	\$ 1,141	16%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (13,078)	\$ 2,221	\$ (15,299)	*
ELECTRIC CAPITAL CONTRIBUTIONS				
Services	\$ 1,892	\$ 1,096	\$ 796	73%
Developer Contributions	\$ -	\$ -	\$ -	0%
TOTAL ELECTRIC CAPITAL CONTRIBUTIONS	\$ 1,892	\$ 1,096	\$ 796	73%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ (11,186)	\$ 3,317	\$ (14,503)	*

NEW BRAUNFELS UTILITIES
WATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending April 30, 2021
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance		YTD Actual	YTD Budget	Variance	% Variance
WATER OPERATING REVENUES									
WATER SERVICE REVENUE									
Water Service	\$ 2,057	\$ 2,086	\$ (29)	-1%		\$ 17,797	\$ 17,777	\$ 20	0%
TOTAL WATER SERVICE REVENUE	\$ 2,057	\$ 2,086	\$ (29)	-1%		\$ 17,797	\$ 17,777	\$ 20	0%
OTHER WATER OPERATING REVENUE									
Water Other	\$ 29	\$ 34	\$ (5)	-15%		\$ 311	\$ 300	\$ 11	4%
Water Tower Antenna Lease	7	8	(1)	-13%		74	74	-	0%
TOTAL OTHER WATER OPERATING REVENUE	\$ 36	\$ 42	\$ (6)	-14%		\$ 385	\$ 374	\$ 11	3%
TOTAL WATER OPERATING REVENUE	\$ 2,093	\$ 2,128	\$ (35)	-2%		\$ 18,182	\$ 18,151	\$ 31	0%
WATER OPERATING EXPENSES									
Purchased Water	\$ 405	\$ 579	\$ (174)	-30%		\$ 4,072	\$ 5,214	\$ (1,142)	-22%
Supply Source	14	9	5	56%		77	76	1	1%
Transmission & Distribution	236	253	(17)	-7%		1,930	2,469	(539)	-22%
Pumping	143	176	(33)	-19%		1,328	1,604	(276)	-17%
Water Treatment	200	170	30	18%		1,250	1,606	(356)	-22%
Customer Service	(2)	45	(47)	*		28	401	(373)	-93%
Administrative & General	17	24	(7)	-29%		96	278	(182)	-65%
Depreciation & Amortization	524	600	(76)	-13%		4,656	5,402	(746)	-14%
Support Services Allocated Operating Expenses	588	600	(12)	-2%		4,408	5,584	(1,176)	-21%
TOTAL WATER OPERATING EXPENSE	\$ 2,125	\$ 2,456	\$ (331)	-13%		\$ 17,845	\$22,634	\$ (4,789)	-21%
WATER NET OPERATING INCOME	\$ (32)	\$ (328)	\$ 296	-90%		\$ 337	\$ (4,483)	\$ 4,820	*
NONOPERATING REVENUES (EXPENSES)									
Interest Income	\$ 16	\$ 15	\$ 1	7%		\$ (80)	\$ 138	\$ (218)	*
Intergovernmental Expense	(62)	(58)	(4)	7%		(543)	(526)	(17)	3%
Interest and Amortization Expense	(253)	(409)	156	-38%		(2,070)	(3,681)	1,611	-44%
Other	37	13	24	*		326	119	207	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (262)	\$ (439)	\$ 177	-40%		\$ (2,367)	\$ (3,950)	\$ 1,583	-40%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (294)	\$ (767)	\$ 473	-62%		\$ (2,030)	\$ (8,433)	\$ 6,403	-76%
WATER CAPITAL CONTRIBUTIONS									
Impact Fees	\$ 290	\$ 418	\$ (128)	-31%		\$ 8,731	\$ 3,761	\$ 4,970	*
Services	85	62	23	37%		863	558	305	55%
Developer Contributions	0	0	-	0%		1,123	0	1,123	0%
TOTAL WATER CAPITAL CONTRIBUTIONS	\$ 375	\$ 480	\$ (105)	-22%		\$ 10,717	\$ 4,319	\$ 6,398	*
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 81	\$ (287)	\$ 368	*		\$ 8,687	\$ (4,114)	\$ 12,801	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WASTEWATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending April 30, 2021
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance
WASTEWATER OPERATING REVENUES				
WASTEWATER SERVICE REVENUE				
Wastewater Service	\$ 1,966	\$ 1,923	\$ 43	2%
TOTAL WASTEWATER SERVICE REVENUE	\$ 1,966	\$ 1,923	\$ 43	2%
OTHER WASTEWATER OPERATING REVENUE				
Wastewater Other	\$ 19	\$ 15	\$ 4	27%
TOTAL OTHER WASTEWATER OPERATING REVENUE	\$ 19	\$ 15	\$ 4	27%
TOTAL WASTEWATER OPERATING REVENUE	\$ 1,985	\$ 1,938	\$ 47	2%
WASTEWATER OPERATING EXPENSES				
Transmission & Distribution	1	-	\$ 1	100%
Wastewater Operations & Maintenance	630	508	122	24%
Wastewater Treatment	-	-	-	0%
Customer Service	-	40	(40)	-100%
Administrative & General	20	19	1	5%
Depreciation & Amortization	622	1,167	(545)	-47%
Support Services Allocated Operating Expenses	454	455	(1)	0%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 1,727	\$ 2,189	\$ (462)	-21%
WASTEWATER NET OPERATING INCOME	\$ 258	\$ (251)	\$ 509	*
NONOPERATING REVENUES (EXPENSES)				
Interest Income	\$ 17	\$ 17	\$ -	0%
Intergovernmental Expense	(61)	(60)	(1)	2%
Interest and Amortization Expense	(307)	(210)	(97)	46%
Other	18	15	3	20%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (333)	\$ (238)	\$ (95)	40%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (75)	\$ (489)	\$ 414	-85%
WASTEWATER CAPITAL CONTRIBUTIONS				
Impact Fees	\$ 123	\$ 230	\$ (107)	-47%
Services	\$ -	(12)	12	-100%
GBRA Capital Participation Fee	\$ -	68	(68)	-100%
Developer Contributions	\$ 1,400	-	1,400	0%
TOTAL WASTEWATER CAPITAL CONTRIBUTIONS	\$ 1,523	\$ 286	\$ 1,237	*
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 1,448	\$ (203)	\$ 1,651	*

	YTD Actual	YTD Budget	Variance	% Variance
WASTEWATER OPERATING REVENUES				
WASTEWATER SERVICE REVENUE				
Wastewater Service	\$ 15,579	\$ 16,237	\$ (658)	-4%
TOTAL WASTEWATER SERVICE REVENUE	\$ 15,579	\$ 16,237	\$ (658)	-4%
OTHER WASTEWATER OPERATING REVENUE				
Wastewater Other	\$ 172	\$ 134	\$ 38	28%
TOTAL OTHER WASTEWATER OPERATING REVENUE	\$ 172	\$ 134	\$ 38	28%
TOTAL WASTEWATER OPERATING REVENUE	\$ 15,751	\$ 16,371	\$ (620)	-4%
WASTEWATER OPERATING EXPENSES				
Transmission & Distribution	9	-	\$ 9	100%
Wastewater Operations & Maintenance	4,172	4,866	(694)	-14%
Wastewater Treatment	-	-	-	0%
Customer Service	29	361	(332)	-92%
Administrative & General	181	335	(154)	-46%
Depreciation & Amortization	5,530	10,506	(4,976)	-47%
Support Services Allocated Operating Expenses	3,416	4,255	(839)	-20%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 13,337	\$ 20,323	\$ (6,986)	-34%
WASTEWATER NET OPERATING INCOME	\$ 2,414	\$ (3,952)	\$ 6,366	*
NONOPERATING REVENUES (EXPENSES)				
Interest Income	\$ (88)	\$ 151	\$ (239)	*
Intergovernmental Expense	(540)	(538)	(2)	0%
Interest and Amortization Expense	(2,516)	(1,890)	(626)	33%
Other	162	132	30	23%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (2,982)	\$ (2,145)	\$ (837)	39%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (568)	\$ (6,097)	\$ 5,529	91%
WASTEWATER CAPITAL CONTRIBUTIONS				
Impact Fees	\$ 3,950	\$ 2,075	\$ 1,875	90%
Services	(34)	(107)	73	-68%
GBRA Capital Participation Fee	-	612	(612)	-100%
Developer Contributions	1,399	-	1,399	100%
TOTAL WASTEWATER CAPITAL CONTRIBUTIONS	\$ 5,315	\$ 2,580	\$ 2,735	*
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 4,747	\$ (3,517)	\$ 8,264	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES**Statement of Cash Flows****For the Period Ending April 30, 2021**

Amounts Shown in Thousands

	MTD	YTD
NET POSITION BEFORE CONTRIBUTIONS	\$ 909	\$ (15,676)
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 2,013	\$ 17,761
Decrease (increase) in accounts receivable	67	8,274
Decrease (increase) in inventories	143	(427)
Decrease (increase) in other assets	7,053	(13,341)
Increase (decrease) in current liabilities	(35,884)	88,329
Increase (decrease) in other liabilities	(374)	(13,909)
Net Cash Flow from Operating Activities	\$ (26,072)	\$ 71,011
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (10,060)	\$ (76,549)
Investments	(1,350)	12,696
Rents/Interest Receivable	(26)	(284)
Net Cash Flow from Investing Activities	\$ (11,437)	\$ (64,137)
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (1,225)	\$ (11,236)
Increase (decrease) in long-term debt	(130)	(1,172)
Net Cash Flow from Financing Activities	\$ (1,355)	\$ (12,408)
Net Increase (Decrease) in Cash and Cash Equivalents	\$ (38,864)	\$ (5,535)

CAPITAL EQUIPMENT SUMMARY - FY 2021
YTD for the Period Ending April 30, 2021



Department	Capital Equipment Description	YTD Actual	FY 2021 Budget	Budget Remaining
ELECTRIC				
117	Replace Unit 1121 (1999 Kenworth Aerial Unit Bucket Truck)	-	260,000	260,000
117	Proposed Large Bucket (addition to fleet)	-	260,000	260,000
117	Replace Unit 1132 (F-650 Service Truck)	-	175,000	175,000
117	URD Wire Pulling Machine	-	160,000	160,000
117	Replace Unit 1136 (2005 F-350 Diesel 4X4 Truck)	-	65,000	65,000
117	Supervisor Truck (addition to fleet)	-	45,000	45,000
119	Replace Instrument Meter Test Set	-	85,000	85,000
119	Replace Unit 1133 (2007 Freightliner Sprinter Van)	-	55,000	55,000
	TOTAL ELECTRIC	\$ -	\$ 1,105,000	\$ 1,105,000
WATER				
220	Proposed F-150 Extended Cab Truck for Assistant Manager Positi	-	30,000	30,000
	TOTAL WATER	\$ -	\$ 30,000	\$ 30,000
SHARED WATER/WASTEWATER				
217/317	Replace Unit 216 (2020 International Camel Truck)	-	575,000	575,000
217/317	Proposed New CCTV Van	-	185,000	185,000
217/317	Replace Unit 213 (International 4900-6 ton Dump Truck)	107,290	105,000	(2,290)
217/317	Replace Unit 235 (1999 Freightliner FL80 Diesel Dump Truck)	107,290	105,000	(2,290)
217/317	Replace Unit 534 (2003 Cat Backhoe/Loader)	99,600	90,000	(9,600)
217/317	Replace Unit 208 (2005 Freightliner M2-70 Crewcab Service Truc	-	65,000	65,000
217/317	Replace Unit 211 (Four-Door Repair Truck)	-	60,000	60,000
	TOTAL SHARED WATER/WASTEWATER	\$ 314,180	\$ 1,185,000	\$ 870,820
PURCHASING				
527	Pallet Racks	-	10,000	10,000
	TOTAL PURCHASING	\$ -	\$ 10,000	\$ 10,000
FLEET/FACILITIES				
528	Lift Installation and Repair	28,181	68,000	39,819
528	New Fleet Service Truck	-	65,000	65,000
528	Refurbish HVAC Systems at Main Office & Service Center	-	50,000	50,000
528	New Facilities Van	-	45,000	45,000
528	Pool Vehicle	-	33,000	33,000
528	Pool Vehicle	-	33,000	33,000
528	Outfitting of Service Trucks	-	22,000	22,000
528	Used Laymore Broom SM300	17,537	18,000	463
528	Welding Equipment Update	13,785	14,000	215
528	Gruene Road Tank Fencing	-	13,500	13,500
	TOTAL FLEET/FACILITIES	\$ 59,503	\$ 361,500	\$ 301,997
TECHNOLOGY				
531	Dell Nodes	-	400,008	400,008
531	PC Replacements	121,479	200,000	78,521
531	Server Replacements	-	200,000	200,000
531	Network Equipment Replacements	35,761	90,000	54,239
531	Copier and HighEnd Printer and Plotter Replacements	-	36,500	36,500
	TOTAL TECHNOLOGY	\$ 157,240	\$ 926,508	\$ 769,268
SYSTEM CONTROL				
532	Replace Unit 480 (2007 Ford F150 Pickup)	-	30,000	30,000
	TOTAL SYSTEM CONTROL	\$ -	\$ 30,000	\$ 30,000
TOTAL CAPITAL EQUIPMENT		\$ 530,923	\$ 3,648,008	\$ 3,117,085

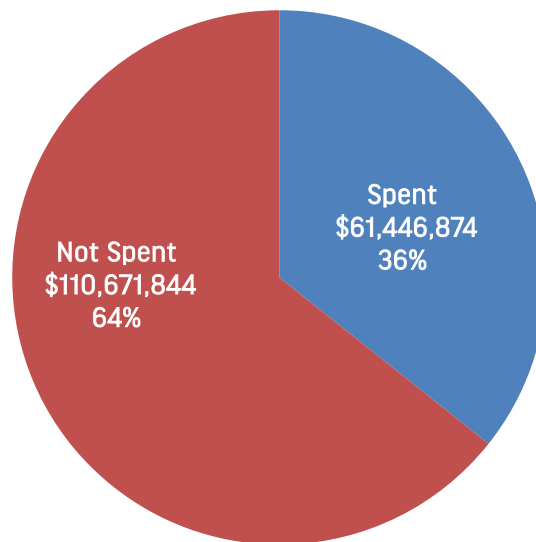
UNBUDGETED ITEMS:

FLEET/FACILITIES				
528	Shop Fans	10,497	-	(10,497)
	TOTAL FLEET/FACILITIES	\$ 10,497	\$ -	\$ (10,497)
TECHNOLOGY				
531	Bid Data Analytics On-Premise Platform	249,763	-	(249,763)
	TOTAL TECHNOLOGY	\$ 249,763	\$ -	\$ (249,763)
TOTAL UNBUDGETED CAPITAL EQUIPMENT		\$ 260,260	\$ -	\$ (260,260)

FY 2021 Capital Expenditure Summary As of April 30, 2021

75% of Year
Completed

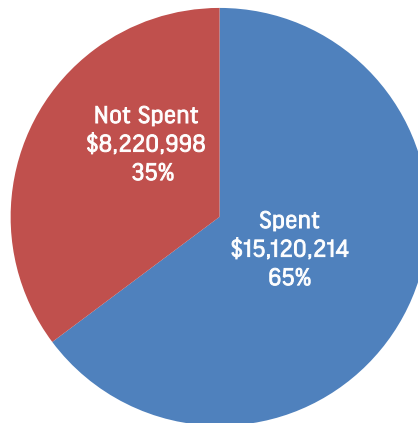
	<u>Spent</u>	<u>Not Spent</u>	<u>Total Budget</u>	<u>% of Total Budget Spent</u>
Electric	\$ 15,120,214	\$ 8,220,998	\$ 23,341,212	65%
Water	22,787,559	50,140,802	72,928,361	31%
Wastewater	22,549,320	38,669,640	61,218,960	37%
Support Services	989,781	13,640,404	14,630,185	7%
TOTAL	\$ 61,446,874	\$ 110,671,844	\$ 172,118,718	
	36%	64%	100%	



Electric Line of Business
FY 2021 Capital Expenditure Summary
As of April 30, 2021

75% of Year
Completed

Project	¹ Total Spent YTD	² FY21 Project Budget	FY21 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 3,042,420	\$ 3,221,870	\$ 179,450	\$ 3,221,870	94%	75%
Distribution Transformers	1,807,618	1,023,760	(783,858)	1,023,760	177%	75%
Electric Meters	1,167,502	685,745	(481,757)	685,745	170%	75%
Electric Aging Infrastructure	1,624,677	2,127,158	502,481	2,127,158	76%	75%
Electric Technology Upgrades	7,461	152,192	144,731	152,192	5%	10%
System Equipment Additions	-	75,370	75,370	550,241	0%	10%
TxDOT Road Widening	6,807	289,870	283,063	289,870	2%	5%
Substation Security	-	86,967	86,967	86,967	0%	0%
Three-Phase Extensions	255,818	261,363	5,545	1,922,774	98%	60%
Fiber Optic Extensions	103,421	243,128	139,707	930,819	43%	25%
Hortontown T2 (Power Transformer Replacement)	330,563	425,474	94,911	1,414,782	78%	100%
Sheriff's Posse to Marion, T-340 Upgrade	88,434	1,082,184	993,750	1,103,347	8%	15%
Pole Replacements	150,274	680,759	530,485	680,759	22%	40%
Sheriff's Posse T3 Addition	1,826,788	5,545,747	3,718,959	5,964,644	33%	50%
E.C. Morhinweg T2 & Feeders	120,908	976,231	855,323	5,697,528	12%	10%
Freiheit Feeder 11, Alves Ln	81,567	1,066,593	985,026	1,066,593	8%	20%
Goodwin & Conrads Adjustments	152,913	1,124,467	971,554	1,124,467	14%	10%
Industrial Substation PWT Replacement (TXI T1)	72,536	1,164,108	1,091,572	1,164,108	6%	5%
Sheriff's Posse Feeder, 31 & 32	40,601	1,041,637	1,001,036	1,041,637	4%	10%
Rivertree UD Conversion	-	1,641,115	1,641,115	1,641,115	0%	5%
Weltner Rd Feeder 13, Clear Springs	43,666	425,474	381,808	425,474	10%	10%
Total Budgeted Projects	\$ 10,923,973	\$ 23,341,212	\$ 12,417,239	\$ 32,315,850	47%	
Unbudgeted Projects:						
Transmission Breaker Replacements	\$ 87,993	\$ -	\$ (87,993)	\$ 4,479,788	0%	100%
Loop 337 T2 & Feeder Exits	2,812,697	-	(2,812,697)	4,218,228	0%	95%
Comal Substation T1 Replacement	274,626	-	(274,626)	1,080,253	0%	100%
Hueco Springs Substation	1,020,926	-	(1,020,926)	-	0%	100%
Total Unbudgeted Projects	\$ 4,196,242	\$ -	\$ (4,196,242)	\$ 9,778,269		
TOTAL	\$ 15,120,214	\$ 23,341,212	\$ 8,220,998	\$ 42,094,119	65%	



Water Line of Business
FY 2021 Capital Expenditure Summary
As of April 30, 2021

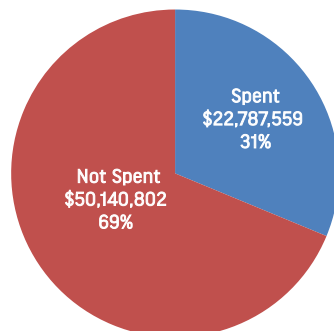
75% of Year
Completed

Project	¹ Total Spent YTD	² FY21 Project Budget	FY21 Budget Remaining	Project Life Total Budget	⁽¹⁾⁺⁽²⁾ % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 342,615	\$ 318,343	\$ (24,272)	\$ 318,343	108%	75%
Water Meters	1,091,113	2,769,262	1,678,149	2,769,262	39%	75%
Water Technology Upgrades	6,963	355,259	348,296	355,259	2%	75%
Aging System Replacements	536,803	964,347	427,544	964,347	56%	75%
MSR Reconstruction(CNB)	991,241	1,393,407	402,166	4,174,983	71%	73%
ASR Feasibility Dev (IF)	1,096,938	1,726,671	629,733	9,759,100	64%	79%
Castell Ave Rehabilitation (CNB)	262,382	4,553,752	4,291,370	5,800,721	6%	11%
Avery Park 30" Water Main	5,439,406	7,556,672	2,117,266	16,258,288	72%	99%
Well 4 Discharge Line	49,696	2,914,851	2,865,155	3,090,528	2%	17%
Copper Ridge Ground Storage Tank Oversize	473	366,793	366,320	419,485	0%	75%
12-Inch Waterline River Crossing Evaluation	4,096	196,980	192,884	228,359	2%	6%
San Antonio St Rehabilitation Phase 2 (CNB)	383,095	696,647	313,552	1,752,972	55%	99%
Replacement of Clarifier Drive #1 at SWTP	499,697	1,083,304	583,607	2,126,177	46%	82%
Veramendi EST Oversize/Flow Control Valve	51,326	153,132	101,806	292,309	34%	23%
Water Plant Pump #5	818,861	41,059	(777,802)	6,052,940	1994%	98%
Weltner Rd Ground Strg Tank & Pump Station-Ph 1	2,747,141	3,997,037	1,249,896	12,159,100	69%	91%
2.5 MG Bretzke EST and 24-inch Bretzke Waterline	1,045,960	9,585,333	8,539,373	11,198,435	11%	19%
Grandview Pump Station Exp	1,725,232	4,847,857	3,122,625	5,315,947	36%	26%
I-35 Water Line (Downtown)	157,305	79,188	(78,117)	7,943,325	199%	5%
Infrastructure Replacement Package 1-W	-	404,023	404,023	404,497	0%	3%
Infrastructure Replacement Package 2-W	87,256	731,769	644,513	731,769	12%	3%
Infrastructure Replacement Package 3-W	-	689,685	689,685	712,734	0%	3%
24-inch McQueeney Road Parallel Water Line (Downtown)	161,806	4,878,397	4,716,591	7,343,157	3%	17%
Oakbrook EST, FCV, 24" Ext	120,134	3,932,894	3,812,760	7,770,114	3%	8%
1.00MG Solms Ground Storage Tank and Flow Control Valve	104,174	2,996,600	2,892,426	3,051,134	3%	4%
Replacement of Clarifier Drive #2 at SWTP	1,436,789	1,445,229	8,440	1,540,838	99%	64%
30/24-inch SWTP Discharge Line (Downtown)	255,109	348,736	93,627	10,307,170	73%	11%
SWTP Expansion - Water Supply Facilities	1,609,680	2,932,780	1,323,100	39,651,120	55%	3%
Western Downtown to Morningside PZ Conversion	181,358	2,358,242	2,176,884	2,701,105	8%	22%
FM 306 Pump Station & Discharge Pipeline	345,368	697,426	352,058	6,820,385	50%	3%
Cibolo Interconnect	-	602,635	602,635	602,635	0%	0%
Goodwin Lane EST	54,654	1,492,113	1,437,459	8,742,708	4%	0%
Goodwin Lane Water Main	407,477	1,087,710	680,233	6,276,331	37%	3%
Grandview Discharge Line Upgrades	50,141	387,023	336,882	2,356,407	13%	1%
Trinity Expansion- Water Supply Facilities	71,070	3,493,692	3,422,622	6,288,873	2%	1%
Well 4 Pump & Discharge Line Upgrades	50,141	359,430	309,289	1,945,034	14%	6%
Weltner Road Repaving	67,237	490,083	422,846	549,853	14%	12%

Total Budgeted Projects	\$ 22,252,737	\$ 72,928,361	\$ 50,675,624	\$ 198,775,746	31%
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Unbudgeted Projects:						
Alves Ln Improvements(CNB)	\$ 106,226	\$ -	\$ (106,226)	\$ 1,742,342		100%
Live Oak & Katy St Improvements(CNB)	3,198	-	(3,198)	678,573		100%
San Antonio St Rehabilitation (CNB)	23	-	(23)	1,215,560		100%
Old FM 306 Ground Storage Tank	(679)	-	679	3,353,369		100%
AC Pipe Replacement - Balcones	1,024	-	(1,024)	1,050,641		100%
Trinity Aquifer Well Field Treatment Addition	2,560	-	(2,560)	16,938,033		100%
Bretzke Water Supply & Country Hills Ground Storage Tank	1,519	-	(1,519)	5,287,630		100%
SWTP High Service Pump #4 & Water Line Connections	17,348	-	(17,348)	1,887,896		100%
Green Valley Pump Station	272,950	-	(272,950)	1,802,623		100%
Klein Rd Reconstruction Phase 2 (water aging)	11,977	-	(11,977)	10,560		1%
Landa Pump Station Imp Phase 1 (water aging)	118,675	-	(118,675)	105,531		34%
Landa Pump Station Phase 2/Well 5 (water aging)	-	-	-	-		0%

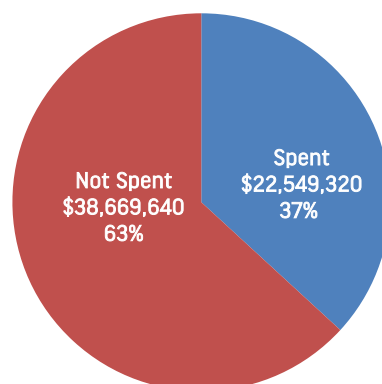
Total Unbudgeted Projects	\$ 534,822	\$ -	\$ (534,822)	\$ 34,072,758	
TOTAL	\$ 22,787,559	\$ 72,928,361	\$ 50,140,802	\$ 232,848,505	31%



Wastewater Line of Business
FY 2021 Capital Expenditure Summary
As of April 30, 2021

75% of Year
Completed

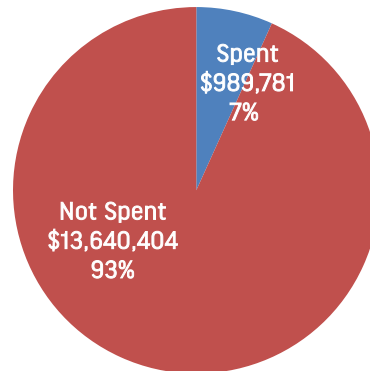
Project	¹ Total Spent YTD	² FY21 Project Budget	FY21 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 221,379	\$ 183,103	\$ (38,276)	\$ 183,103	121%	75%
Aging System Replacements	207,184	940,842	733,658	940,842	22%	75%
Castell Ave Rehabilitation (CNB)	64,062	1,528,557	1,464,495	2,148,696	4%	11%
Gruene W/W Treatment Plant Relocation & Expansion	2,955,960	2,592,532	(363,428)	61,656,561	114%	98%
MSR Reconstruction (CNB)	693,331	626,296	(67,035)	2,523,707	111%	86%
Wastewater Technology Upgrades	6,745	361,240	354,495	361,240	2%	100%
Manhole Rehabilitation	-	562,444	562,444	562,444	0%	100%
North Kuehler 42" Interceptor Upgrade	4,139,252	12,834,032	8,694,780	14,736,125	32%	33%
North & South Kuehler WWTP Expansion	1,193,828	791,784	(402,044)	5,009,890	151%	7%
North & South Kuehler WWTP Major Permit Amend	9,053	60,494	51,441	168,278	15%	74%
So. Kuehler Sanitary Interceptor SK-20 Relo/Expansion	57,512	1,087,252	1,029,740	6,500,223	5%	6%
North Kuehler 30 and 33-inch Interceptor Upgrade	11,057,692	14,408,758	3,351,066	16,468,886	77%	46%
San Antonio St Rehabilitation Phase 2 (CNB)	372,887	1,012,186	639,299	2,065,310	37%	98%
Gruene Rd Sewer Main Rehabilitation Relocation	31,265	279,058	247,793	2,346,902	11%	10%
Infrastructure Replacement Package 1-WW	11,657	1,946,000	1,934,343	2,049,127	1%	5%
Infrastructure Replacement Package 2-WW	84,023	1,206,966	1,122,943	1,206,966	7%	3%
Infrastructure Replacement Package 3-WW	-	1,301,520	1,301,520	1,340,381	0%	3%
McKenzie WWTP Expansion	723,026	2,767,801	2,044,775	44,175,395	26%	2%
Nautilus Off-site Sewer Ext	57,198	2,076,985	2,019,787	2,377,589	3%	21%
Sewer Rehab Package 1	33,410	111,508	78,098	1,252,693	30%	37%
Rio Lift Station Expansion	45,642	2,609,811	2,564,169	3,147,255	2%	17%
Saengerhalle Lift Station Expansion & Force Main	275,675	3,743,818	3,468,143	4,114,199	7%	11%
Solms Lift Station Expansion	152,923	1,118,132	965,209	1,233,610	14%	19%
I-35 Interceptor Upgrade	5,074	549,864	544,790	2,039,924	1%	0%
McKenzie Interceptor Upgrade	5,120	4,412,811	4,407,691	35,069,614	0%	0%
North & South Kuehler Rehabilitation	(32,126)	836,207	868,333	43,608,677	-4%	2%
Sewer Infrastructure Replacement Package 1	2,288	440,827	438,539	440,827	1%	1%
Sewer Infrastructure Replacement Package 2	-	466,959	466,959	466,959	0%	1%
Saengerhalle North Interceptor	135,152	361,173	226,021	746,473	37%	27%
Total Budgeted Projects	\$ 22,509,214	\$ 61,218,960	\$ 38,709,746	\$ 258,941,897	37%	
Unbudgeted Projects:						
Alves Ln Improvements(CNB)	\$ 13,074	\$ -	\$ (13,074)	\$ 1,208,920		100%
Live Oak Ave&Katy St Improvements(CNB)	812	-	(812)	648,366		100%
San Antonio St Rehabilitation (CNB)	544	-	(544)	1,099,562		100%
Sam C. McKenzie Jr. Water Reclamation Facility	39	-	(39)	36,998,104		100%
North Kuehler WWTP Rehabilitation	6,753	-	(6,753)	217,683		3%
South Kuehler 18/24" Interceptor Replacement	1,679	-	(1,679)	2,144,434		100%
South Kuehler WWTP Rehabilitation	17,205	-	(17,205)	435,477		7%
Schmidt IH35 N Sewer Main Replacement(sewer aging)	-	-	-	-		0%
Total Unbudgeted Projects	\$ 40,106	\$ -	\$ (40,106)	\$ 42,752,545		
TOTAL	\$ 22,549,320	\$ 61,218,960	\$ 38,669,640	\$ 301,694,443	37%	



Support Services Line of Business
FY 2021 Capital Expenditure Summary
As of April 30, 2021

75% of Year
Completed

Project	¹ Total Spent YTD	² FY21 Project Budget	FY21 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
Headwaters at the Comal	\$ 59,674	\$ 5,243,368	\$ 5,183,694	\$ 22,852,799	1%	60%
Personnel Workstations	11,453	30,000	18,547	30,000	38%	100%
Cyber Security System	44,309	402,817	358,508	402,817	11%	15%
Physical Security Systems	-	120,000	120,000	120,000	0%	90%
Software Replacement and Enhancements	14,700	125,000	110,300	125,000	12%	10%
NBU Headquarters, Maint & Support Facility	710,331	4,900,000	4,189,670	48,674,447	14%	100%
EDRMS Software	-	50,000	50,000	321,808	0%	20%
Update Backup and Disaster Recovery	37,113	1,321,000	1,283,887	2,467,288	3%	15%
Data Strategy Upgrades - BDAP	90,332	60,000	(30,332)	640,227	151%	80%
Cyber Security Penetration Testing	-	100,000	100,000	400,000	0%	0%
Domain Controllers for SCADA	-	25,000	25,000	25,000	0%	0%
Enterprise Ticketing Software	-	20,000	20,000	80,000	0%	0%
Kerlick Tower	-	760,000	760,000	1,520,097	0%	15%
Data Strategy Upgrades - Models	12,496	200,000	187,504	1,200,000	6%	0%
Network Virtualization	-	350,000	350,000	430,000	0%	0%
PCI Compliance	-	200,000	200,000	200,000	0%	0%
Data Strategy Upgrades - GIS Portal	-	75,000	75,000	75,000	0%	0%
System Technology Upgrades - Monitoring	9,374	648,000	638,626	648,000	1%	10%
Total	\$ 989,781	\$ 14,630,185	\$ 13,640,404	\$ 80,212,483	7%	

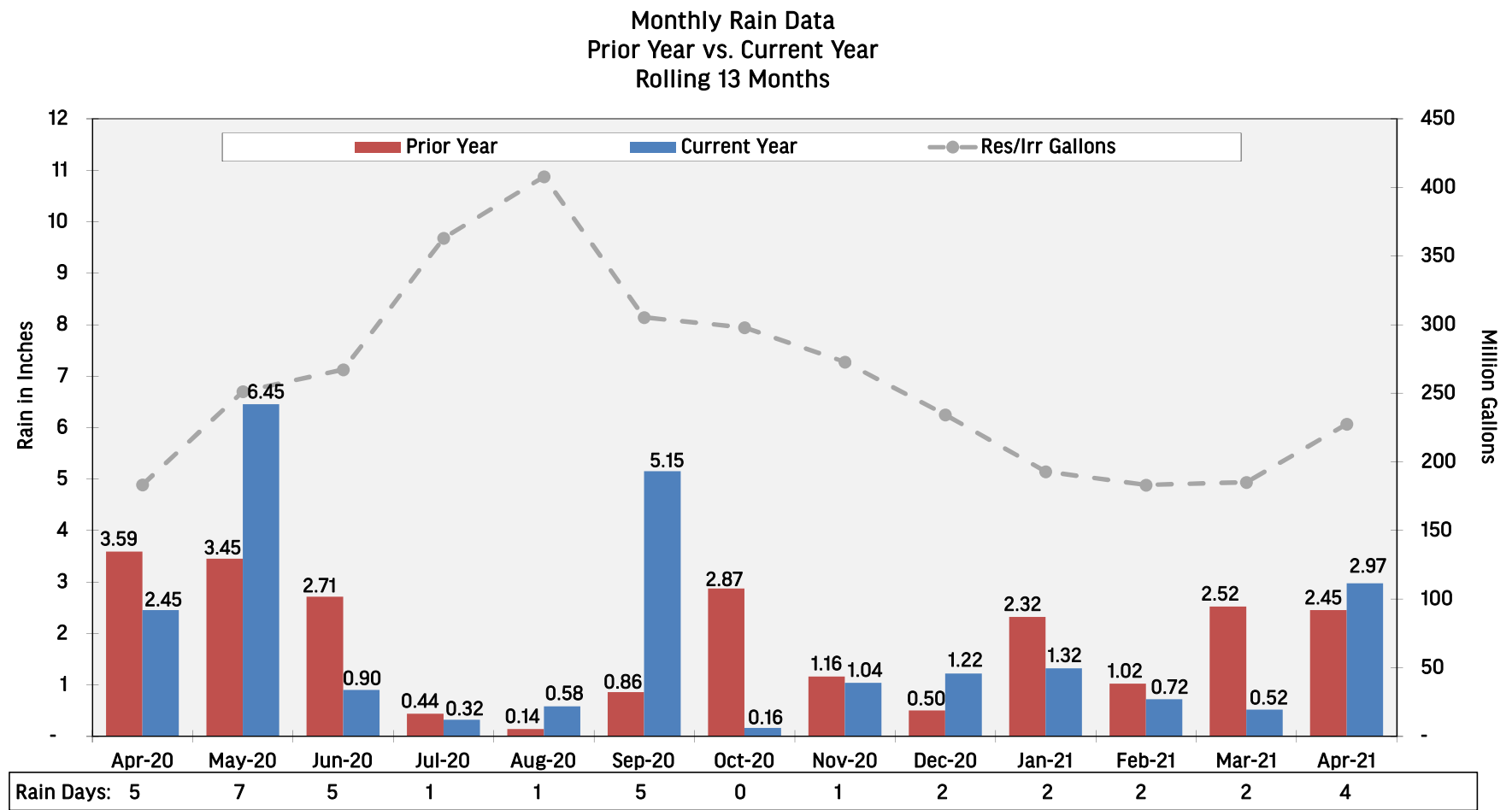


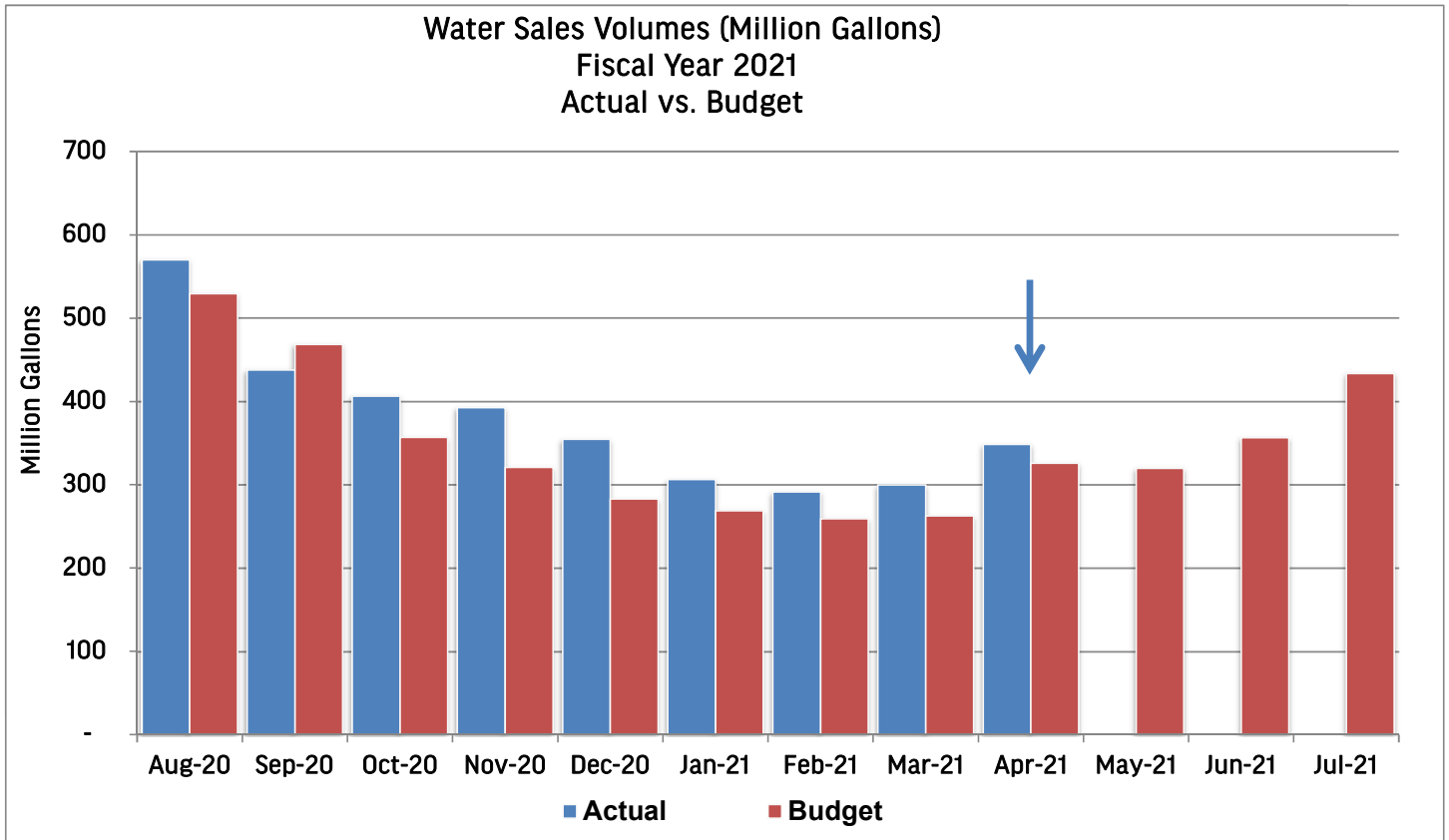
Electric Statistics are provided separately due to competitive matters.

WATER STATISTICS

NEW BRAUNFELS UTILITIES WATER STATISTICS HIGHLIGHTS OVERVIEW

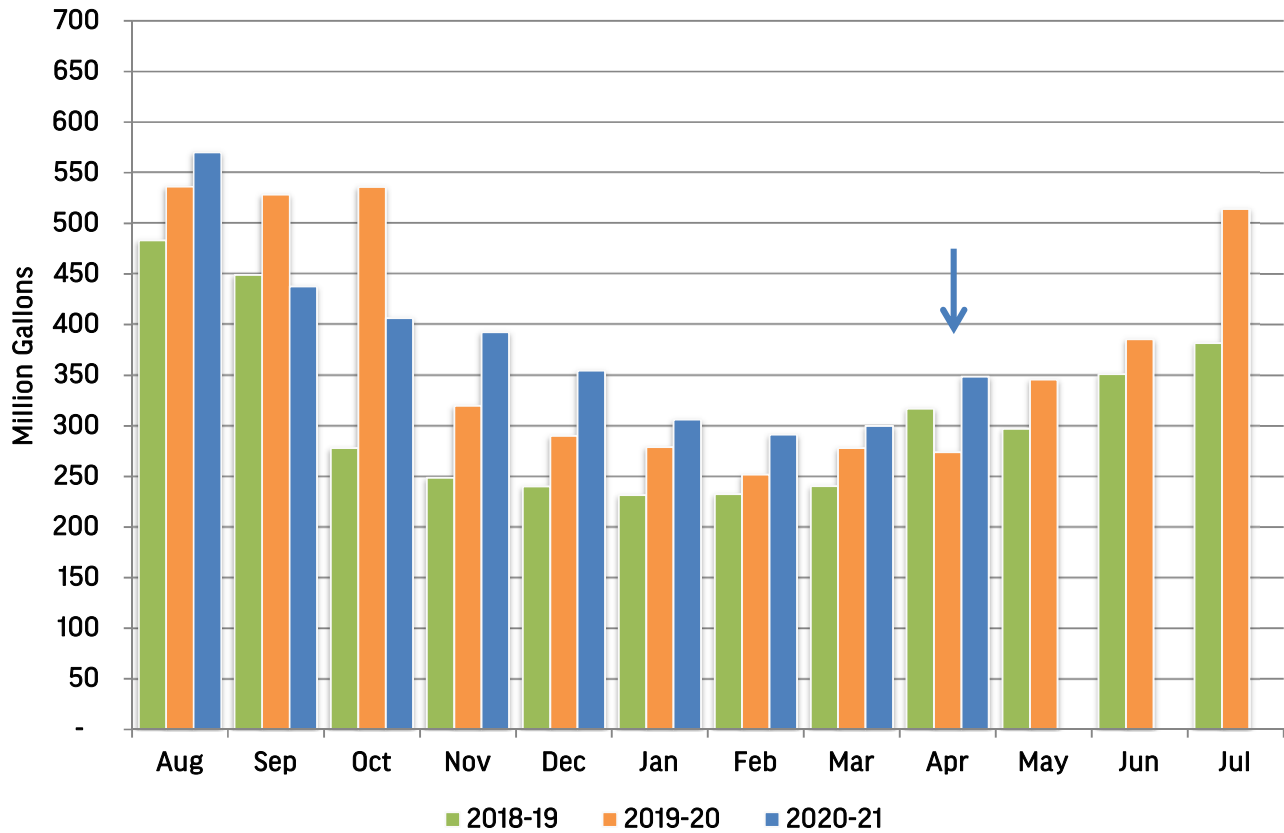
- April MTD rainfall was greater than the prior year rainfall, totaling 2.97 inches for the month. The April rainfall total of 2.97 inches was 0.07 inches more than the historical average rainfall of 2.90 inches. For April 2021, there were four rain day during the month compared to five rain days in April 2020.
- April YTD rainfall totaled 13.68 inches compared to the prior year total of 13.84 inches, which is a decrease of 0.16 inches compared to prior year YTD. For YTD, there have been 18 rain days compared to 28 rain days for prior year YTD.
- Average MTD consumption by residential water customer in April 2021 was **5,602 gallons** compared to **5,029 gallons** in April 2020, reflecting a 11.4% increase.
- Average YTD consumption by residential water customer through April 2021 was **57,307 gallons** compared to **58,250** for YTD through April 2020, reflecting a decrease of 1.6%.
- Overall trend for fiscal year-to-date in total water sales volume is greater than the sales volume over the same period for the previous year with the change being 114.8 million gallons, or 3.5% (3,407.7 million gallons for FY 2021 YTD vs. 3,292.9 million gallons for FY 2020 YTD).
- Actual total water sales volume for year-to-date FY 2021 is 3,407.7 million gallons, which is 332.8 million more than the budgeted amount of 3,074.9 million gallons for the same time period.
 - The following are major contributors, by rate classification, towards the 332.8 million gallon change from budget:
 - Residential Domestic – increase of 167.2 million gallons (up 10.2% from budget)
 - Multi-Unit 2-4 - increase of 4.7 million gallons (up 33.3% from budget)
 - Multi-Unit 5+ - increase of 12.6 million gallons (up 6.0% from budget)
 - Residential Irrigation – increase of 64.3 million gallons (up 15.7% from budget)
 - Commercial Irrigation – increase of 47.5 million gallons (up 26.9% from budget)
 - Small General Service – decrease of 4.7 million gallons (down 0.8% from budget)
 - Other Sales – increase of 18.1 million gallons (up 75.5% from budget)
 - ReUse Water – increase of 23.0 million gallons (up 478.4% from budget)





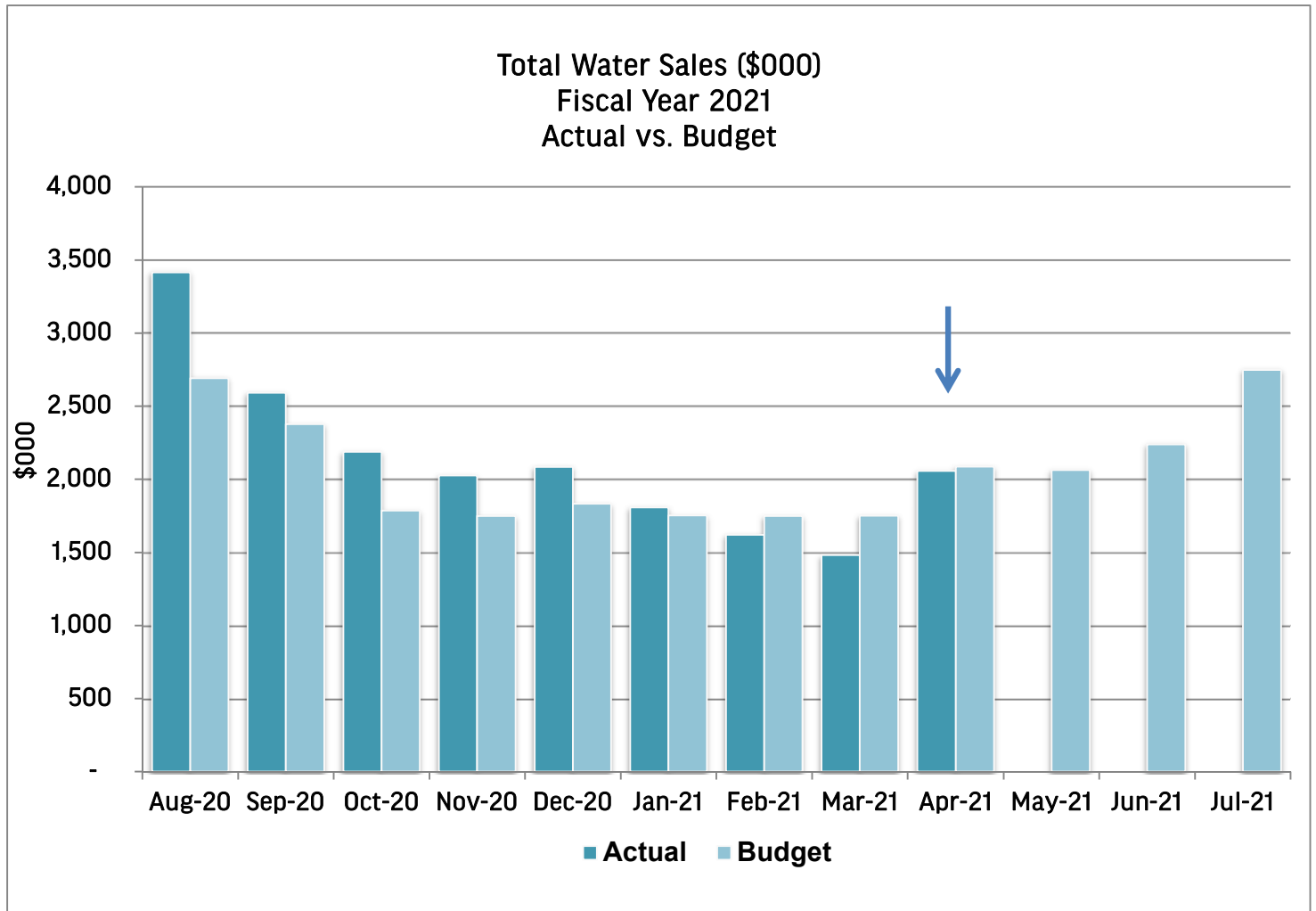
Month	Actual	Budget
Aug-20	570	529
Sep-20	438	468
Oct-20	407	357
Nov-20	393	321
Dec-20	354	283
Jan-21	306	269
Feb-21	292	259
Mar-21	300	263
Apr-21	348	326
May-21	-	320
Jun-21	-	357
Jul-21	-	434
TOTAL	3,408	4,185

Water Sales Volumes (Million Gallons)
3-Year Comparison of Actuals by Month



Month	Water Sales Volumes (Million Gallons)		
	2018-19	2019-20	2020-21
Aug	483	536	570
Sep	449	528	438
Oct	278	536	407
Nov	249	320	393
Dec	240	290	354
Jan	232	279	306
Feb	233	252	292
Mar	240	278	300
Apr	317	274	348
May	297	346	-
Jun	351	386	-
Jul	382	514	-
TOTAL	3,751	4,539	3,408

Meter Count	FY 2019	% Change 2019-2020	FY 2020	% Change 2020-2021	FY 2021
Residential	29,280	4.20%	30,509	5.18%	32,088
Irrigation	8,530	13.07%	9,645	14.57%	11,050
Other	5,213	-44.96%	2,869	1.36%	2,908
TOTAL	43,023	0.00%	43,023	7.03%	46,046



Month	Total Water Sales (\$000)	
	Actual	Budget
Aug-20	\$ 3,415	\$ 2,692
Sep-20	\$ 2,592	\$ 2,376
Oct-20	\$ 2,188	\$ 1,786
Nov-20	\$ 2,026	\$ 1,748
Dec-20	\$ 2,084	\$ 1,833
Jan-21	\$ 1,807	\$ 1,753
Feb-21	\$ 1,620	\$ 1,750
Mar-21	\$ 1,482	\$ 1,751
Apr-21	\$ 2,057	\$ 2,086
May-21	\$ -	\$ 2,064
Jun-21	\$ -	\$ 2,239
Jul-21	\$ -	\$ 2,747
TOTAL	\$ 19,270	\$ 24,827

WATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Water Volume (Gallons)
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD	
										ACT	AVG
Residential											
Actuals	310,207,613	231,742,511	207,289,872	208,441,775	186,398,715	163,558,742	158,403,396	162,086,806	179,766,991	1,807,896,421	200,877,380
Budget	283,141,464	245,363,860	185,972,686	167,890,373	152,931,600	151,797,046	142,715,288	140,880,967	169,999,555	1,640,692,839	182,299,204
Prior Year	287,377,090	291,255,156	266,172,478	161,799,580	150,924,313	146,177,288	133,564,246	140,498,754	153,433,174	1,731,202,077	192,355,786
Multi-Unit 2-4											
Actuals	2,643,169	2,157,262	2,059,153	2,029,089	1,943,018	1,766,625	1,910,498	2,320,495	1,858,084	18,687,393	2,076,377
Budget	2,139,541	2,020,293	1,646,844	1,477,857	1,379,787	1,448,962	1,294,595	1,208,175	1,405,111	14,021,165	1,557,907
Prior Year	2,248,322	2,493,271	2,235,385	1,591,791	1,536,657	1,717,155	1,334,676	1,296,753	1,500,881	15,954,891	1,772,766
Multi-Unit 5+											
Actuals	26,535,315	23,186,521	25,545,143	23,589,215	24,218,835	25,386,569	24,598,076	26,149,636	24,107,493	223,316,803	24,812,978
Budget	24,842,318	26,010,193	24,403,995	23,019,872	22,460,538	22,760,645	22,665,368	21,643,672	22,860,891	210,667,491	23,407,499
Prior Year	23,827,921	23,170,884	24,569,252	20,736,432	22,418,922	22,010,703	20,468,274	21,534,406	23,156,347	201,893,141	22,432,571
Residential Irrigation											
Actuals	97,615,251	73,449,944	66,250,690	64,302,260	47,902,212	29,438,630	24,856,003	23,056,485	47,763,686	474,635,161	52,737,240
Budget	93,593,130	78,665,896	55,257,313	43,555,789	29,643,485	20,249,896	19,271,533	24,249,401	45,872,840	410,359,283	45,595,476
Prior Year	95,030,608	89,193,003	100,169,970	44,330,514	29,329,813	22,836,013	17,865,592	23,279,931	29,925,275	451,960,719	50,217,858
Commercial Irrigation											
Actuals	43,071,476	36,092,539	33,497,462	28,557,495	23,477,719	18,092,778	13,700,335	10,940,754	16,556,057	223,986,615	24,887,402
Budget	33,241,355	33,557,105	22,616,484	19,655,029	15,547,131	12,203,941	10,097,041	11,638,888	17,913,346	176,470,321	19,607,813
Prior Year	36,583,358	47,336,338	48,519,498	25,412,227	17,009,316	15,788,709	11,861,725	11,582,342	12,733,964	226,827,480	25,203,053
SGS											
Actuals	80,997,800	66,359,285	66,308,932	61,366,237	58,845,476	58,254,266	59,668,834	68,793,496	68,558,505	589,152,830	65,461,426
Budget	84,822,878	76,486,484	63,873,614	63,307,234	60,310,296	58,917,563	60,939,478	60,616,028	64,601,537	593,875,112	65,986,124
Prior Year	81,234,953	75,577,767	76,136,491	61,141,425	63,860,872	62,054,657	60,060,973	74,376,014	50,734,003	605,177,153	67,241,906
Other Sales											
Actuals	8,894,936	4,776,217	5,462,619	4,278,486	3,975,137	939,235	2,825,503	4,724,976	6,238,983	42,116,092	4,679,566
Budget	5,745,802	5,338,839	2,874,427	1,191,427	221,025	1,097,596	2,039,833	2,288,756	3,200,887	23,998,591	2,666,510
Prior Year	7,401,287	534,601	17,604,773	3,277,276	3,401,580	2,797,804	3,259,936	3,008,979	2,413,974	43,700,210	4,855,579
ReUse Water											
Actuals	-	-	93,123	93,991	7,734,448	8,961,457	5,551,556	1,785,506	3,641,652	27,861,733	3,095,748
Budget	1,812,650	949,121	324,645	634,700	442,163	235,575	84,025	219,800	114,050	4,816,728	535,192
Prior Year	2,418,200	(1,436,800)	377,829	1,644,807	1,508,606	5,535,253	3,498,337	2,553,091	52,494	16,151,817	1,794,646
Total Sales											
Actuals	569,965,560	437,764,279	406,506,994	392,658,548	354,495,560	306,398,302	291,514,201	299,858,154	348,491,451	3,407,653,048	378,628,116
Budget	529,339,137	468,391,791	356,970,007	320,732,281	282,936,024	268,711,224	259,107,161	262,745,688	325,968,216	3,074,901,529	341,655,725
Prior Year	536,121,739	528,124,220	535,785,676	319,934,052	289,990,079	278,917,582	251,913,759	278,130,270	273,950,112	3,292,867,488	365,874,165

NEW BRAUNFELS UTILITIES
Water Volume (Gallons) Variance
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD	
										ACT	AVG
Residential											
Actuals	310,207,613	231,742,511	207,289,872	208,441,775	186,398,715	163,558,742	158,403,396	162,086,806	179,766,991	1,807,896,421	200,877,380
Actual vs Budget	27,066,149	(13,621,349)	21,317,186	40,551,401	33,467,116	11,761,696	15,688,109	21,205,839	9,767,437	167,203,582	18,578,176
Actual vs Prior Year	22,830,523	(59,512,645)	(58,882,606)	46,642,194	35,474,403	17,381,455	24,839,151	21,588,053	26,333,818	76,694,345	8,521,594
Multi-Unit 2-4											
Actuals	2,643,169	2,157,262	2,059,153	2,029,089	1,943,018	1,766,625	1,910,498	2,320,495	1,858,084	18,687,393	2,076,377
Actual vs Budget	503,628	136,969	412,309	551,232	563,231	317,663	615,903	1,112,320	452,973	4,666,228	518,470
Actual vs Prior Year	394,847	(336,009)	(176,232)	437,298	406,361	49,470	575,822	1,023,742	357,203	2,732,502	303,611
Multi-Unit 5+											
Actuals	26,535,315	23,186,521	25,545,143	23,589,215	24,218,835	25,386,569	24,598,076	26,149,636	24,107,493	223,316,803	24,812,978
Actual vs Budget	1,692,997	(2,823,672)	1,141,148	569,343	1,758,297	2,625,924	1,932,708	4,505,964	1,246,602	12,649,312	1,405,479
Actual vs Prior Year	2,707,394	15,637	975,891	2,852,783	1,799,913	3,375,866	4,129,802	4,615,230	951,146	21,423,662	2,380,407
Residential Irrigation											
Actuals	97,615,251	73,449,944	66,250,690	64,302,260	47,902,212	29,438,630	24,856,003	23,056,485	47,763,686	474,635,161	52,737,240
Actual vs Budget	4,022,121	(5,215,952)	10,993,377	20,746,471	18,258,727	9,188,734	5,584,470	(1,192,916)	1,890,846	64,275,878	7,141,764
Actual vs Prior Year	2,584,643	(15,743,059)	(33,919,280)	19,971,746	18,572,399	6,602,617	6,990,411	(223,446)	17,838,411	22,674,442	2,519,382
Commercial Irrigation											
Actuals	43,071,476	36,092,539	33,497,462	28,557,495	23,477,719	18,092,778	13,700,335	10,940,754	16,556,057	223,986,615	24,887,402
Actual vs Budget	9,830,122	2,535,434	10,880,979	8,902,465	7,930,587	5,888,837	3,603,293	(698,134)	(1,357,289)	47,516,294	5,279,588
Actual vs Prior Year	6,488,118	(11,243,799)	(15,022,036)	3,145,268	6,468,402	2,304,068	1,838,609	(641,589)	3,822,093	(2,840,865)	(315,652)
SGS											
Actuals	80,997,800	66,359,285	66,308,932	61,366,237	58,845,476	58,254,266	59,668,834	68,793,496	68,558,505	589,152,830	65,461,426
Actual vs Budget	(3,825,078)	(10,127,200)	2,435,318	(1,940,997)	(1,464,820)	(663,297)	(1,270,644)	8,177,468	3,956,968	(4,722,282)	(524,698)
Actual vs Prior Year	(237,153)	(9,218,482)	(9,827,559)	224,812	(5,015,396)	(3,800,391)	(392,139)	(5,582,518)	17,824,502	(16,024,323)	(1,780,480)
Other Sales											
Actuals	8,894,936	4,776,217	5,462,619	4,278,486	3,975,137	939,235	2,825,503	4,724,976	6,238,983	42,116,092	4,679,566
Actual vs Budget	3,149,134	(562,622)	2,588,192	3,087,059	3,754,112	(158,361)	785,670	2,436,220	3,038,096	18,117,501	2,013,056
Actual vs Prior Year	1,493,649	4,241,616	(12,142,154)	1,001,210	573,557	(1,858,569)	(434,433)	1,715,997	3,825,009	(1,584,118)	(176,013)
ReUse Water											
Actuals	-	-	93,123	93,991	7,734,448	8,961,457	5,551,556	1,785,506	3,641,652	27,861,733	3,095,748
Actual vs Budget	(1,812,650)	(949,121)	(231,522)	(540,709)	7,292,286	8,725,882	5,467,531	1,565,706	3,527,602	23,045,005	2,560,556
Actual vs Prior Year	(2,418,200)	1,436,800	(284,706)	(1,550,816)	6,225,842	3,426,204	2,053,219	(767,585)	3,589,158	11,709,916	1,301,102
Total Sales											
Actuals	569,965,560	437,764,279	406,506,994	392,658,548	354,495,560	306,398,302	291,514,201	299,858,154	348,491,451	3,407,653,048	378,628,116
Actual vs Budget	40,626,423	(30,627,512)	49,536,986	71,926,266	71,559,536	37,687,078	32,407,040	37,112,466	22,523,235	332,751,519	36,972,391
Actual vs Prior Year	33,843,821	(90,359,942)	(129,278,682)	72,724,495	64,505,481	27,480,720	39,600,442	21,727,884	74,541,340	114,785,560	12,753,951

NEW BRAUNFELS UTILITIES
Water Revenue
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD	
										ACT	AVG
Residential											
Actuals	\$ 1,659,468	\$ 1,187,834	\$ 938,710	\$ 921,198	\$ 951,659	\$ 842,794	\$ 761,192	\$ 679,478	\$ 931,603	\$ 8,873,935	\$ 985,993
Budget	\$ 1,481,765	\$ 1,270,631	\$ 960,709	\$ 906,286	\$ 945,900	\$ 936,551	\$ 912,039	\$ 889,356	\$ 1,141,626	\$ 9,444,863	\$ 1,049,429
Prior Year	\$ 1,232,731	\$ 1,236,297	\$ 1,127,058	\$ 715,908	\$ 765,151	\$ 739,244	\$ 699,638	\$ 727,003	\$ 768,685	\$ 8,011,714	\$ 890,190
Multi-Unit 2-4											
Actuals	\$ 12,807	\$ 11,450	\$ 10,932	\$ 10,998	\$ 12,295	\$ 11,679	\$ 7,335	\$ 13,552	\$ 11,981	\$ 103,031	\$ 11,448
Budget	\$ 10,615	\$ 9,676	\$ 8,136	\$ 9,121	\$ 9,936	\$ 9,868	\$ 10,178	\$ 9,745	\$ 10,306	\$ 87,580	\$ 9,731
Prior Year	\$ 9,144	\$ 9,788	\$ 9,052	\$ 8,053	\$ 9,070	\$ 9,585	\$ 8,601	\$ 8,573	\$ 9,095	\$ 80,960	\$ 8,996
Multi-Unit 5+											
Actuals	\$ 152,604	\$ 143,133	\$ 147,514	\$ 144,977	\$ 164,516	\$ 168,589	\$ 158,978	\$ 144,994	\$ 163,797	\$ 1,389,101	\$ 154,345
Budget	\$ 120,842	\$ 128,270	\$ 118,906	\$ 136,347	\$ 160,089	\$ 163,623	\$ 170,552	\$ 159,393	\$ 142,378	\$ 1,300,400	\$ 144,489
Prior Year	\$ 95,006	\$ 93,662	\$ 98,124	\$ 100,674	\$ 130,977	\$ 129,698	\$ 126,246	\$ 129,990	\$ 133,581	\$ 1,037,959	\$ 115,329
Residential Irrigation											
Actuals	\$ 726,646	\$ 552,267	\$ 457,405	\$ 428,169	\$ 386,667	\$ 277,112	\$ 245,506	\$ 227,146	\$ 390,636	\$ 3,691,553	\$ 410,173
Budget	\$ 538,308	\$ 448,031	\$ 313,716	\$ 288,205	\$ 277,927	\$ 208,981	\$ 226,345	\$ 250,633	\$ 339,551	\$ 2,891,697	\$ 321,300
Prior Year	\$ 448,013	\$ 416,383	\$ 466,149	\$ 240,435	\$ 225,398	\$ 193,172	\$ 171,993	\$ 197,224	\$ 229,357	\$ 2,588,125	\$ 287,569
Commercial Irrigation											
Actuals	\$ 373,928	\$ 311,144	\$ 260,889	\$ 202,246	\$ 190,478	\$ 147,215	\$ 112,127	\$ 90,682	\$ 135,586	\$ 1,824,296	\$ 202,700
Budget	\$ 210,964	\$ 213,311	\$ 143,194	\$ 131,155	\$ 125,607	\$ 105,323	\$ 86,755	\$ 99,191	\$ 140,230	\$ 1,255,731	\$ 139,526
Prior Year	\$ 190,307	\$ 246,640	\$ 251,800	\$ 138,993	\$ 112,639	\$ 111,689	\$ 83,539	\$ 80,909	\$ 88,278	\$ 1,304,794	\$ 144,977
SGS											
Actuals	\$ 408,714	\$ 335,742	\$ 307,252	\$ 273,027	\$ 311,437	\$ 310,556	\$ 290,305	\$ 271,974	\$ 354,562	\$ 2,863,570	\$ 318,174
Budget	\$ 301,455	\$ 274,679	\$ 228,890	\$ 262,168	\$ 310,761	\$ 313,453	\$ 317,523	\$ 311,990	\$ 292,955	\$ 2,613,873	\$ 290,430
Prior Year	\$ 236,642	\$ 222,472	\$ 223,634	\$ 207,540	\$ 269,718	\$ 270,609	\$ 256,513	\$ 313,781	\$ 225,035	\$ 2,225,943	\$ 247,327
Other Sales											
Actuals	\$ 80,548	\$ 50,303	\$ 49,165	\$ 44,940	\$ 43,526	\$ 22,017	\$ 35,255	\$ 49,285	\$ 68,076	\$ 443,114	\$ 49,235
Budget	\$ 26,296	\$ 31,198	\$ 12,608	\$ 14,535	\$ 2,780	\$ 14,577	\$ 26,288	\$ 30,711	\$ 18,731	\$ 177,726	\$ 19,747
Prior Year	\$ 27,764	\$ 2,561	\$ 63,295	\$ 28,817	\$ 35,073	\$ 30,457	\$ 34,436	\$ 33,095	\$ 29,847	\$ 285,346	\$ 31,705
ReUse Water											
Actuals	\$ 45	\$ 45	\$ 16,182	\$ 286	\$ 23,120	\$ 26,801	\$ 9,275	\$ 5,261	\$ 717	\$ 81,731	\$ 9,081
Budget	\$ 1,783	\$ 653	\$ 317	\$ 619	\$ 432	\$ 230	\$ 80	\$ 215	\$ 284	\$ 4,613	\$ 513
Prior Year	\$ 1,950	\$ (810)	\$ 489	\$ 1,396	\$ 1,299	\$ 4,182	\$ 2,723	\$ 2,047	\$ 256	\$ 13,532	\$ 1,504
Total Sales											
Actuals	\$ 3,414,760	\$ 2,591,919	\$ 2,188,049	\$ 2,025,841	\$ 2,083,698	\$ 1,806,762	\$ 1,619,973	\$ 1,482,372	\$ 2,056,958	\$ 19,270,331	\$ 2,141,148
Budget	\$ 2,692,030	\$ 2,376,449	\$ 1,786,475	\$ 1,748,437	\$ 1,833,431	\$ 1,752,606	\$ 1,749,761	\$ 1,751,233	\$ 2,086,061	\$ 17,776,483	\$ 1,975,165
Prior Year	\$ 2,241,557	\$ 2,226,992	\$ 2,239,601	\$ 1,441,816	\$ 1,549,326	\$ 1,488,637	\$ 1,383,690	\$ 1,492,620	\$ 1,484,135	\$ 15,548,374	\$ 1,727,597

NEW BRAUNFELS UTILITIES
Water Revenue Variance
For Month Ending April 30, 2021

DESCRIPTION	2020	2020	2020	2020	2020	2021	2021	2021	2021	FY 2021 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	ACT	AVG
Residential											
Actuals	\$ 1,659,468	\$ 1,187,834	\$ 938,710	\$ 921,198	\$ 951,659	\$ 842,794	\$ 761,192	\$ 679,478	\$ 931,603	\$ 8,873,935	\$ 985,993
Actual vs Budget	\$ 177,703	\$ (82,797)	\$ (21,999)	\$ 14,912	\$ 5,759	\$ (93,757)	\$ (150,848)	\$ (209,878)	\$ (210,023)	\$ (570,928)	\$ (63,436)
Actual vs Prior Year	\$ 426,737	\$ (48,463)	\$ (188,348)	\$ 205,290	\$ 186,508	\$ 103,549	\$ 61,553	\$ (47,524)	\$ 162,918	\$ 862,221	\$ 95,802
Multi-Unit 2-4											
Actuals	\$ 12,807	\$ 11,450	\$ 10,932	\$ 10,998	\$ 12,295	\$ 11,679	\$ 7,335	\$ 13,552	\$ 11,981	\$ 103,031	\$ 11,448
Actual vs Budget	\$ 2,192	\$ 1,775	\$ 2,797	\$ 1,877	\$ 2,359	\$ 1,812	\$ (2,843)	\$ 3,807	\$ 1,675	\$ 15,451	\$ 1,717
Actual vs Prior Year	\$ 3,664	\$ 1,663	\$ 1,881	\$ 2,946	\$ 3,225	\$ 2,094	\$ (1,266)	\$ 4,979	\$ 2,886	\$ 22,070	\$ 2,452
Multi-Unit 5+											
Actuals	\$ 152,604	\$ 143,133	\$ 147,514	\$ 144,977	\$ 164,516	\$ 168,589	\$ 158,978	\$ 144,994	\$ 163,797	\$ 1,389,101	\$ 154,345
Actual vs Budget	\$ 31,762	\$ 14,863	\$ 28,608	\$ 8,630	\$ 4,428	\$ 4,966	\$ (11,575)	\$ (14,399)	\$ 21,418	\$ 88,701	\$ 9,856
Actual vs Prior Year	\$ 57,598	\$ 49,470	\$ 49,390	\$ 44,303	\$ 33,539	\$ 38,891	\$ 32,732	\$ 15,004	\$ 30,215	\$ 351,142	\$ 39,016
Residential Irrigation											
Actuals	\$ 726,646	\$ 552,267	\$ 457,405	\$ 428,169	\$ 386,667	\$ 277,112	\$ 245,506	\$ 227,146	\$ 390,636	\$ 3,691,553	\$ 410,173
Actual vs Budget	\$ 188,338	\$ 104,236	\$ 143,689	\$ 139,964	\$ 108,740	\$ 68,131	\$ 19,161	\$ (23,487)	\$ 51,085	\$ 799,856	\$ 88,873
Actual vs Prior Year	\$ 278,633	\$ 135,884	\$ (8,744)	\$ 187,734	\$ 161,268	\$ 83,940	\$ 73,513	\$ 29,922	\$ 161,280	\$ 1,103,428	\$ 122,603
Commercial Irrigation											
Actuals	\$ 373,928	\$ 311,144	\$ 260,889	\$ 202,246	\$ 190,478	\$ 147,215	\$ 112,127	\$ 90,682	\$ 135,586	\$ 1,824,296	\$ 202,700
Actual vs Budget	\$ 162,964	\$ 97,833	\$ 117,695	\$ 71,091	\$ 64,871	\$ 41,891	\$ 25,372	\$ (8,509)	\$ (4,644)	\$ 568,566	\$ 63,174
Actual vs Prior Year	\$ 183,621	\$ 64,504	\$ 9,089	\$ 63,253	\$ 77,839	\$ 35,526	\$ 28,588	\$ 9,773	\$ 47,309	\$ 519,502	\$ 57,722
SGS											
Actuals	\$ 408,714	\$ 335,742	\$ 307,252	\$ 273,027	\$ 311,437	\$ 310,556	\$ 290,305	\$ 271,974	\$ 354,562	\$ 2,863,570	\$ 318,174
Actual vs Budget	\$ 107,259	\$ 61,063	\$ 78,362	\$ 10,859	\$ 676	\$ (2,896)	\$ (27,217)	\$ (40,015)	\$ 61,607	\$ 249,696	\$ 27,744
Actual vs Prior Year	\$ 172,072	\$ 113,270	\$ 83,618	\$ 65,487	\$ 41,719	\$ 39,948	\$ 33,793	\$ (41,806)	\$ 129,527	\$ 637,626	\$ 70,847
Other Sales											
Actuals	\$ 80,548	\$ 50,303	\$ 49,165	\$ 44,940	\$ 43,526	\$ 22,017	\$ 35,255	\$ 49,285	\$ 68,076	\$ 443,114	\$ 49,235
Actual vs Budget	\$ 54,252	\$ 19,105	\$ 36,557	\$ 30,404	\$ 40,746	\$ 7,439	\$ 8,967	\$ 18,574	\$ 49,345	\$ 265,388	\$ 29,488
Actual vs Prior Year	\$ 52,783	\$ 47,742	\$ (14,130)	\$ 16,123	\$ 8,453	\$ (8,441)	\$ 819	\$ 16,190	\$ 38,228	\$ 157,768	\$ 17,530
ReUse Water											
Actuals	\$ 45	\$ 45	\$ 16,182	\$ 286	\$ 23,120	\$ 26,801	\$ 9,275	\$ 5,261	\$ 717	\$ 81,731	\$ 9,081
Actual vs Budget	\$ (1,738)	\$ (608)	\$ 15,865	\$ (333)	\$ 22,688	\$ 26,571	\$ 9,195	\$ 5,046	\$ 433	\$ 77,118	\$ 8,569
Actual vs Prior Year	\$ (1,905)	\$ 855	\$ 15,693	\$ (1,110)	\$ 21,821	\$ 22,619	\$ 6,552	\$ 3,214	\$ 461	\$ 68,199	\$ 7,578
Total Sales											
Actuals	\$ 3,414,760	\$ 2,591,919	\$ 2,188,049	\$ 2,025,841	\$ 2,083,698	\$ 1,806,762	\$ 1,619,973	\$ 1,482,372	\$ 2,056,958	\$ 19,270,331	\$ 2,141,148
Actual vs Budget	\$ 722,730	\$ 215,469	\$ 401,574	\$ 277,404	\$ 250,267	\$ 54,156	\$ (129,788)	\$ (268,862)	\$ (29,103)	\$ 1,493,848	\$ 165,983
Actual vs Prior Year	\$ 1,173,203	\$ 364,927	\$ (51,552)	\$ 584,025	\$ 534,372	\$ 318,125	\$ 236,284	\$ (10,249)	\$ 572,824	\$ 3,721,957	\$ 413,551

NEW BRAUNFELS UTILITIES
Water Meters
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD AVG
Residential										
Actuals	31,115	31,248	31,353	31,499	31,627	31,759	31,822	31,977	32,088	31,610
Budget	30,870	30,920	30,970	31,020	31,070	31,120	31,171	31,222	31,273	31,071
Prior Year	29,555	28,674	29,705	29,822	29,952	30,062	30,170	30,372	30,509	29,869
Multi-Unit 2-4										
Actuals	203	203	202	202	205	204	205	205	204	204
Budget	206	206	206	206	206	206	206	206	206	206
Prior Year	198	199	198	202	200	201	202	203	203	201
Multi-Unit 5+										
Actuals	254	254	254	254	254	254	254	254	254	254
Budget	253	254	255	256	257	258	259	260	261	257
Prior Year	241	241	241	243	243	243	245	248	249	244
Residential Irrigation										
Actuals	9,345	9,472	9,604	9,734	9,867	9,936	10,022	10,140	10,236	9,817
Budget	9,214	9,272	9,330	9,388	9,447	9,506	9,566	9,626	9,686	9,448
Prior Year	8,077	7,614	8,205	8,297	8,411	8,497	8,576	8,751	8,861	8,365
Commercial Irrigation										
Actuals	803	802	806	805	804	806	806	812	814	806
Budget	792	794	796	798	800	802	804	806	808	800
Prior Year	747	735	757	765	772	775	775	776	784	765
SGS										
Actuals	2,334	2,335	2,342	2,345	2,342	2,343	2,354	2,373	2,341	2,345
Budget	2,344	2,350	2,356	2,362	2,368	2,374	2,380	2,386	2,392	2,368
Prior Year	2,284	2,281	2,294	2,301	2,314	2,317	2,314	2,320	2,319	2,305
Other Sales										
Actuals	95	95	94	94	93	89	125	96	108	99
Budget	109	109	109	109	109	109	109	109	109	109
Prior Year	76	12	91	88	94	88	91	95	97	81
ReUse Water										
Actuals	1	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1	1
Total Meters										
Actuals	44,150	44,410	44,656	44,934	45,193	45,392	45,589	45,858	46,046	45,136
Budget	43,789	43,906	44,023	44,140	44,258	44,376	44,496	44,616	44,736	44,260
Prior Year	41,179	39,757	41,492	41,719	41,987	42,184	42,374	42,766	43,023	41,831
New Meters	339	260	246	278	259	199	197	269	188	248
New Meter Growth	0.8%	0.6%	0.6%	0.6%	0.6%	0.4%	0.4%	0.6%	0.4%	0.6%

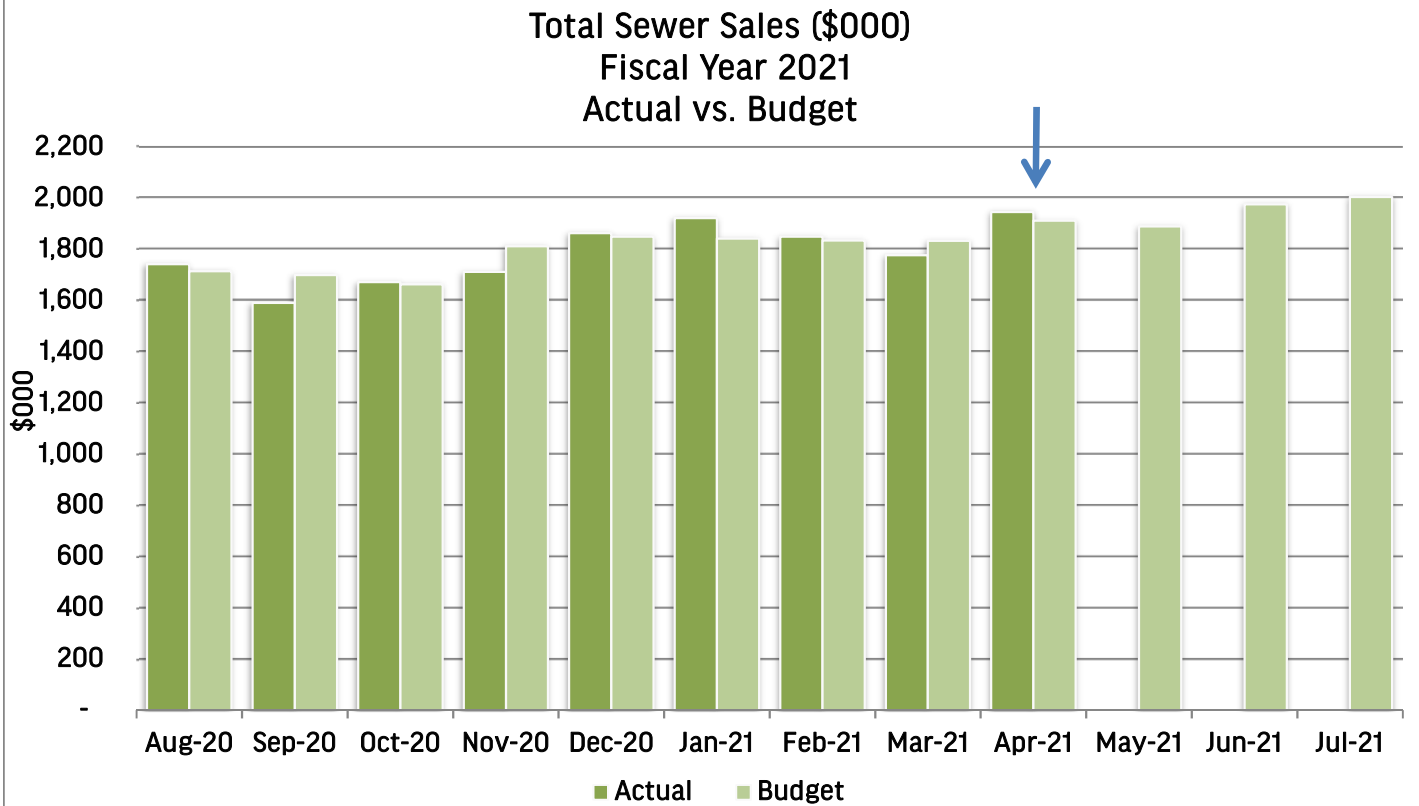
NEW BRAUNFELS UTILITIES
Water Volume per Meter (Gallons)
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD	
										ACT	AVG
Residential											
Actuals	9,970	7,416	6,611	6,617	5,894	5,150	4,978	5,069	5,602	57,307	6,367
Budget	9,172	7,935	6,005	5,412	4,922	4,878	4,578	4,512	5,436	52,851	5,872
Prior Year	9,723	10,157	8,961	5,426	5,039	4,863	4,427	4,626	5,029	58,250	6,472
Multi-Unit 2-4											
Actuals	13,021	10,627	10,194	10,045	9,478	8,660	9,320	11,319	9,108	91,772	10,197
Budget	10,386	9,807	7,994	7,174	6,698	7,034	6,284	5,865	6,821	68,064	7,563
Prior Year	11,355	12,529	11,290	7,880	7,683	8,543	6,607	6,388	7,394	79,669	8,852
Multi-Unit 5+											
Actuals	104,470	91,286	100,571	92,871	95,350	99,947	96,843	102,951	94,911	879,200	97,689
Budget	98,191	102,402	95,702	89,921	87,395	88,220	87,511	83,245	87,590	820,177	91,131
Prior Year	98,871	96,145	101,947	85,335	92,259	90,579	83,544	86,832	92,997	828,510	92,057
Residential Irrigation											
Actuals	10,446	7,754	6,898	6,606	4,855	2,963	2,480	2,274	4,666	48,942	5,438
Budget	10,158	8,484	5,923	4,640	3,138	2,130	2,015	2,519	4,736	43,742	4,860
Prior Year	11,766	11,714	12,208	5,343	3,487	2,688	2,083	2,660	3,377	55,327	6,147
Commercial Irrigation											
Actuals	53,638	45,003	41,560	35,475	29,201	22,448	16,998	13,474	20,339	278,136	30,904
Budget	41,971	42,263	28,413	24,630	19,434	15,217	12,559	14,440	22,170	221,097	24,566
Prior Year	48,974	64,403	64,094	33,219	22,033	20,373	15,305	14,926	16,242	299,569	33,285
SGS											
Actuals	34,703	28,419	28,313	26,169	25,126	24,863	25,348	28,990	29,286	251,218	27,913
Budget	36,187	32,547	27,111	26,802	25,469	24,818	25,605	25,405	27,007	250,952	27,884
Prior Year	35,567	33,134	33,189	26,572	27,598	26,782	25,955	32,059	21,878	262,733	29,193
Other Sales											
Actuals	93,631	50,276	58,113	45,516	42,743	10,553	22,604	49,219	57,768	430,423	47,825
Budget	52,714	48,980	26,371	10,931	2,028	10,070	18,714	20,998	29,366	220,171	24,463
Prior Year	97,385	44,550	193,459	37,242	36,187	31,793	35,823	31,673	24,886	533,000	59,222
ReUse Water											
Actuals	-	-	93,123	93,991	7,734,448	8,961,457	5,551,556	1,785,506	3,641,652	27,861,733	3,095,748
Budget	1,812,650	949,121	324,645	634,700	442,163	235,575	84,025	219,800	114,050	4,816,728	535,192
Prior Year	2,418,200	(1,436,800)	377,829	1,644,807	1,508,606	5,535,253	3,498,337	2,553,091	52,494	16,151,817	1,794,646

NEW BRAUNFELS UTILITIES
Water Rates (per Gallon)
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD AVG
Residential										
Actuals	\$ 0.0053	\$ 0.0051	\$ 0.0045	\$ 0.0044	\$ 0.0051	\$ 0.0052	\$ 0.0048	\$ 0.0042	\$ 0.0052	\$ 0.0049
Budget	\$ 0.0052	\$ 0.0052	\$ 0.0052	\$ 0.0054	\$ 0.0062	\$ 0.0062	\$ 0.0064	\$ 0.0063	\$ 0.0067	\$ 0.0059
Prior Year	\$ 0.0043	\$ 0.0042	\$ 0.0042	\$ 0.0044	\$ 0.0051	\$ 0.0051	\$ 0.0052	\$ 0.0052	\$ 0.0050	\$ 0.0047
Multi-Unit 2-4										
Actuals	\$ 0.0048	\$ 0.0053	\$ 0.0053	\$ 0.0054	\$ 0.0063	\$ 0.0066	\$ 0.0038	\$ 0.0058	\$ 0.0064	\$ 0.0055
Budget	\$ 0.0050	\$ 0.0048	\$ 0.0049	\$ 0.0062	\$ 0.0072	\$ 0.0068	\$ 0.0079	\$ 0.0081	\$ 0.0073	\$ 0.0065
Prior Year	\$ 0.0041	\$ 0.0039	\$ 0.0040	\$ 0.0051	\$ 0.0059	\$ 0.0056	\$ 0.0064	\$ 0.0066	\$ 0.0061	\$ 0.0053
Multi-Unit 5+										
Actuals	\$ 0.0058	\$ 0.0062	\$ 0.0058	\$ 0.0061	\$ 0.0068	\$ 0.0066	\$ 0.0065	\$ 0.0055	\$ 0.0068	\$ 0.0062
Budget	\$ 0.0049	\$ 0.0049	\$ 0.0049	\$ 0.0059	\$ 0.0071	\$ 0.0072	\$ 0.0075	\$ 0.0074	\$ 0.0062	\$ 0.0062
Prior Year	\$ 0.0040	\$ 0.0040	\$ 0.0040	\$ 0.0049	\$ 0.0058	\$ 0.0059	\$ 0.0062	\$ 0.0060	\$ 0.0058	\$ 0.0052
Residential Irrigation										
Actuals	\$ 0.0074	\$ 0.0075	\$ 0.0069	\$ 0.0067	\$ 0.0081	\$ 0.0094	\$ 0.0099	\$ 0.0099	\$ 0.0082	\$ 0.0082
Budget	\$ 0.0058	\$ 0.0057	\$ 0.0057	\$ 0.0066	\$ 0.0094	\$ 0.0103	\$ 0.0117	\$ 0.0103	\$ 0.0074	\$ 0.0081
Prior Year	\$ 0.0047	\$ 0.0047	\$ 0.0047	\$ 0.0054	\$ 0.0077	\$ 0.0085	\$ 0.0096	\$ 0.0085	\$ 0.0077	\$ 0.0068
Commercial Irrigation										
Actuals	\$ 0.0087	\$ 0.0086	\$ 0.0078	\$ 0.0071	\$ 0.0081	\$ 0.0081	\$ 0.0082	\$ 0.0083	\$ 0.0082	\$ 0.0081
Budget	\$ 0.0063	\$ 0.0064	\$ 0.0063	\$ 0.0067	\$ 0.0081	\$ 0.0086	\$ 0.0086	\$ 0.0085	\$ 0.0078	\$ 0.0075
Prior Year	\$ 0.0052	\$ 0.0052	\$ 0.0052	\$ 0.0055	\$ 0.0066	\$ 0.0071	\$ 0.0070	\$ 0.0070	\$ 0.0069	\$ 0.0062
SGS										
Actuals	\$ 0.0050	\$ 0.0051	\$ 0.0046	\$ 0.0044	\$ 0.0053	\$ 0.0053	\$ 0.0049	\$ 0.0040	\$ 0.0052	\$ 0.0049
Budget	\$ 0.0036	\$ 0.0036	\$ 0.0036	\$ 0.0041	\$ 0.0052	\$ 0.0053	\$ 0.0052	\$ 0.0051	\$ 0.0045	\$ 0.0045
Prior Year	\$ 0.0029	\$ 0.0029	\$ 0.0029	\$ 0.0034	\$ 0.0042	\$ 0.0044	\$ 0.0043	\$ 0.0042	\$ 0.0044	\$ 0.0037
Other Sales										
Actuals	\$ 0.0091	\$ 0.0105	\$ 0.0090	\$ 0.0105	\$ 0.0109	\$ 0.0234	\$ 0.0125	\$ 0.0104	\$ 0.0109	\$ 0.0119
Budget	\$ 0.0046	\$ 0.0058	\$ 0.0044	\$ 0.0122	\$ 0.0126	\$ 0.0133	\$ 0.0129	\$ 0.0134	\$ 0.0059	\$ 0.0094
Prior Year	\$ 0.0038	\$ 0.0048	\$ 0.0036	\$ 0.0088	\$ 0.0103	\$ 0.0109	\$ 0.0106	\$ 0.0110	\$ 0.0124	\$ 0.0085
ReUse Water										
Actuals	\$ -	\$ -	\$ 0.1738	\$ 0.0030	\$ 0.0030	\$ 0.0030	\$ 0.0017	\$ 0.0029	\$ 0.0002	\$ 0.0208
Budget	\$ 0.0010	\$ 0.0007	\$ 0.0010	\$ 0.0010	\$ 0.0010	\$ 0.0010	\$ 0.0009	\$ 0.0010	\$ 0.0025	\$ 0.0011
Prior Year	\$ 0.0008	\$ 0.0006	\$ 0.0013	\$ 0.0008	\$ 0.0009	\$ 0.0008	\$ 0.0008	\$ 0.0008	\$ 0.0049	\$ 0.0013

WASTEWATER STATISTICS



Month	Total Sewer Sales (\$000)	
	Actual	Budget
Aug-20	\$ 1,742	\$ 1,714
Sep-20	\$ 1,591	\$ 1,699
Oct-20	\$ 1,672	\$ 1,664
Nov-20	\$ 1,713	\$ 1,812
Dec-20	\$ 1,864	\$ 1,850
Jan-21	\$ 1,923	\$ 1,842
Feb-21	\$ 1,849	\$ 1,835
Mar-21	\$ 1,777	\$ 1,833
Apr-21	\$ 1,946	\$ 1,912
May-21	\$ -	\$ 1,890
Jun-21	\$ -	\$ 1,976
Jul-21	\$ -	\$ 2,004
TOTAL	\$ 16,077	\$ 22,031

Customer Count	FY 2019	% Change 2019-2020	FY 2020	% Change 2020-2021	FY 2021
Residential	26,115	4.41%	27,267	5.50%	28,768
Other	2,435	2.14%	2,487	1.29%	2,519
TOTAL	28,550	4.22%	29,754	5.15%	31,287

WASTEWATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Sewer Revenue
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD	
										ACT	AVG
Residential											
Actuals	\$ 982,203	\$ 921,770	\$ 959,833	\$ 1,008,160	\$ 1,125,655	\$ 1,151,722	\$ 1,119,551	\$ 1,084,393	\$ 1,142,035	\$ 9,495,323	\$ 1,055,036
Budget	\$ 955,716	\$ 963,391	\$ 963,536	\$ 1,065,428	\$ 1,092,199	\$ 1,090,820	\$ 1,088,418	\$ 1,071,699	\$ 1,121,451	\$ 9,412,658	\$ 1,045,851
Prior Year	\$ 779,479	\$ 747,562	\$ 824,138	\$ 797,987	\$ 892,353	\$ 896,216	\$ 890,728	\$ 893,434	\$ 899,809	\$ 7,621,706	\$ 846,856
Multi-Unit 2-4											
Actuals	\$ 9,208	\$ 8,848	\$ 8,891	\$ 9,280	\$ 10,402	\$ 10,570	\$ 10,700	\$ 10,419	\$ 10,985	\$ 89,303	\$ 9,923
Budget	\$ 8,979	\$ 8,972	\$ 8,984	\$ 9,981	\$ 10,265	\$ 10,222	\$ 10,139	\$ 9,935	\$ 10,518	\$ 87,995	\$ 9,777
Prior Year	\$ 7,539	\$ 7,534	\$ 7,770	\$ 7,897	\$ 8,802	\$ 8,846	\$ 8,660	\$ 8,612	\$ 8,658	\$ 74,317	\$ 8,257
Multi-Unit 5+											
Actuals	\$ 235,730	\$ 216,276	\$ 230,801	\$ 231,902	\$ 260,172	\$ 267,875	\$ 255,204	\$ 241,016	\$ 258,587	\$ 2,197,563	\$ 244,174
Budget	\$ 220,425	\$ 225,939	\$ 217,322	\$ 235,701	\$ 245,805	\$ 244,006	\$ 241,845	\$ 241,291	\$ 252,167	\$ 2,124,500	\$ 236,056
Prior Year	\$ 184,353	\$ 181,385	\$ 189,109	\$ 180,591	\$ 210,363	\$ 208,625	\$ 191,515	\$ 206,672	\$ 207,784	\$ 1,760,397	\$ 195,600
SGS											
Actuals	\$ 513,280	\$ 443,041	\$ 471,395	\$ 461,937	\$ 466,336	\$ 491,063	\$ 462,551	\$ 439,812	\$ 533,053	\$ 4,282,468	\$ 475,830
Budget	\$ 527,852	\$ 499,535	\$ 472,310	\$ 499,014	\$ 500,141	\$ 495,097	\$ 492,649	\$ 508,963	\$ 526,374	\$ 4,521,935	\$ 502,437
Prior Year	\$ 438,893	\$ 423,789	\$ 441,872	\$ 393,047	\$ 437,433	\$ 434,132	\$ 420,540	\$ 468,589	\$ 353,486	\$ 3,811,780	\$ 423,531
Schertz Sewer											
Actuals	\$ 1,212	\$ 1,203	\$ 1,375	\$ 1,426	\$ 1,282	\$ 1,517	\$ 1,487	\$ 1,330	\$ 1,316	\$ 12,148	\$ 1,350
Budget	\$ 1,371	\$ 1,559	\$ 1,395	\$ 1,670	\$ 1,565	\$ 1,505	\$ 1,753	\$ 1,334	\$ 1,634	\$ 13,786	\$ 1,532
Prior Year	\$ 1,372	\$ 1,328	\$ 1,295	\$ 1,248	\$ 1,093	\$ 1,171	\$ 1,416	\$ 1,086	\$ 1,275	\$ 11,284	\$ 1,254
Total Sales											
Actuals	\$ 1,741,634	\$ 1,591,138	\$ 1,672,296	\$ 1,712,706	\$ 1,863,847	\$ 1,922,747	\$ 1,849,494	\$ 1,776,969	\$ 1,945,976	\$ 16,076,806	\$ 1,786,312
Budget	\$ 1,714,342	\$ 1,699,395	\$ 1,663,547	\$ 1,811,794	\$ 1,849,975	\$ 1,841,649	\$ 1,834,805	\$ 1,833,223	\$ 1,912,143	\$ 16,160,873	\$ 1,795,653
Prior Year	\$ 1,411,637	\$ 1,361,598	\$ 1,464,184	\$ 1,380,770	\$ 1,550,044	\$ 1,548,991	\$ 1,512,859	\$ 1,578,392	\$ 1,471,012	\$ 13,279,485	\$ 1,475,498

NEW BRAUNFELS UTILITIES
Sewer Revenue Variance
For Month Ending April 30, 2021

DESCRIPTION	2020	2020	2020	2020	2020	2021	2021	2021	2021	FY 2021 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	ACT	AVG
Residential											
Actuals	\$ 982,203	\$ 921,770	\$ 959,833	\$ 1,008,160	\$ 1,125,655	\$ 1,151,722	\$ 1,119,551	\$ 1,084,393	\$ 1,142,035	\$ 9,495,323	\$ 1,055,036
Actual vs Budget	\$ 26,488	\$ (41,621)	\$ (3,703)	\$ (57,267)	\$ 33,456	\$ 60,902	\$ 31,133	\$ 12,694	\$ 20,584	\$ 82,665	\$ 9,185
Actual vs Prior Year	\$ 202,724	\$ 174,209	\$ 135,695	\$ 210,173	\$ 233,302	\$ 255,506	\$ 228,824	\$ 190,959	\$ 242,226	\$ 1,873,617	\$ 208,180
Multi-Unit 2-4											
Actuals	\$ 9,208	\$ 8,848	\$ 8,891	\$ 9,280	\$ 10,402	\$ 10,570	\$ 10,700	\$ 10,419	\$ 10,985	\$ 89,303	\$ 9,923
Actual vs Budget	\$ 229	\$ (124)	\$ (93)	\$ (701)	\$ 137	\$ 348	\$ 561	\$ 484	\$ 467	\$ 1,308	\$ 145
Actual vs Prior Year	\$ 1,668	\$ 1,315	\$ 1,121	\$ 1,384	\$ 1,600	\$ 1,724	\$ 2,040	\$ 1,807	\$ 2,327	\$ 14,986	\$ 1,665
Multi-Unit 5+											
Actuals	\$ 235,730	\$ 216,276	\$ 230,801	\$ 231,902	\$ 260,172	\$ 267,875	\$ 255,204	\$ 241,016	\$ 258,587	\$ 2,197,563	\$ 244,174
Actual vs Budget	\$ 15,306	\$ (9,663)	\$ 13,479	\$ (3,798)	\$ 14,367	\$ 23,870	\$ 13,359	\$ (276)	\$ 6,420	\$ 73,063	\$ 8,118
Actual vs Prior Year	\$ 51,377	\$ 34,890	\$ 41,692	\$ 51,311	\$ 49,809	\$ 59,250	\$ 63,689	\$ 34,344	\$ 50,803	\$ 437,166	\$ 48,574
SGS											
Actuals	\$ 513,280	\$ 443,041	\$ 471,395	\$ 461,937	\$ 466,336	\$ 491,063	\$ 462,551	\$ 439,812	\$ 533,053	\$ 4,282,468	\$ 475,830
Actual vs Budget	\$ (14,572)	\$ (56,493)	\$ (915)	\$ (37,077)	\$ (33,805)	\$ (4,034)	\$ (30,099)	\$ (69,151)	\$ 6,679	\$ (239,466)	\$ (26,607)
Actual vs Prior Year	\$ 74,387	\$ 19,252	\$ 29,524	\$ 68,890	\$ 28,902	\$ 56,931	\$ 42,011	\$ (28,777)	\$ 179,567	\$ 470,688	\$ 52,299
Schertz Sewer											
Actuals	\$ 1,212	\$ 1,203	\$ 1,375	\$ 1,426	\$ 1,282	\$ 1,517	\$ 1,487	\$ 1,330	\$ 1,316	\$ 12,148	\$ 1,350
Actual vs Budget	\$ (158)	\$ (356)	\$ (20)	\$ (244)	\$ (283)	\$ 12	\$ (266)	\$ (4)	\$ (318)	\$ (1,637)	\$ (182)
Actual vs Prior Year	\$ (160)	\$ (125)	\$ 80	\$ 178	\$ 189	\$ 346	\$ 71	\$ 243	\$ 41	\$ 864	\$ 96
Total Sales											
Actuals	\$ 1,741,634	\$ 1,591,138	\$ 1,672,296	\$ 1,712,706	\$ 1,863,847	\$ 1,922,747	\$ 1,849,494	\$ 1,776,969	\$ 1,945,976	\$ 16,076,806	\$ 1,786,312
Actual vs Budget	\$ 27,292	\$ (108,257)	\$ 8,749	\$ (99,088)	\$ 13,872	\$ 81,098	\$ 14,688	\$ (56,253)	\$ 33,833	\$ (84,067)	\$ (9,341)
Actual vs Prior Year	\$ 329,997	\$ 229,541	\$ 208,112	\$ 331,936	\$ 313,802	\$ 373,756	\$ 336,635	\$ 198,577	\$ 474,964	\$ 2,797,321	\$ 310,813

NEW BRAUNFELS UTILITIES
Sewer Customers
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD AVG
Residential										
Actuals	27,834	27,963	28,068	28,208	28,330	28,453	28,513	28,665	28,768	28,311
Budget	27,546	27,589	27,632	27,675	27,718	27,761	27,804	27,848	27,891	27,718
Prior Year	26,371	25,486	26,507	26,609	26,726	26,830	26,941	27,137	27,267	26,653
Multi-Unit 2-4										
Actuals	168	169	168	167	170	169	170	170	170	169
Budget	163	163	163	163	163	163	163	163	163	163
Prior Year	162	163	162	166	165	165	166	167	167	165
Multi-Unit 5+										
Actuals	252	252	252	252	252	252	253	254	252	252
Budget	251	252	253	254	255	255	256	257	258	255
Prior Year	240	240	240	242	242	242	243	246	246	242
SGS										
Actuals	2,088	2,089	2,097	2,102	2,100	2,101	2,096	2,095	2,096	2,096
Budget	2,091	2,094	2,096	2,098	2,101	2,103	2,106	2,108	2,110	2,101
Prior Year	2,043	2,041	2,050	2,057	2,068	2,071	2,068	2,073	2,073	2,060
Schertz Sewer										
Actuals	1	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1	1
Total Accounts										
Actuals	30,343	30,474	30,586	30,730	30,853	30,976	31,033	31,185	31,287	30,830
Budget	30,052	30,098	30,144	30,191	30,237	30,284	30,330	30,377	30,423	30,237
Prior Year	28,817	27,931	28,960	29,075	29,202	29,309	29,419	29,624	29,754	29,121
New Customers	158	131	112	144	123	123	57	152	102	122

NEW BRAUNFELS UTILITIES
Sewer Usage (Gallons)
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD	
										ACT	AVG
Residential											
Actuals	107,892,635	93,448,005	101,404,353	102,153,489	101,983,460	106,363,204	102,591,917	95,450,300	103,212,195	914,499,558	101,611,062
Prior Year	91,744,148	87,276,169	98,804,116	87,301,631	91,908,741	91,876,466	90,453,981	90,259,815	91,068,654	820,693,721	91,188,191
Multi-Unit 2-4											
Actuals	867,250	770,851	796,304	793,736	787,352	828,590	850,394	793,869	897,799	7,386,145	820,683
Prior Year	788,566	792,733	852,920	745,149	792,916	787,282	763,542	732,996	742,884	6,998,988	777,665
Multi-Unit 5+											
Actuals	26,955,876	23,549,933	26,095,061	23,931,771	24,522,241	25,666,157	24,761,334	26,274,621	24,292,462	226,049,456	25,116,606
Prior Year	24,138,334	23,524,610	24,800,676	20,878,614	22,808,423	22,209,267	20,678,256	21,772,498	23,356,983	204,167,661	22,685,296
SGS											
Actuals	123,541,179	105,170,489	108,552,819	102,335,601	97,558,666	97,950,351	94,573,203	106,679,411	108,701,908	945,063,627	105,007,070
Prior Year	122,649,281	118,608,277	125,796,126	103,796,264	107,629,256	106,347,274	101,631,396	111,078,348	82,767,154	980,303,376	108,922,597
Schertz Sewer											
Actuals	1,290,900	1,215,300	1,342,800	1,302,600	1,171,200	1,385,400	1,365,300	1,214,400	1,165,800	11,453,700	1,272,633
Prior Year	1,339,500	1,296,600	1,344,600	1,295,700	1,134,900	1,215,900	1,470,000	1,128,000	1,342,500	11,567,700	1,285,300
Total Sales											
Actuals	260,547,840	224,154,578	238,191,337	230,517,197	226,022,919	232,193,702	224,142,148	230,412,601	238,270,164	2,104,452,486	233,828,054
Prior Year	240,659,829	231,498,389	251,598,438	214,017,358	224,274,236	222,436,189	214,997,175	224,971,657	199,278,175	2,023,731,446	224,859,050

NEW BRAUNFELS UTILITIES
Sewer Rates (per Customer)
For Month Ending April 30, 2021

DESCRIPTION	2020 AUG	2020 SEP	2020 OCT	2020 NOV	2020 DEC	2021 JAN	2021 FEB	2021 MAR	2021 APR	FY 2021 YTD AVG
Residential										
Actuals	\$ 35.29	\$ 32.96	\$ 34.20	\$ 35.74	\$ 39.73	\$ 40.48	\$ 39.26	\$ 37.83	\$ 39.70	\$ 37.24
Budget	\$ 34.70	\$ 34.92	\$ 34.87	\$ 38.50	\$ 39.40	\$ 39.29	\$ 39.15	\$ 38.48	\$ 40.21	\$ 37.72
Prior Year	\$ 29.56	\$ 29.33	\$ 31.09	\$ 29.99	\$ 33.39	\$ 33.40	\$ 33.06	\$ 32.92	\$ 33.00	\$ 31.75
Multi-Unit 2-4										
Actuals	\$ 54.81	\$ 52.36	\$ 52.92	\$ 55.57	\$ 61.19	\$ 62.54	\$ 62.94	\$ 61.29	\$ 64.62	\$ 58.69
Budget	\$ 55.08	\$ 55.04	\$ 55.12	\$ 61.24	\$ 62.98	\$ 62.71	\$ 62.21	\$ 60.95	\$ 64.53	\$ 59.98
Prior Year	\$ 46.54	\$ 46.22	\$ 47.96	\$ 47.57	\$ 53.35	\$ 53.61	\$ 52.17	\$ 51.57	\$ 51.84	\$ 50.09
Multi-Unit 5+										
Actuals	\$ 935.44	\$ 858.24	\$ 915.88	\$ 920.25	\$ 1,032.43	\$ 1,063.00	\$ 1,008.71	\$ 948.88	\$ 1,026.14	\$ 967.66
Budget	\$ 878.56	\$ 897.33	\$ 860.03	\$ 929.44	\$ 965.83	\$ 955.35	\$ 943.52	\$ 938.00	\$ 976.79	\$ 927.21
Prior Year	\$ 768.14	\$ 755.77	\$ 787.96	\$ 746.24	\$ 869.27	\$ 862.09	\$ 788.13	\$ 840.13	\$ 844.65	\$ 806.93
SGS										
Actuals	\$ 245.82	\$ 212.08	\$ 224.80	\$ 219.76	\$ 222.06	\$ 233.73	\$ 220.68	\$ 209.93	\$ 254.32	\$ 227.02
Budget	\$ 252.40	\$ 238.59	\$ 225.33	\$ 237.80	\$ 238.07	\$ 235.41	\$ 233.98	\$ 241.46	\$ 249.43	\$ 239.16
Prior Year	\$ 214.83	\$ 207.64	\$ 215.55	\$ 191.08	\$ 211.52	\$ 209.62	\$ 203.36	\$ 226.04	\$ 170.52	\$ 205.57
Schertz Sewer										
Actuals	\$ 1,212.31	\$ 1,203.02	\$ 1,374.68	\$ 1,426.15	\$ 1,282.28	\$ 1,516.80	\$ 1,487.11	\$ 1,329.58	\$ 1,316.13	\$ 1,349.78
Budget	\$ 1,370.53	\$ 1,558.84	\$ 1,394.89	\$ 1,670.20	\$ 1,564.84	\$ 1,505.29	\$ 1,753.14	\$ 1,333.84	\$ 1,633.96	\$ 1,531.73
Prior Year	\$ 1,372.23	\$ 1,328.28	\$ 1,295.01	\$ 1,247.91	\$ 1,093.04	\$ 1,171.05	\$ 1,415.78	\$ 1,086.40	\$ 1,274.73	\$ 1,253.83



Meeting Date: May 25, 2021

Agenda Type: Items from Staff

From: John Warren
Finance Manager

Reviewed by: Dawn Schriewer
Chief Financial Officer

Submitted by: Dawn Schriewer
Chief Financial Officer

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Review Quarterly Investment Report

BACKGROUND

As required by the Public Funds Investment Act and the New Braunfels Utilities Investment Policy, the Investment Officers of NBU submit the quarterly report of investment activity for the quarter ended April 30, 2021. Attached is the NBU Investment Portfolio beginning January 31, 2021 and ending April 30, 2021. This is a report showing the changes to the portfolio during the quarter. This report has been modified to conform to the preferred reporting format illustrated in Statement No. 31 of the Governmental Accounting Standards Board, which mandates fair value accounting on investments held by public entities.

FINANCIAL IMPACT

NBU budgeted \$715,000 in interest income for FY 2021.

LINK TO STRATEGIC PLAN

Develop and Retain an Engaged and Ethical Workforce

Maintain a Competitive Bond Rating

EXHIBITS

1. Quarterly Investment Report

New Braunfels Utilities
Quarterly Investment Report
1/31/2021 to 04/30/2021

Item 3.

Investment Balances and Activity

As required by the Public Funds Investment Act and the New Braunfels Utilities Investment Policy, the Investment Officers of NBU hereby submit this quarterly report of investment activity for the quarter ended April 30, 2021. Statement No. 31 of the Governmental Accounting Standards Board, effective for reporting periods beginning after June 15, 1997, mandates fair value accounting on investments held by public entities. Attached is the NBU Investment Portfolio beginning January 31, 2021 and ending April 30, 2021. This is a report showing the changes to the portfolio during the quarter. This report has been modified to conform to the preferred reporting format illustrated in Statement No. 31.

The fair values of the Federally Insured Cash Account, Pooled, and Money Market Fund Groups (including \$21,180,867.93 in demand deposits at April 30, 2021) for the beginning and end of the reporting period are as follows:

	<u>Fair Value</u>
01/31/2021	\$80,971,954.71
04/30/2021	\$46,904,703.38

NBU had additions to the Pooled Fund Groups of \$51,221,008.66 and withdrawals totaling \$85,288,259.99.

The fair values of the Separately Invested Assets for the beginning and end of the reporting period are as follows:

	<u>Fair Value</u>
01/31/2021	\$20,328,916.62
04/30/2021	\$15,037,677.70

NBU had additions to the Separately Invested Assets of \$73,829.37 and withdrawals of \$5,017,453.96 due to maturities. The change in fair value due to amortization of premium and discount and mark to market changes from January 31, 2021 to April 30, 2021 was a decrease of \$347,614.33.

The fair values of the entire portfolio for the beginning and end of the reporting period for the quarter ended April 30, 2021 are as follows:

	<u>Fair Value</u>
01/31/2021	\$101,300,871.33
04/30/2021	\$61,942,381.08

Compliance with GAAP

The investment portfolio complied with generally accepted accounting principles (GAAP) throughout the quarter. Although the Public Funds Investment Act requires book value accounting for investments, it also contains a clause that requires conformance to GAAP.

New Braunfels Utilities
Quarterly Investment Report
1/31/2021 to 04/30/2021

Item 3.

Statement No. 31 supersedes the Public Funds Investments Act in the GAAP hierarchy and mandates fair value accounting. The fair market value of investments was determined by utilizing a third party service provider, ICE Data Pricing and Reference Data, LLC, formerly called Interactive Data Pricing.


Compliance with NBU Investment Policy

The investment portfolio funds are invested in compliance with the strategies outlined in the NBU Investment Policy, which the Board re-affirmed on March 25, 2021. Investments in each security type are within the allowable range established by the Investment Policy. The investment portfolio's weighted-average maturity of 141 days and weighted-average maturity to first call date of 29 days are within the 450 days and 300 days limit, respectively, stated in the NBU Investment Policy. Please note that the WAM and WAMC do not include the investment in the Community Assistance Fund, which was specifically authorized in the Investment Policy to permit investments up to ten years.

NBU is also required to maintain daily liquid funds of at least 30 days of budgeted operating expenses. At April 30, 2021, NBU had daily liquid funds of 99 days. Pooled investments are in no load money market mutual funds and eligible specified investment pools that are continuously rated AAA or higher by at least one nationally recognized rating agency and that have a dollar-weighted average stated maturity of 90 days or less. These same investments maintain a stable net asset value of \$1 for each share.

NBU has obtained collateral reports at quarter-end from third party custodians that confirm the collateral securities in NBU's name are at least equal to or greater than the required amount of uninsured balances as of April 30, 2021.

NBU Investment Officers:


Finance Manager


Chief Financial Officer



NBU Investments
GASB 31 Compliance Detail
Sorted by Fund - Fund
February 1, 2021 - April 30, 2021

CUSIP	Investment #	Fund	Maturity Date	Beginning Invested Value	Purchase of Principal	Addition to Principal	Redemption of Principal	Change in Market Value/Amortization	Ending Invested Value
Fund: Consumer Deposit									
3134GXDT8	10860	119F	11/24/2023	3,001,440.18	-	-	3,281.91	(1,440.18)	2,996,718.09
3134GXGQ1	10861	119F	12/15/2022	3,001,927.59	-	-	2,832.99	472.41	2,999,567.01
Subtotal				6,003,367.77	-	-	6,114.90	(967.77)	5,996,285.10
Fund: Special Funds- Community Assistance									
912828YS3	10853	117F	11/15/2029	5,328,320.00	-	73,829.37	-	(346,679.37)	5,055,470.00
Subtotal				5,328,320.00	-	73,829.37	-	(346,679.37)	5,055,470.00
CUSIP	Investment #	Fund	Maturity Date	Beginning Invested Value	Purchase of Principal	Addition to Principal	Redemption of Principal	Change in Market Value/Amortization	Ending Invested Value
Fund: Bond Reserve Fund									
3133ELZ72	10857	170F	7/27/2023	2,998,947.90	-	-	3,000,000.00	1,052.10	-
3133EMMN9	10862	170F	1/11/2024	2,997,833.85	-	-	10,245.09	(572.19)	2,987,016.57
3134GWA48	10858	170F	12/1/2023	1,999,967.04	-	-	2,000,000.00	32.96	-
3134GXDT8	10859	170F	11/24/2023	1,000,480.06	-	-	1,093.97	(480.06)	998,906.03
Subtotal				8,997,228.85	-	-	5,011,339.06	32.81	3,985,922.60
Total				20,328,916.62	-	73,829.37	5,017,453.96	(347,614.33)	15,037,677.70
Change due to amortization of premium/discount								385.39	
Change due to mark to market								(347,999.72)	
Total								(347,614.33)	



NBU Investments
GASB 31 Compliance Detail
Sorted by Fund - Fund
February 1, 2021 - April 30, 2021

		Investment #	Fund	Beginning Invested Value	Purchase of Principal	Addition to Principal	Redemption of Principal	Change in Market Value	Ending Invested Value
FEDERALLY INSURED CASH ACCOUNT, POOLED, AND MONEY MARKET FUND GROUPS									
Coastal Securities - Temp Cash	SYS10539	10539	110C	-	-	-	-	-	-
Frost Bank	SYS10809	10809	110FGF	9,304,811.98	-	23,453,761.27	11,577,705.32	-	21,180,867.93
Hilltop Securities -Temp Cash	SYS10566	10566	110HS	-	-	-	-	-	-
StoneCastle- Community Assistance	SYS10779	10779	117SC	41,631.65	-	5.10	-	-	41,636.75
Texas Daily- I&P 2004	SYS10543	10544	163	213,049.46	-	91,238.71	-	-	304,288.17
Texas Daily- I&P 2015	SYS10763	10763	167	212,493.88	-	306,553.85	-	-	519,047.73
Texas Daily- I&P 2016	SYS10788	10788	168	660,448.74	-	748,995.16	-	-	1,409,443.90
Texas Daily- I&P 2018	SYS10831	10831	169	1,171,536.91	-	901,550.57	-	-	2,073,087.48
Texas Daily- I&P 2020	SYS10855	10855	196	1,398,326.42	-	1,363,875.72	-	-	2,762,202.14
Texas Daily- Temp-Cash	SYS10244	10244	110D	3,708.92	-	0.45	-	-	3,709.37
Texpool- Central Facilities-S	SYS10225	10225	183F	872.40	-	-	-	-	872.40
Texpool- Central Facilities-W	SYS10224	10224	182F	1,046.79	-	-	-	-	1,046.79
Texpool- Consumer Deposit	SYS10572	10572	119T	2,313,637.03	-	138.84	-	-	2,313,775.87
Texpool- Contingency Systems	SYS10572	10573	114F	14,239,760.66	-	545.29	10,000,000.00	-	4,240,305.95
Texpool- Impact Fees S	SYS10221	10221	185F	1,284,809.87	-	1,488,194.45	1,936,766.43	-	836,237.89
Texpool- Impact Fees W	SYS10090	10090	184F	2,293,510.70	-	2,862,337.77	4,973,492.60	-	182,355.87
Texpool- Bond Reserve	SYS10701	10701	170	2,993,359.75	-	5,002,687.16	-	-	7,996,046.91
Texpool- Temp-Cash	SYS10149	10149	110T	10,047,303.66	-	228.13	10,000,000.00	-	47,531.79
Texpool- Commercial Paper Series A		10845	191	9,894,114.95	-	15,000,318.59	21,903,295.64	-	2,991,137.90
Texpool- Commercial Paper Series B		10846	192	358.68	-	-	-	-	358.68
Texpool- Power Stabilization Fund	SYS10849	10849	195	24,897,172.26	-	577.60	24,897,000.00	-	749.86
TexStar- Temp-Cash	SYS10095	10095	110S	-	-	-	-	-	-
Total				80,971,954.71	-	51,221,008.66	85,288,259.99	-	46,904,703.38
Portfolio Total									
				101,300,871.33	-	51,294,838.03	90,305,713.95	(347,614.33)	61,942,381.08

New Braunfels Utilities
Investment Summary
Quarter Ended April 30, 2021
(000's)

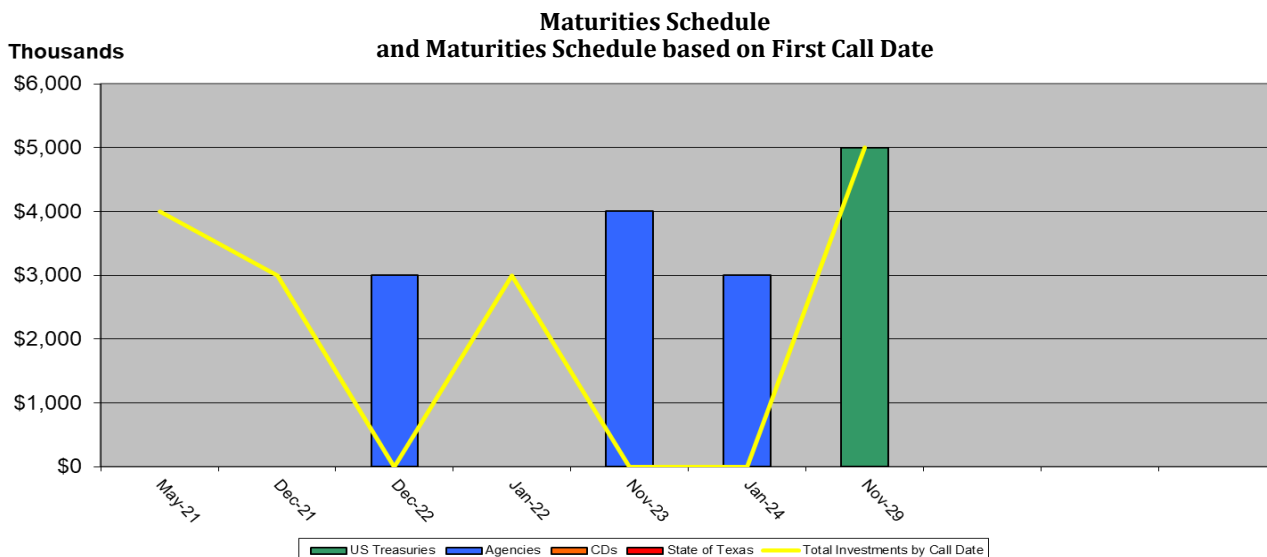


	Ending Invested Value	Percentage of Portfolio	Weighted Average Maturity (in days)	Weighted Average Days to Call
Daily Liquidity Funds				
Money Markets	\$ -	0.0%	1	1
Pooled Funds	25,682,199	41.5%	1	1
Total Money Markets & Pooled	\$ 25,682,199	41.5%	1	1
Federally Insured Cash Account	\$ 41,637	0.1%	1	1
Demand Deposits	21,180,868	34.2%	1	1
Daily Liquidity Funds Total	\$ 46,904,703	75.7%	1	1
U.S. Agencies	\$ 9,982,208	16.1%	849	154
U.S. Treasuries *	5,055,470	8.2%	0	0
Certificates of Deposit	-	0.0%	0	0
Obligations of The State of Texas, Agencies & Instrumentalities	-	0.0%	0	0
Total Invested Funds	\$ 61,942,381	100.0%	141	29
			Max = 450	Max = 300

* WAM and WAM to Call exclude a \$5 Million investment in the Community Assistance Fund having a remaining maturity of 8.6 years.

Liquidity Requirement

Total Daily Liquid Funds	\$ 46,904,703
Average Monthly Operating Expense (FY 2021 Budgeted Operating Expenses ÷ 12)	\$ 14,148,667
Operating Expense Liquidity Coverage Ratio	3
Number of Days Coverage of Operating Expenses	99
	Min = 30

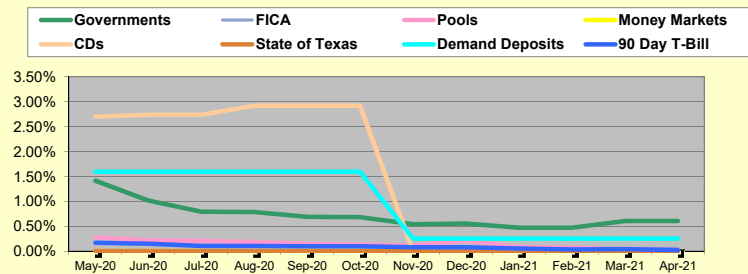


* U.S Treasury Securities includes a \$5 Million 10 year Community Assistance investment with a WAM of 3121 days as an approved exception to the investment policy.

New Braunfels Utilities
Investment Comparison
Quarter Ended April 30, 2021



Annualized Rate by Investment Type



* NBU's last CDAR security matured in November 2020, and there are currently no available offerings

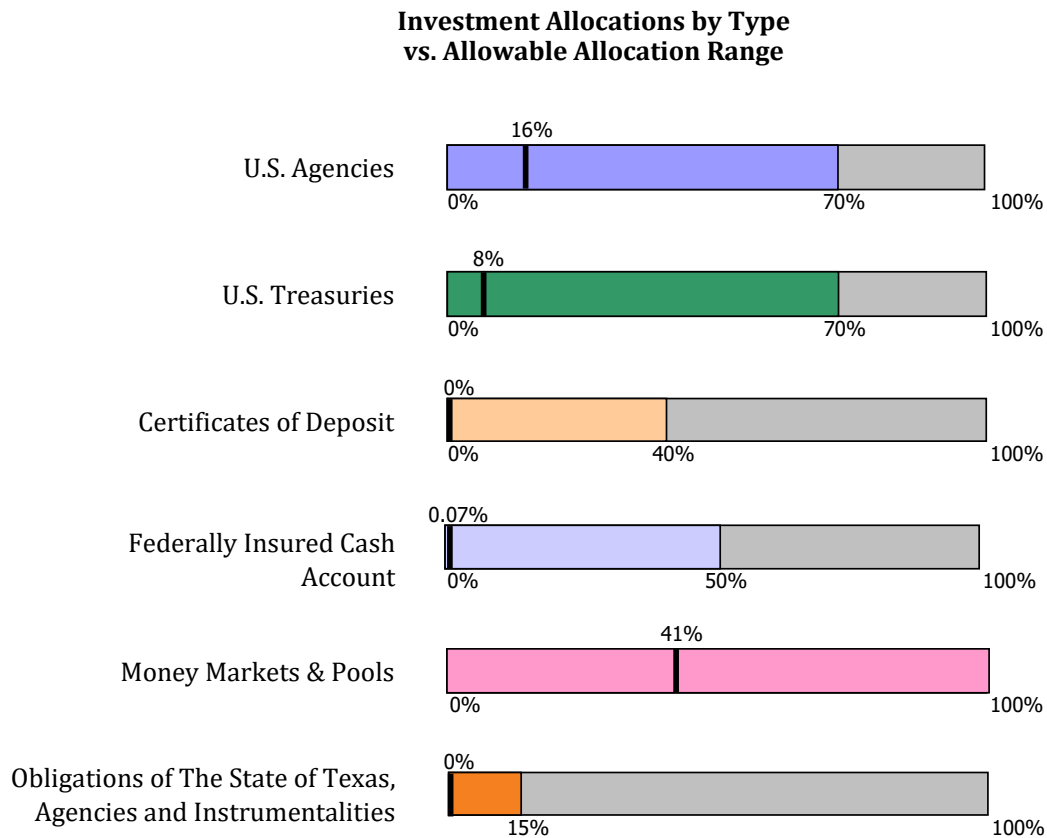
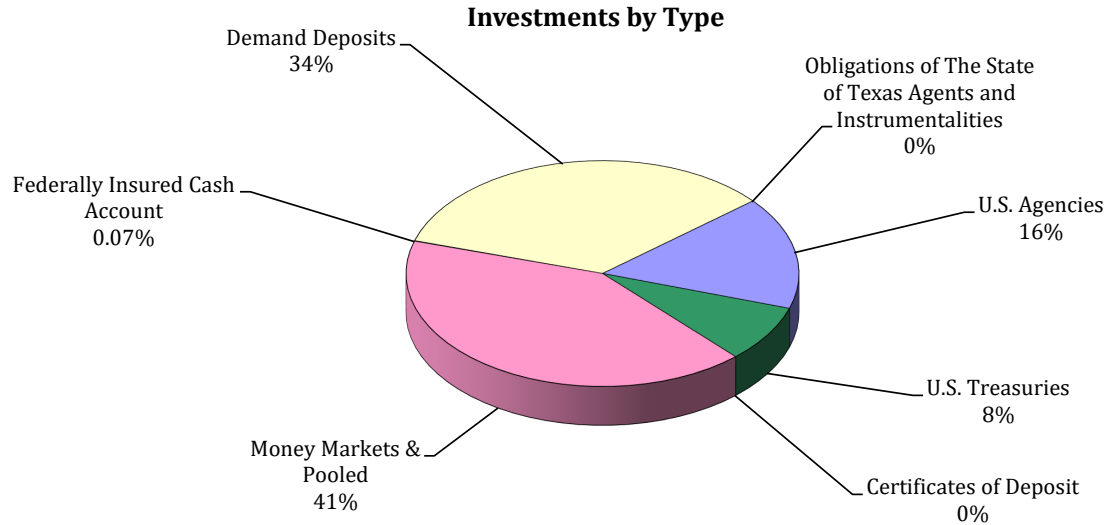
Quarterly Average Annualized Yield By Investment Type		Quarterly Average Annualized Yield by Investment Type vs. 90 Day T-Bill	
U.S. Govt. Securities	0.558%		
Federally Insured Cash Account	0.057%		
Pooled Funds	0.041%		
Money Markets	0.000%		
Certificates of Deposit	0.000%		
Obligations of The State of Texas, Agencies & Instrumentalities	0.000%		
Demand Deposits	0.250%		
Total NBU Yield	0.305%		
90 Day T-Bill	0.032%		

Rolling Four Quarter Annualized Yield By Investment Type For The Fiscal Quarter Ended		
	4/30/2021	Rolling Four Quarter Average
U.S. Govt. Securities*	0.558%	0.718%
Federally Insured Cash Account	0.057%	0.121%
Pooled Funds	0.041%	0.141%
Money Markets	0.000%	0.000%
Certificates of Deposit	0.000%	1.410%
Obligations of The State of Texas, Agencies & Instrumentalities	0.000%	0.000%
Demand Deposits**	0.250%	0.920%
Total NBU Yield	0.305%	0.541%
90 Day T-Bill	0.032%	0.086%

* U.S. Govt. Securities includes a \$5 million 10 year Community Assistance maturity at 1.79%

** The Demand Deposits interest rate reflects NBU's earnings credit rate with Frost Bank.
Earnings are solely used to offset Frost Bank fees for the month.

New Braunfels Utilities
Investment Portfolio Mix vs. Allowable Allocations
Quarter Ended April 30, 2021
(000's)



Note: Colored area in bar represents allowable allocation range

Board Agenda Item Report

May 25, 2021

**CONSENT ITEMS
FOR ACTION**



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

From: Ruby Alvarado **Reviewed by:** Laura Rivers
Board Technical Writer Chief of Staff

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

RECOMMENDED ACTION: Approve Minutes of the NBU Regular Board Meeting of April 29, 2021

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Recognized as a Trusted Community Partner Dedicated to Excellence in Service

EXHIBITS

1. April 29, 2021 Board Meeting Minutes

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

**1:00 P.M.
THURSDAY, APRIL 29, 2021
GOTOMEETING – VIDEO CONFERENCE**

Board President John Harrell opened the meeting at 1:01 pm. A quorum of the NBU Board was present.

PRESENT

Board President John Harrell, Board Vice President Judith Dykes-Hoffmann, Board Trustee Bob Gray, Board Trustee Wayne Peters, and Mayor Rusty Brockman

ABSENT

None

NBU PERSONNEL

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

NBU CONSULTANTS

None

PLEDGE AND INVOCATION

Board President John Harrell led the pledge of allegiance and offered the invocation.

PUBLIC COMMENT

Residents of Copper Ridge, Jody Heikkinen and Monica Chisholm, commented.

ITEMS FROM THE CHAIR

1. Report from Investment Committee

Board Trustee Bob Gray provided a report from the Investment Committee meeting held on April 26, 2021. Attendees included: John Harrell, Bob Gray, Ian Taylor, Dawn Schriewer, John Warren, Thomas Varner, Amy Chapple, Duane Westerman, and Laura Rivers. During the meeting, John Warren presented the proposed changes to the Financial Policy, Dawn Schriewer provided an update on the correspondence with the Rating Agencies, and Duane Westerman provided analysis regarding potential options for increased liquidity and an update of the preliminary timeline for the issuance of the proposed Series 2021 Refunding Bonds.

ITEMS FROM THE STAFF

1. CEO'S Update

- a. Proposed NBU Headquarters and Access Related Thereto

CEO Ian Taylor briefed the Board on the proposed NBU Headquarters and access road, along with ongoing meetings with the homeowners associations (HOA) in the area, TPPA changes to executive leadership, and on NBU's recent Managers Retreat in early April. At the New Braunfels City Council meeting held on April 12, 2021, NBU was recognized for Outstanding Public Service Day. In addition, Mr. Taylor announced that on April 19, 2021, NBU employees received the New Braunfels Chamber's April Chair of the Board Award, in recognition their tireless efforts during the winter storm event in February. On the same date, NBU entered State 2 Drought Restrictions, as the rolling 10-day average for the Aquifer level hit 649.6 feet. Mr. Taylor informed the board that the Environmental Affairs Department has realigned and changed its name to Conservation and Consumer Solutions (CCS), and plans are underway for Phase 3 of the NBU re-entry.

2. Financial Update and Report

Accounting Manager Kimberly Huffman provided an update on the financial status of NBU. Ms. Huffman reviewed the financial and statistical reports for March 2021.

CONSENT ITEMS FOR ACTION

Board Trustee Judith Dykes-Hoffman made a motion and Board Trustee Bob Gray seconded the motion to approve the Consent Items for Action as follows: #1, #2, #3, #4, #5, #6, #7, #8, and #9. The vote was unanimous.

1. Approve Minutes of the NBU Regular Board Meeting of March 25, 2021
2. Approve Minutes of the NBU Special Board Meeting of March 31, 2021
3. Approve the Change Order Log from February 15, 2021, through March 15, 2021
4. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2020, through March 15, 2021
5. Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with D Guerra Construction LLC for the Construction of the Castell Avenue Rehabilitation Project
6. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the McKenzie Interceptor Upgrade Project
7. Authorize CEO or His Designee to Execute and/or File (i) a Water CNN Transfer Agreement among NBU, Green Valley Special Utility District, and SA Given to Fly, LP for the Morningside Hills Development and (ii) and Documents Related to Such Transfer with the Texas Public Utility Commission
8. Authorize CEO or His Designee to Negotiate and Execute a Contract with Altec Industries Inc. for the Purchase of a 60' Reach Bucket Truck and a 55' Articulating Telescopic Aerial Device Truck
9. Authorize CEO or His Designee to Negotiate and Execute an Equipment Rental Agreement with Herc Rentals Inc. and Rocky Hill Equipment Rental

ITEMS FOR FUTURE ACTION

1. Review and Discuss Proposed Revisions to the NBU Board Governance Policies

ACTION ITEMS

1. Discuss and Consider Authorizing Proposed Changes to the New Braunfels Utilities Financial Policy

Board Trustee Bob Gray made a motion and Board Trustee Wayne Peters seconded the motion to authorize proposed changes to the NBU Financial Policy. The vote was unanimous.

EXECUTIVE SESSION

Board President John Harrell recessed the Open Session at 1:58 pm and announced that the Board would go into an Executive Session Meeting. The Executive Session included Competitive Matters regarding Power Supply and Resource Strategies, and Attorney Client Privilege Consultation and Contemplated Litigation, and Personnel Matters. The Executive Session was opened at 2:11 pm and closed at 5:14 pm.

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

ADJOURN

The Regular Session resumed at 5:16 pm. There was no further business and Board President John Harrell adjourned the Board Meeting at 5:16 pm.

Attest:

John A. Harrell, President
Approved

Ian Taylor, Secretary of the Board
Chief Executive Officer

Date Approved: May 25, 2021



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve 2020 Fourth Quarter Charge-Off Accounts

BACKGROUND

Charge-offs for the fourth quarter of calendar year 2020 (October, November, December) netted \$98,782.50 for NBU accounts that have unpaid balances. NBU applied \$41,245.14 in customer deposits to the delinquent account balance of \$140,027.64, which reduced the total unpaid balance by 29.45%. Residential customers accounted for 82% of the number of charge-off accounts.

The accounts that included insufficient funds, due to returned checks and failed auto-draft payments, totaled \$3,765.67.

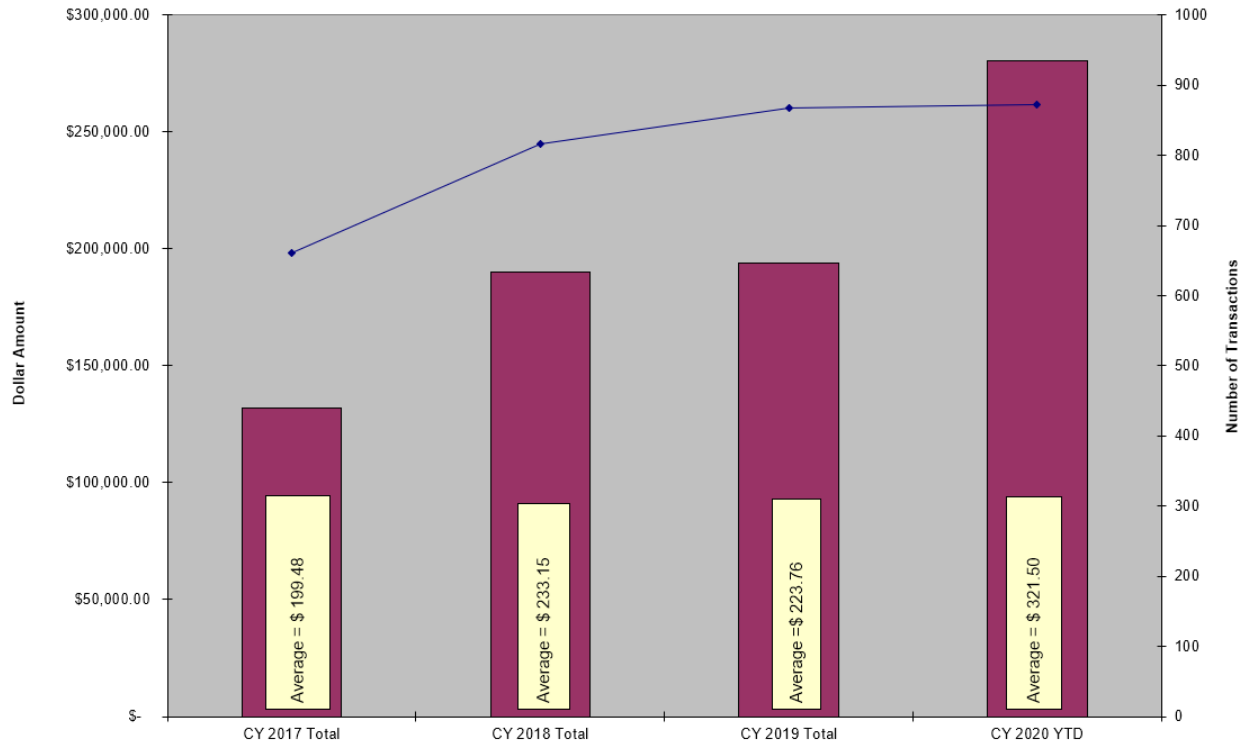
When compared to total revenue billings for the same quarter, the charge-off balance amounts to just under 2/10th of one percent. For every \$100 billed to our customers, we received \$99.83.

This fourth quarter of 2020 was impacted by the COVID-19 pandemic. The increase in outstanding balances is due to the suspension of late fees and disconnects for non-payment from the period of March 2020 through July 2020. The residential accounts continue to show the impact of COVID-19 in the number and amount of the charge-offs. The number of residential accounts included in the charge-offs increased by 20.39% compared to the previous 3 years' average for the same quarter, and the dollar amount increased by 75.03%. The charge-offs for the last two quarters include balances for commercial accounts, which were highly impacted due to the COVID-19 pandemic.

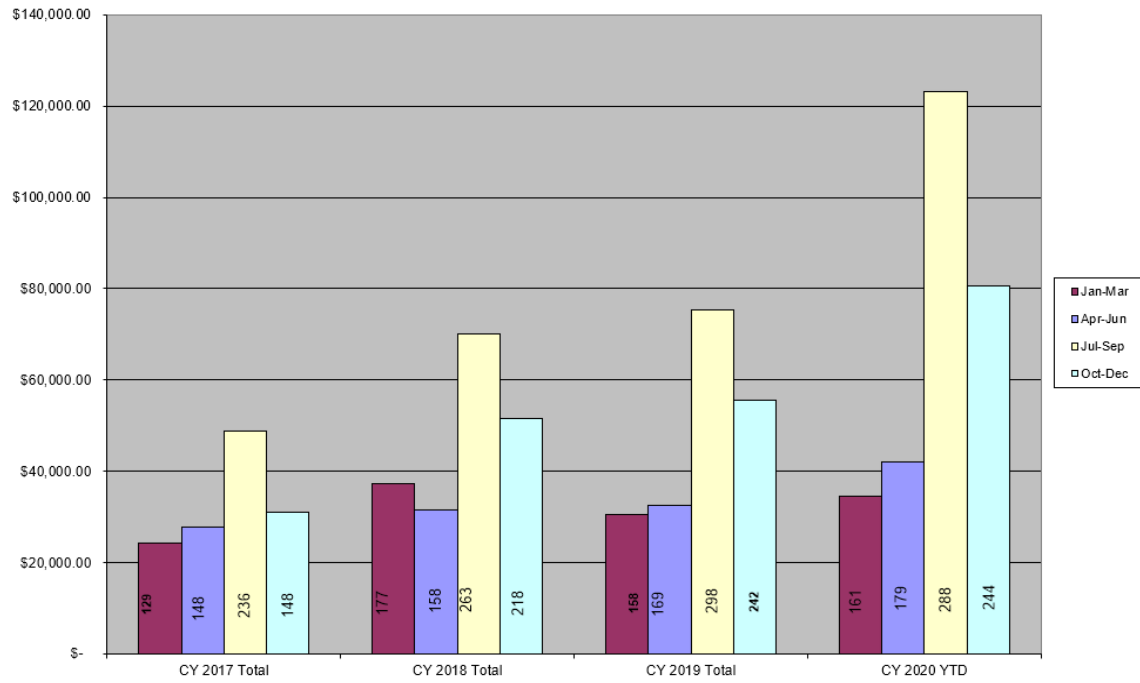
The NBU credit rating summary for this report is as follows:

Credit Rating*	Number of Active Customers	Number of Charge-off Customers	Percentage of Charge-off Customers
A	42,551	24	0.06%
B	9,078	11	1.47%
C	2,620	103	3.93%
D	1	0	0.00%
Auto-Draft	7,445	5	0.07%

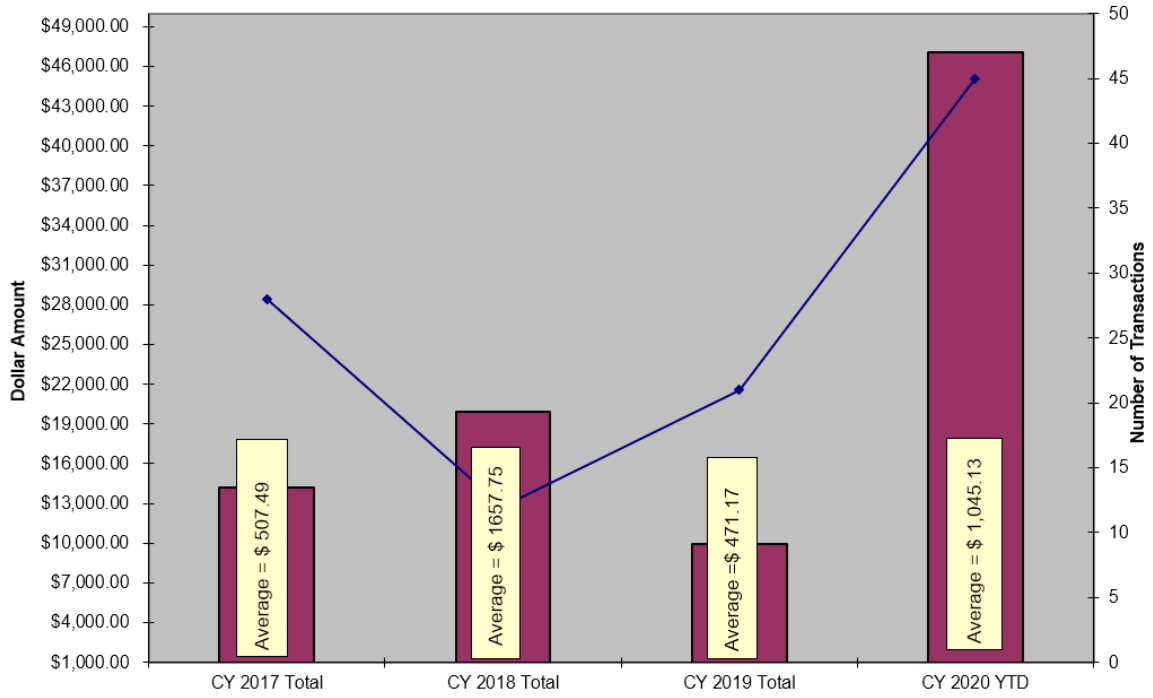
Annual Residential Charge-Off Amount & Count



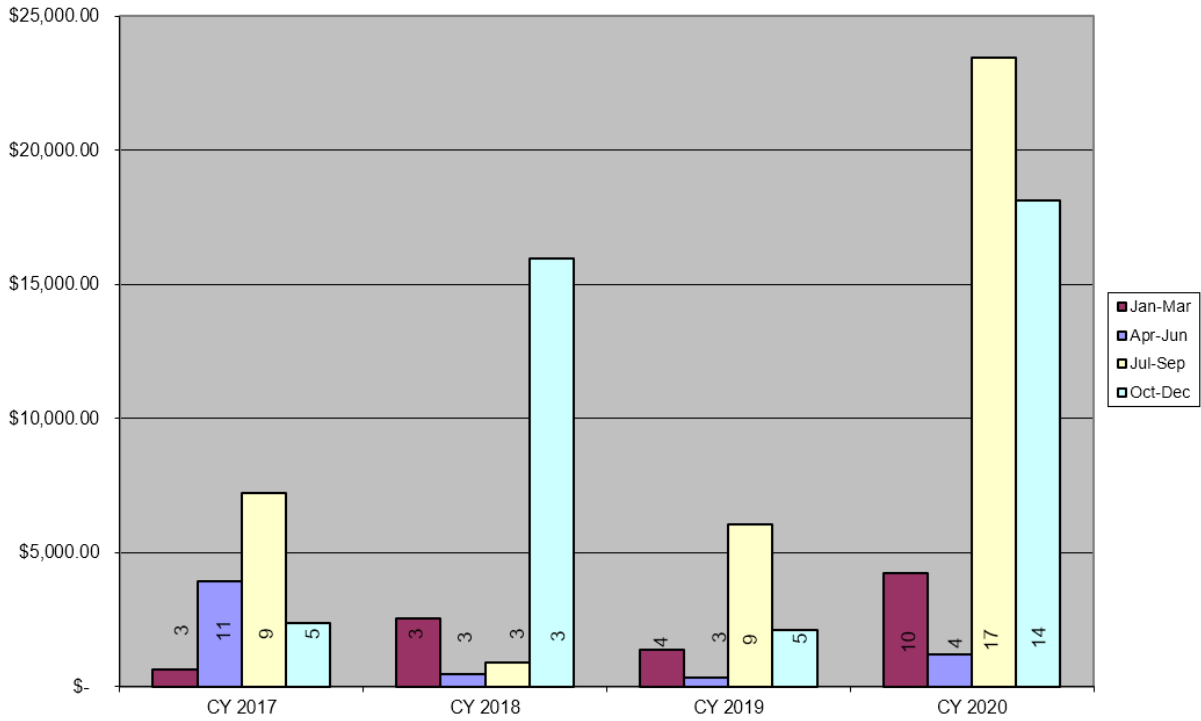
Residential - Quarterly Charge-Off Totals



Annual Commercial Charge-Off Amount & Count



Commercial - Quarterly Charge-Off Totals



FINANCIAL IMPACT

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

LINK TO STRATEGIC PLAN

Maintain a Competitive Bond Rating**EXHIBITS**

1. Charge-off Summary

**Charge Off Summary
May 2021**

Item 2.

<u>TYPE OF CUSTOMER</u>	<u>AMOUNT BEFORE DEPOSIT/INTEREST APPLIED</u>	<u>DEPOSIT APPLIED</u>	<u>AMOUNT AFTER DEPOSIT/INTEREST APPLIED</u>	<u>AMOUNT OF CHARGE OFF PER \$100 BILLED</u>
Residential	\$116,685.14	\$36,047.88	\$80,637.26	0.125%
Commercial	\$23,342.50	\$5,197.26	\$18,145.24	0.028%
Miscellaneous	\$0.00	\$0.00	\$0.00	0.000%
Bankruptcy	\$0.00	\$0.00	\$0.00	0.000%
Total	\$140,027.64	\$41,245.14	\$98,782.50	0.153%

Historical Charge-Off Information

	2020			2019	
	<u>Charge-Off Amount</u>	<u># of Charge-Offs</u>	<u>Average Amount</u>	<u>Charge-Off Amount</u>	<u># of Charge-Offs</u>
1st Qtr	\$39,679.47	172	\$230.69	\$34,570.84	167
2nd Qtr	\$48,069.11	185	\$259.83	\$32,851.40	172
3rd Qtr	\$146,994.92	306	\$480.38	\$81,959.56	312
4th Qtr	\$98,782.50	258	\$382.88	\$59,280.23	248



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

From: Tony Meister **Reviewed by:** David Hubbard
 Purchasing Manager Chief Administrative Officer

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

RECOMMENDED ACTION: Approve the Change Order Log from March 15, 2021, through April 15, 2021

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 \$50,000.00, 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 March 15, 2021, through April 15, 2021.

FINANCIAL IMPACT

Change orders less than \$50,000.00:

- Weltner Road GST and Pump Station Phase 1, Door Access Controls – Driveway and Gate Modifications – Site Piping Modifications – Valve Platforms, Black Castle GC, Change Order No. 3, Cost Increase of **\$29,507.00**.
- Aquifer Storage and Recovery Project, Install Additional Piping, Kutscher Drilling, Changer Order No. 5, Cost Increase of **\$1,500.00**.
- Grandview Pump Station and Expansion, Piping Tie-In Modifications, Pesado Construction, Change Order No. 2, Cost Increase of **\$4,600.00**.
- Gruene WRF Relocation Expansion, 12” Storm Sewer Line – Removal of Temporary Road, MGC Contractors, Change Order No. 14, Cost Increase of **\$4,611.00**.
- San Antonio Street Rehab Phase 2, Contractor Mobilization – 2”, 6”, 8” Pipe Grouting, Pesado Construction, Change Order No. 3, Cost Increase of **\$23,622.50**.

- North Kuehler 42” Interceptor Upgrade, Sewer Alignment Modifications – 2” Water Services Additions, Santa Clara Contractors, Change Order No. 1, Cost Increase of **\$44,416.00**.

Change orders more than \$50,000.00:

- North Kuehler 30” and 33” Interceptor Upgrade, Sewer Tie-In – Bypass Pumping – Doghouse Manhole, Pesado Construction, Change Order No. 1, Cost Increase **\$78,308.21**
- Avery Park 30” Water Main, 16” and 30” Tie-In – 8” Sewer Extension – Added Fittings and Appurtenances, Harper Brothers, Change Order No. 4, Cost Increase of **\$151,354.72**.

LINK TO STRATEGIC PLAN

Recognized as a Trusted Community Partner Dedicated to Excellence in Service

Maintain Organizational Reliability and Resiliency

Be a Responsible Steward of Natural Resources

EXHIBITS

None



Meeting Date: May 25, 2021

Agenda Type: Consent Items for Action

From: Tony Meister
Purchasing Manager

Reviewed by: David Hubbard
Chief Administrative Officer

Submitted by: David Hubbard
Chief Administrative Officer

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Approve the Reports for Water and Electric Engineering Contracts from August 1, 2020, through April 15, 2021

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 amount 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, 2020, through April 15, 2021.

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

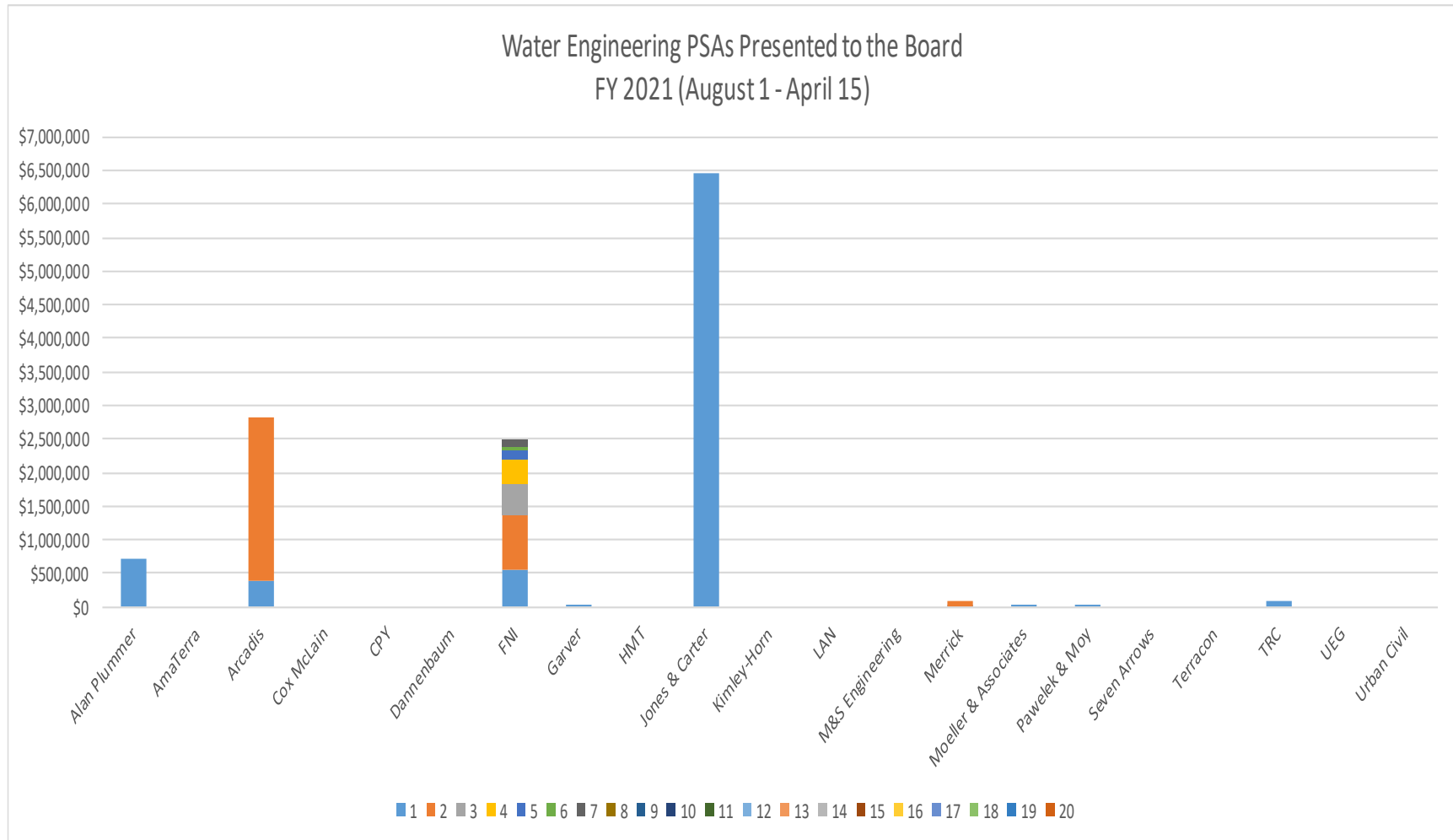
Recognized as a Trusted Community Partner Dedicated to Excellence in Service

Maintain Organizational Reliability and Resiliency

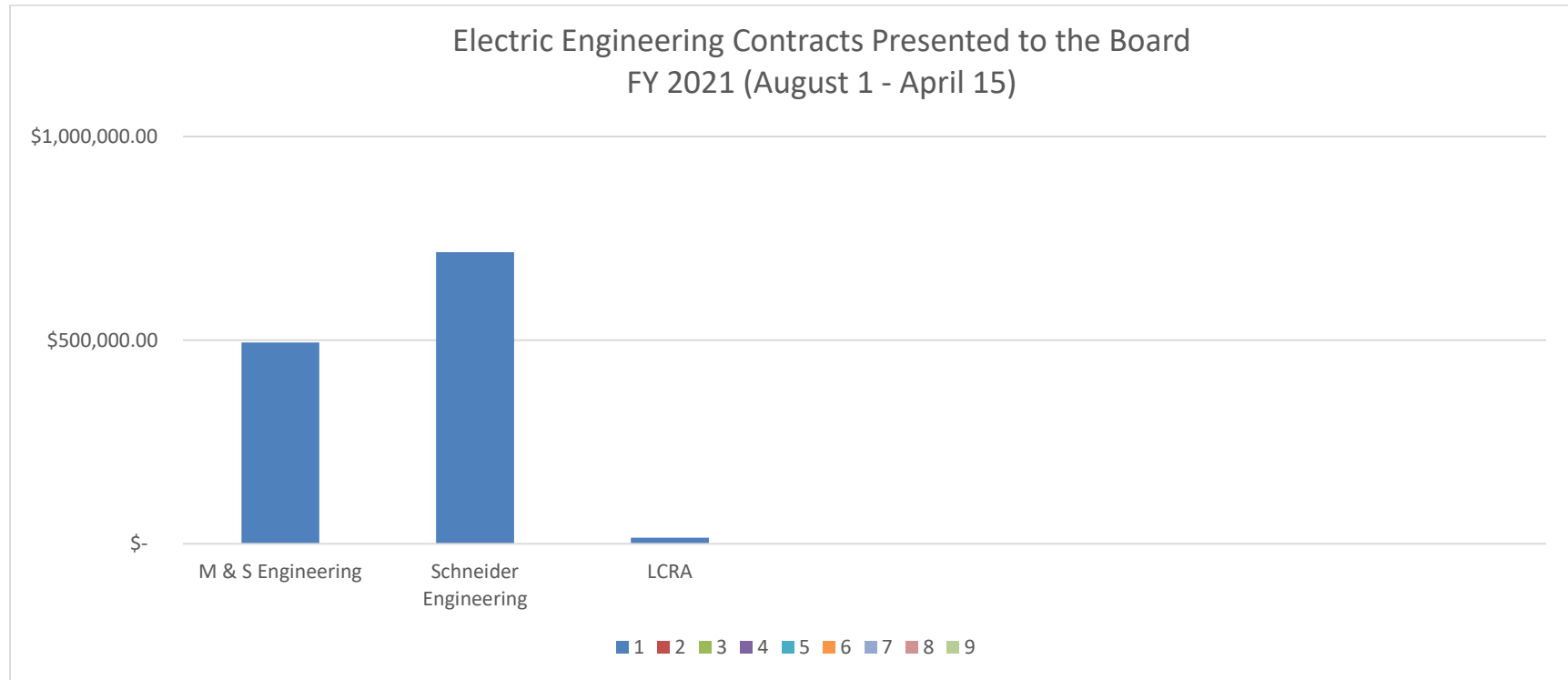
Provide a Safe and Secure Environment

EXHIBITS

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



Vendor	Legend	Project Name	Value	Presented to Board
Alan Plummer	1	Goodwin Lane Water Main	\$720,894	8/27/2020
		Total	\$720,894	
Arcadis	1	Trinity Expansion - Water Supply Facilities	\$391,400	
	2	Hydraulic Model Analysis	\$2,418,834	2/25/2021
		Total	\$2,810,234	
FNI	1	Grandview Pump Station Expansion	\$562,383	8/27/2020
	2	Goodwin Lane Elevated Storage Tank	\$817,926	9/24/2020
	3	Grandview Discharge Line Upgrades & Well 4	\$470,545	
	4	Gruene Rd Sewer Main Rehabilitation/Reloca	\$352,212	
	5	FM 306 Pump Station & Discharge Line	\$140,422	
	6	Oakbrook EST, FCV, 24" Ext	\$29,370	
	7	Rio Lift Station Expansion	\$132,969	
		Total	\$2,505,827	
Garver, LLC.	1	Nautilus Off-site Sewer Extension	\$39,000	
		Total	\$39,000	
Jones & Carter	1	McKenzie WRF Expansion	\$6,472,000	10/29/2020
		Total	\$6,472,000	
Merrick	1	Green Valley Pump Station	\$4,701	
	2	Weltner Road Repaving	\$91,881	
		Total	\$96,582	
Moeller & Associates	1	MSR Reconstruction (CNB)	\$22,292	
		Total	\$22,292	
Pawelek & Moy	1	Klein Road Reconstruction Phase 2	\$19,500	
		Total	\$19,500	
TRC	1	Gruene WWTP Relocation & Expansion	\$94,249	8/27/2020
		Total	\$94,249	



Vendor	Legend	Project Name	Value	Date Presented to Board
M & S Engineering	1	1163 Electric FY21 Capital Projects	\$ 494,085.00	
		Total	\$ 494,085.00	
Schneider Engineering	1	1161 Substation Design FY21	\$ 716,500.00	10/29/2020
		Total	\$ 716,500.00	
LCRA	1	2020 Transmission Planning Assessment	\$ 14,900.00	
		Total	\$ 14,900.00	



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Harper Brothers Construction, LLC for the Construction of the 24-Inch McQueeney Road Water Line Project

BACKGROUND

On February 21, 2021, New Braunfels Utilities (“NBU”) issued a request for bids for the 24-Inch McQueeney Road Water Line Project, which includes installation of approximately 8,300 linear feet (“LF”) of new 24-inch ductile iron water line (the “Project”). The Project will also provide additional transmission capacity to serve existing customers and future growth in the Downtown Pressure Zone.

NBU received fourteen (14) bids on March 19, 2021, for the Project during the public bidding process. The Project team evaluated the bids and recommends the selection of Harper Brothers Construction, LLC (“Harper Brothers”) for the Project. Harper Brothers was the lowest responsible bidder with a base bid of \$3,901,270.

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

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

FINANCIAL IMPACT

The total construction contract with Harper Brothers for the Project is \$3,901,270. The Project is budgeted within the fiscal year 2021 through fiscal year 2022 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 roughly 5% of the contract amount, is being added to the project construction budget. The total contract amount plus contingency equals \$4,101,270.

LINK TO STRATEGIC PLAN

Provide a Safe and Secure Environment

Be a Responsible Steward of Natural Resources

EXHIBITS

1. Construction Contract with Harper Brothers
2. Letter of Recommendation from Plummer and Associates

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

THIS AGREEMENT is dated as of the _____ day of _____ of the year 20__ by and between NEW BRAUNFELS UTILITIES (Owner or NBU) and HARPER BROTHERS CONSTRUCTION, LLC. (Contractor).

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

ARTICLE 1 - WORK

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

The Contract Agreement with Exhibits
Standard General Conditions of the Contract
Special Conditions
Supplemental Conditions
Technical Specifications
Payment Bond
Performance Bond
Contract Drawings produced by Plummer Associates, Inc. dated December 2, 2020
Technical Specifications produced by Plummer Associates, Inc. dated December 2, 2020

1.02 The Work is generally described as follows:

Construction of approximately (i) 8,300 linear feet ("LF") of 24-inch water main generally along McQueeney Road from the County Line Pump Station to Castell Avenue; (ii) clearing and grubbing; (iii) traffic control; (iv) storm water pollution prevention; (v) site restoration; and (vi) 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:

24-Inch McQueeney Road Water Line

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

Jesse Guerra, P.E.
Plummer Associates, Inc.
12500 San Pedro Avenue, Suite 401
San Antonio, Texas 78216
(210) 510-1278

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

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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 Contract Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work shall be substantially complete within **Three Hundred (300) Calendar Days from the notice to proceed date,** and ready for final payment in accordance with Paragraph 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 this 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 Owner and 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, the Owner may withhold, deduct, or recover from Contractor all costs and damages for compensable delay caused by 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 the Owner as a result of such delay. Owner's delay damages, may be incidental to and not directly associated with the Project.

C. Timely final completion is an essential condition of this Contract. 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 Paragraph 4.03, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and

Bidding Requirements, Contracts Forms & Conditions of the Contract
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administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

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

ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment within 30-days of NBU's acceptance of the payment application:

1. Prior to Substantial Completion, progress payments will be made 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 Engineer may determine or Owner may withhold, including but not limited to damages, in accordance with Paragraph 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 Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

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

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. 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.

Bidding Requirements, Contracts Forms & Conditions of the Contract
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C. 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. 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 which 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 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. 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. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

G. Contractor has correlated the information known to 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. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to 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 General Conditions.

8.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are 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. Owner and 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.

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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 Owner and 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 Texas Public Information Act Requests

The Contractor recognizes that 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 the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to NBU's audit rights.

This provision applies if the Contract 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 Contractor must (1) preserve all contracting information related to the Contract Documents as provided by the records retention requirements applicable to NBU for the duration of the Contract; (2) promptly provide to NBU any contracting information related to the Contract Documents that is in the custody or possession of the Contractor on request of NBU; and (3) on completion of the Work, either:

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

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

8.06 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.

8.07 Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited.

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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>.

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.

8.08 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 Contract, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Contract.

ARTICLE 9 - INSURANCE

9.01 Evidence of Contractor's Insurance

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

Exhibit A – Insurance Rider (Attached)

Exhibit B – Contractor's Bid Form (Attached)

Exhibit C – Evidence of Insurance (To Be Supplied by Contractor)

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

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

OWNER:

NEW BRAUNFELS UTILITIES

By: _____

Printed Name: Ian Taylor

Title: CEO

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

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

CONTRACTOR:

HARPER BROTHERS CONSTRUCTION, LLC.

By: _____

Printed Name: Joe Harper

Title: President

[CORPORATE SEAL]

Attest: _____

Title: PM Assistant

Address for giving notices:

654 N Sam Houston Pkwy E

Ste 330

Houston, TX 77060

License No.: _____
 (Where Applicable)

Agent for service or process:

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

END OF DOCUMENT

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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

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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 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

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		the expiring retroactive date.
Contractors Pollution Liability	<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.
Builders Risk	<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. 	<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.

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<p>• 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.</p> <p>• The policy must provide coverage for:</p> <table><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></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></td></tr><tr><td>○ Preservation of property</td><td>Included</td></tr><tr><td>○ Theft</td><td>Included</td></tr><tr><td>• Deductible shall not exceed</td><td>\$10,000</td></tr><tr><td>○ All Risks of Direct Damage, Per Occurrence, except</td><td>2% subject to \$50,000</td></tr><tr><td>○ Named Storm</td><td>minimum \$100,000</td></tr><tr><td>○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</td><td>\$100,000</td></tr><tr><td>○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V</td><td></td></tr></table>	○ 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		○ Mechanical breakdown including hot & cold testing	\$1,000,000	○ Ordinance or law	\$ 25,000	○ Pollutant clean-up and removal		○ Preservation of property	Included	○ Theft	Included	• Deductible shall not exceed	\$10,000	○ All Risks of Direct Damage, Per Occurrence, except	2% subject to \$50,000	○ Named Storm	minimum \$100,000	○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence	\$100,000	○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V		<p>• Such insurance shall cover:</p> <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. <p>• No protective safeguard warranty shall be permitted.</p> <p>• 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:</p> <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. <p>• A waiver of subrogation provision shall be provided in favor of all insureds listed above.</p>
○ Agreed Value	Included																																
○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse	Included																																
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Bidding Requirements, Contracts Forms & Conditions of the Contract
CONTRACT AGREEMENT

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;

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

- 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

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

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.**

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

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: 24-Inch McQueeney Road Water Line

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 Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance 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 himself/herself 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 which 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 paragraph 4.02 of the General Conditions; 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 paragraph 4.04 of the General Conditions.
 - 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 work for the following prices:

Water Utility

ITEM NO	SPEC. NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
1	510	Pipe, 24-Inch Dia. DIP (CL 250) by (all depths), including Excavation and Backfill	LF	8,310	\$ 187.00 \$ 178.00	\$ 1,553,970.00 \$ 1,479,180.00
2	31 70 00	Pipe, 42-Inch Steel Casing, Installed by Bore	LF	990	\$ 810.00	\$ 801,900.00
3	510	Pipe, 42-Inch Steel Casing, Installed by Open Cut	EA	160	\$ 645.00	\$ 103,200.00
4	510	Ductile Iron Fitting, 24-Inch 11.25° Bend	EA	8	\$ 1,620.00	\$ 12,960.00
5	510	Ductile Iron Fitting, 24-Inch 22.5° Bend	EA	16	\$ 1,700.00	\$ 27,200.00
6	510	Ductile Iron Fitting, 24-Inch 45° Bend	EA	17	\$ 1,800.00	\$ 30,600.00
7	510	Ductile Iron Fitting, 24-Inch x 8-Inch MJ Tee	EA	2	\$ 1,900.00	\$ 3,800.00
8	510	Ductile Iron Fitting, 24-Inch x 12-Inch MJ Tee	EA	1	\$ 2,300.00	\$ 2,300.00
9	510	Ductile Iron Fitting, 24-Inch x 16-Inch MJ Tee	EA	2	\$ 2,600.00	\$ 5,200.00
10	510	Ductile Iron Fitting, Blind Flange, 24-Inch	EA	2	\$ 1,300.00	\$ 2,600.00
11	511	Valve, Butterfly, 24-Inch Dia.	EA	8	\$ 12,200.00	\$ 97,600
12	510	Concrete Thrust Block	EA	3	\$ 250.00	\$ 750.00
13	-	Tie-In #1 at STA 1+13: Connect to Ex. 18" Dia. Pipeline	LS	1	\$ 22,000.00	\$ 22,000.00
14	-	Tie-In #2 at STA 35+55: Connect to Ex. 18" Dia. Pipeline	LS	1	\$ 24,000.00	\$ 24,000.00
15	-	Tie-In #3 at STA 55+78: Proposed 12" Dia. Pipeline	LS	1	\$ 33,000.00	\$ 33,000.00

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

ITEM NO	SPEC. NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
		Installation (including Connection)				
16	-	Tie-In #4 at STA 67+98: Connect to Ex. 8" Dia. Pipeline	LS	1	\$13,000.00	\$13,000.00
17	-	Tie-In #5 at STA 78+60: Connect to Ex. 8" Dia. Pipeline	LS	1	\$10,000.00	\$10,000.00
18	-	Tie-In #6 at STA 84+20: Connect to Ex. 24" Dia. Pipeline	LS	1	\$11,000.00	\$11,000.00
19	511	Air/Vacuum Release Valve Assembly, 2"	EA	2	\$9,000.00	\$18,000.00
20	511	Air/Vacuum Release Valve Assembly, 3"	EA	2	\$18,500.00	\$37,000.00
21	511	Air/Vacuum Release Valve Assembly, 4"	EA	1	\$19,000.00	\$19,000.00
22	511	Drain Valve Assembly	EA	4	\$17,000.00	\$68,000.00
23	-	Temporary Line Stop Complete (8- Inch) as directed by OWNER	EA	2	\$6,900.00	\$13,800.00
24	-	Temporary Line Stop Complete (12- Inch) as directed by OWNER	EA	2	\$8,500.00	\$17,000.00
25	-	Temporary Line Stop Complete (18- Inch) as directed by OWNER	EA	3	\$12,500.00	\$37,500.00
26	-	Temporary Line Stop Complete (24- Inch) as directed by OWNER	EA	2	\$18,500.00	\$37,500.00
27	510	Additional Ductile Iron Fittings as directed by OWNER	TON	5	\$500.00	\$2,500.00

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

Erosion Control, Landscaping, Restoration

ITEM NO	SPEC. NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
28	-	Temporary Construction Entrance	EA	1	\$ 2,500.00	\$ 2,500.00
29	-	Metal Access Gate	EA	1	\$ 1,500.00	\$ 1,500.00
30	TXDOT	Asphalt Road Removal and Replacement (2" HMA Type D)	SY	6,260	\$ 19.00	\$ 118,940.00
31	TXDOT	Concrete Road Removal and Replacement	SY	270	\$ 170.00	\$ 45,900.00
32	TXDOT	Gravel Road Removal and Replacement	SY	40	\$ 90.00	\$ 3,600.00
33	-	Walkway Removal and Replacement	SY	1,450	\$ 15.00	\$ 21,750.00
34	TXDOT	Sidewalk Removal and Replacement	SY	210	\$ 150.00	\$ 31,500.00
35	TXDOT	Concrete Curb and Gutter Removal and Replacement	LF	90	\$ 45.00	\$ 4,050.00
36	-	Storm Drain Removal and Replacement	LF	210	\$ 170.00	\$ 35,700.00
37	-	Barbed Wire Fence Removal and Disposal	LF	520	\$ 3.00	\$ 1,560.00
38	604	Non-Native Seeding for Erosion Control, Hydromulch (includes topsoil)	SY	4,500	\$ 4.00	\$ 18,000.00
39	604	Blackland Prairie, Hydromulch, throughout Fischer Park	SY	9,900	\$ 4.00	\$ 39,600.00
40	610	Preservation of Trees and Other Vegetation	LS	1	\$ 10,000.00	\$ 10,000.00
41	-	Tree Replacement in Fischer Park	ALW	-	\$10,000.00	\$10,000.00

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

General Items

ITEM NO	SPEC. NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
42	-	Utility Location	LF	8,310	\$ 5.00	\$ 41,550.00
43	509	Trench Safety Systems (all depths)	LF	8,310	\$ 1.00	\$ 8,310.00
44	01 57 00	SWPPP and Implementation	LF	8,310	\$ 12.00	\$ 99,720.00
45	-	Corrosion Study and Implementation at STA 41+00 as directed by OWNER	LS	1	\$ 15,000.00	\$ 15,000.00
46	102	Clearing and Grubbing	LS	1	\$ 50,000.00	\$ 50,000.00
47	703	Traffic Control Plan and Implementation	LS	1	\$ 100,000.00	\$ 100,000.00
48	510	Hydrostatic Testing and Disinfection	LS	1	\$ 65,000.00	\$ 65,000.00
49	TXDOT	Hot Mix Asphalt, Type B as directed by Owner	CY	500	\$ 178.00	\$ 89,000.00
50	-	Mobilization and Demobilization (5%)	LS	1	\$ 158,000.00	\$ 158,000.00
Total Base Bid (Bid Items 1-50)						\$ 3,901,270.00

Alternate Bid Item

ITEM NO	SPEC. NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
51	510	Pipe, 24-Inch Dia. PVC (C-900) (CL 235) by (all depths), including Excavation and Backfill	LF	8,310	^{CB} \$ 197.00 \$ 196.00	^{CB} \$ 1,637,070.00 \$ 1,628,760.00
Total Alternate Bid (Bid Item 51)						\$ 1,637,070.00 ^{CB} \$ 1,628,760.00

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

TOTAL BASE BID:

\$ # 3,901,270.00

TOTAL ALTERNATE BID:

\$ # 1,628,760.00

TOTAL BASE BID + ALTERNATE BID:

\$ # 5,530,030.00

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with paragraph 14.07 of the General Conditions within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to liquidated damages and special damages in the event of failure to complete the Work on time.
6. The following documents are attached to and made a condition of this Bid:
 - a) Required Bid Security of five percent (5%) of the Bidder's maximum base bid price and in the form of approved bid bond.
7. Communication concerning this Bid shall be addressed to:
 New Braunfels Utilities
 Purchasing Manager
 355 FM 306,
 New Braunfels, TX 78130
 Phone: 830-608-8867
 Email: Purchasing@NBUTexas.com
8. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.
9. The undersigned acknowledges receipt of the following addenda:

Addendum No. 1 dated	<u>3/10/21</u>	Received	<u>MW</u>
Addendum No. 2 dated	<u>3/16/21</u>	Received	<u>MW</u>
Addendum No. 3 dated	<u>3/17/21</u>	Received	<u>MW</u>
Addendum No. 4 dated	_____	Received	_____
Addendum No. 5 dated	_____	Received	_____

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

 Secretary, *if bidder is a corporation

(Seal)

 Harper Brothers Construction, LLC

 Company Name of Bidder


 Authorized Signature

 3/19/2021

 Date

 Matt Wright

 Printed Name of Authorized Signature

 11550 IH10 W, Suite 100

 San Antonio, TX 78230

 Address

 P: (210)740-0099 F: (210)740-0056

 Telephone Number/Email

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

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

Exhibit C-Evidence of Insurance



CERTIFICATE OF LIABILITY INSURANCE

Item 5.

DATE (MM/DD/YYYY)

4/13/2021

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

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

PRODUCER VTC Insurance Group Troy Office 1175 W. Long Lake Ste. 200 Troy MI 48098-4960		CONTACT NAME: Jackie Wilson PHONE (A/C, No, Ext): (248) 828-3377 FAX (A/C, No): (248) 828-3741 E-MAIL ADDRESS: jwilson@vtcins.com															
INSURED Harper Brothers Construction, LLC 654 N. Sam Houston Parkway E Suite 330 Houston TX 77060		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: National Fire Ins. of Hartford</td> <td>20478</td> </tr> <tr> <td>INSURER B: Continental Insurance Co.</td> <td>035289</td> </tr> <tr> <td>INSURER C: Continental Casualty Co</td> <td>20443</td> </tr> <tr> <td>INSURER D: Continental Casualty Company</td> <td>20443</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A: National Fire Ins. of Hartford	20478	INSURER B: Continental Insurance Co.	035289	INSURER C: Continental Casualty Co	20443	INSURER D: Continental Casualty Company	20443	INSURER E:		INSURER F:	
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INSURER E:																	
INSURER F:																	

COVERAGES

CERTIFICATE NUMBER: 2020-2021 Master

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						
		X	Y	6018195053	7/22/2020	7/22/2021	EACH OCCURRENCE \$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 15,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 4,000,000
	OTHER:						PRODUCTS - COMP/OP AGG \$ 4,000,000
							Employee Benefits \$ 1,000,000
A	AUTOMOBILE LIABILITY						
	<input checked="" type="checkbox"/> ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	X	Y	6018195067	7/22/2020	7/22/2021	BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							Medical payments \$ 5,000
B	<input checked="" type="checkbox"/> UMBRELLA LIAB						
	<input checked="" type="checkbox"/> EXCESS LIAB						EACH OCCURRENCE \$ 10,000,000
	<input type="checkbox"/> RETENTION \$ 10,000			6018195098	7/22/2020	7/22/2021	AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	618195070	7/22/2020	7/22/2021	E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
D	Leased/Rented			6018619119	7/22/2020	7/22/2021	E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Installation Floater			6018619119	7/22/2020	7/22/2021	\$1,000,000 Per Item
							\$5,000,000

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

NBU 02607 24-inch McQueeney Road Water Line. Where required by written contract, New Braunfels Utilities and Owner Parties are add'l insured for General Liability (GL) as respects ongoing & completed operations on a primary & non-contributory basis. GL, Auto & Workers Comp policies include waiver of subrogation on behalf of New Braunfels Utilities and Owner Parties, as required by written contract and where allowed by law. Umbrella/Excess liability coverage follows form over GL, Auto & Employers Liability. Insurer will endeavor to mail 30 days written notice of cancellation to the certificate holder.

CERTIFICATE HOLDER

CANCELLATION

New Braunfels Utilities Purchasing Manager 355 FM 306 New Braunfels, TX 78130	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 Robert Trobec/V46

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USDOT Number: _____ Date Received: 10/19/2020

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0008. Public reporting for this collection of information is estimated to be approximately 2 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, Washington, D.C. 20590.



United States Department of Transportation
Federal Motor Carrier Safety Administration

Endorsement for Motor Carrier Policies of Insurance for Public Liability
under Sections 29 and 30 of the Motor Carrier Act of 1980

FORM MCS-90

Issued to HARPER BROTHERS CONSTRUCTION LLC of Texas
(Motor Carrier name) (Motor Carrier state or province)

Dated at 10:00 am on this 19th day of October, 2020

Amending Policy Number: 6018195067 Effective Date: 07/22/2020

Name of Insurance Company: NATIONAL FIRE INSURANCE COMPANY OF HARTFORD

Countersigned by: Carol Kelly

(authorized company representative)

The policy to which this endorsement is attached provides primary or excess insurance, as indicated for the limits shown (check only one):

- ☒ This insurance is primary and the company shall not be liable for amounts in excess of \$ 1,000,000.00 for each accident.
- ☐ This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: 877-574-0540.

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under 49 U.S.C. 13901, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).

(continued on next page)

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Property Damage means damage to or loss of use of tangible property.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon,

or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of anyone accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

(continued on next page)

SCHEDULE OF LIMITS — PUBLIC LIABILITY

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (in interstate or foreign commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Property (nonhazardous)	\$750,000
(2) For-hire and Private (in interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8 , transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403 .	\$5,000,000
(3) For-hire and Private (in interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,000 or more pounds).	Oil listed in 49 CFR 172.101 ; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101 , but not mentioned in (2) above or (4) below.	\$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403 .	\$5,000,000

*The schedule of limits shown does not provide coverage. The limits shown in the schedule are for information purposes only.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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Policy No: 6018195053
Endorsement No: 3
Effective Date: 07-22-2020

Insured Name: HARPER BROTHERS CONSTRUCTION, LLC

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CNA PARAMOUNT

Contractors' General Liability Extension Endorsement

1. ADDITIONAL INSURED

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

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Policy No: 6018195053

Endorsement No: 3

Effective Date: 7-22-2020

Insured Name: HARPER BROTHERS CONSTRUCTION, LLC

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Contractors' General Liability Extension Endorsement

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, holstaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:



CNA PARAMOUNT

Contractors' General Liability Extension Endorsement

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. **ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE**

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. **BODILY INJURY – EXPANDED DEFINITION**

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. **BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE**

Under **CONDITIONS**, the condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. **BROAD KNOWLEDGE OF OCCURRENCE**

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. **NOTICE OF OCCURRENCE**

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. **BROAD NAMED INSURED**

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

- 3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or



CNA PARAMOUNT

Contractors' General Liability Extension Endorsement

b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership, limited liability company or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or
 - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury or property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
 - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions k. and l. and replace them with the following:

This insurance does not apply to:

k. Damage to Your Product

Property damage to your product arising out of it, or any part of it except when caused by or resulting from:

- (1) fire;
- (2) smoke;
- (3) collapse; or
- (4) explosion.

l. Damage to Your Work

Property damage to your work arising out of it, or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply:

- (1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or

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Policy No: 6018195053
Endorsement No: 3
Effective Date: 7-22-2020

Insured Name: HARPER BROTHERS CONSTRUCTION, LLC

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Contractors' General Liability Extension Endorsement

(2) If the cause of loss to the damaged work arises as a result of:

- (a) fire;
- (b) smoke;
- (c) collapse; or
- (d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage to your product and your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage to your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

8. ELECTRONIC DATA LIABILITY

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Policy No: 6018195053
Endorsement No: 3
Effective Date: 7-22-2020

Insured Name: HARPER BROTHERS CONSTRUCTION, LLC

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CNA PARAMOUNT

Contractors' General Liability Extension Endorsement

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion p. **Electronic Data** and replace it with the following:

This insurance does not apply to:

p. **Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph (1) above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph (1) or (2) above.

- B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

- C. The following definition is added to **DEFINITIONS**:

Electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

Property damage means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

- E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the \$100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for

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claims arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily Injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;
2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.



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- E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs 1.b.(1) and 1.b.(2) with the following:

- b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

- (1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.
- (2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

- i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

- ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

- iii. add the following additional exclusions:

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

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any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees or volunteer workers** in the rendering of:

- a. **professional health care services** on behalf of the **Named Insured** or
- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

iii. amend the definition of **insured** to:

a. add the following:

the **Named Insured's employees** are **insureds** with respect to:

- (1) **bodily injury** to a co-employee while in the course of the co-employee's employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and



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- (2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

the **Named Insured's** **volunteer workers** are **insureds** with respect to:

- (1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

- (2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

- D. The **Other Insurance** condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

Other Insurance

- b. **Excess Insurance**

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- the **bodily injury** or **property damage** first occurred after such termination date; and
- there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph c. above. But this provision will not serve to exclude **bodily injury**, **property damage** or **personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion j. **Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:

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J. Damage to Property

Property damage to:

- (1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the **Named Insured**;
- (4) Personal property in the care, custody or control of the **Insured**;
- (5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are **your work**.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

Paragraphs (3) and (4) of this exclusion do not apply to **property damage** to:

- I. tools, or equipment the **Named Insured** borrows from others, nor
- II. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- b. property that is **mobile equipment** leased by an **Insured**;
- c. property that is an **auto**, aircraft or watercraft;
- d. property in transit; or
- e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

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- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.

- C. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

- D. Paragraph 6., Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph 5. above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **Coverage A** for **damages** because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

a. \$500,000; or

b. The Damage To Premises Rented To You Limit shown in the Declarations.

- E. Paragraph 4.b.(1)(a)(ii) of the **Other Insurance** Condition is deleted and replaced by the following:

(ii) That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

17. MEDICAL PAYMENTS

- A. **LIMITS OF INSURANCE** is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

(1) \$15,000 unless a different amount is shown here: \$N,NNN,NNN,NNN; or

(2) the amount shown in the Declarations for Medical Expense Limit.

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- B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph 1.a.(3)(b) with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

18. NON-OWNED AIRCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

19. NON-OWNED WATERCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

- (a) less than 75 feet long; and
- (b) not being used to carry persons or property for a charge.

20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

- A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

- B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the **Named Insured**; or
- (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

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This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

Provision 1. **ADDITIONAL INSURED** of this endorsement; or

attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

- A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.
- B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph 2.d. is replaced by the following:

- d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

- C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

22. PROPERTY DAMAGE – ELEVATORS

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs (3), (4) and (6) of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

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- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

- 1. the **Named Insured's** ongoing operations; or
- 2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

- 1. is in effect or becomes effective during the term of this **Coverage Part**; and
- 2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

- 1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor

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2. **Bodily injury or property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.
- B. Condition 4. **Other Insurance** is amended to add the following subparagraph 4.b.(1)(c):
- This insurance is excess over:
- (c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.

- C. **DEFINITIONS** is amended to add the following definitions:

Consolidated (wrap-up) insurance program means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

Residential structure means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
2. the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy Issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
 - A. in the performance of your ongoing operations subject to such **written contract**; or
 - B. in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
 1. the **written contract** requires you to provide the additional insured such coverage; and
 2. this **coverage part** provides such coverage.
- II. But if the **written contract** requires:
 - A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
 - B. additional insured coverage with "arising out of" language; or
 - C. additional insured coverage to the greatest extent permissible by law;
 then paragraph I. above is deleted in its entirety and replaced by the following:
WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.
- III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
 - A. coverage broader than required by the **written contract**; or
 - B. a higher limit of insurance than required by the **written contract**.
- IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
 - A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
 1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 2. supervisory, inspection, architectural or engineering activities; or
 - B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

Primary and Noncontributory Insurance

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
 1. the **bodily injury or property damage**; or
 2. the offense that caused the **personal and advertising injury**;
 for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA75079XX (10-16)
Page 2 of 2

Policy No: 6018195053
Endorsement No: 001
Effective Date: 7-22-2020

Insured Name: Harper Brothers Construction LLC

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WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 42 03 04 B

(Ed. 6-14)

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: ALL TEXAS LOCATIONS AND OPERATIONS.

3. Premium:

The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: SEE SCHED

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 7-22-2020
Insured Harper Brothers Construction LLC

Policy No. 618195070

Endorsement No.
Premium

Insurance Company Continental Casualty

Countersigned by 

WC 42 03 04 B
(Ed. 06-14)



Harper Brothers Construction LLC
P# 6018195067
7-22-2020 to 7-22-2021

CNA63359XX
(Ed. 04/12)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
CONTRACTORS EXTENDED COVERAGE ENDORSEMENT
- BUSINESS AUTO PLUS -

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
- b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an "insured" under any other liability "policy" providing "auto" coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) "Bodily injury" or "property damage" caused by an "accident" that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an "insured" under any other liability "policy" providing "auto" coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an "insured" but only with respect to their legal liability for acts or omissions of a person, who qualifies as an "insured" under **Section II – Who Is An Insured** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's"

name, with your permission, while performing duties related to the conduct of your business.

"Policy," as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision **C.** is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered "auto," any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.



D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered "auto" you lease, hire, rent or borrow without a driver; and
- b. Any covered "auto" hired or rented by your "employee" without a driver, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one "accident" or "loss" is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered auto. No deductible applies to "loss" caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned "autos."
- e. Such physical damage coverage for hired "autos" will:
 - (1) Include loss of use, provided it is the consequence of an "accident" for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per "accident."

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered "auto" also applies to "loss" to any permanently installed electronic equipment including its antennas and other accessories.

- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution in Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the "diminution in value" exclusion does not apply to:

- a. Any covered "auto" of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered "auto" of the private passenger type hired or rented by your "employee" without a driver for a period of 30 days or less, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a "diminution in value" loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for "loss" to a covered "auto" in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the "auto's" actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

1. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers," except:
 - a. An "auto" owned by that "executive officer" or a member of that person's household; or
 - b. An "auto" used by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos."

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered "auto"; and

(2) Excess over any other collectible insurance.

2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are "insureds" while using a covered "auto" described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

- (4) Your "employees" may know of an "accident" or "loss." This will not mean that you have such knowledge, unless such "accident" or "loss" is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your "employees" may know of documents received concerning a claim or "suit." This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or

damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an "accident" or "loss."

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract. That written contract must have been entered into prior to "Accident" or "Loss."

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. Paragraph C. is deleted and replaced by the following:

"Bodily Injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

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Addendum to Certificate

Contractors Pollution Liability:

Carrier: Allied World Assurance Company

NAIC #19489

Policy Number: 03108383

Policy Term: 7/22/2020 to 7/22/2021

\$1,000,000 Occurrence/\$1,000,000 Aggregate – Aggregate Increased 9/16/2020

\$2,000,000 Aggregate: Effective 9/16/2020 to 7/22/2021

\$3,000,000 Aggregate: Effective 12/3/2020 to 7/22/2021

Excess Umbrella (2nd layer)

Carrier: Indian Harbor Insurance Company

NAIC #36940

Policy Number: XS005026203

Policy Term: 7/22/2020 to 7/22/2021

\$5,000,000 Occurrence/\$5,000,000 Aggregate

Excess Umbrella (3rd Layer)

Carrier: Lloyds of London

Policy Number: XS1122820

Policy Term: 7/22/2020 to 7/22/2021

\$5,000,000 Occurrence/\$5,000,000 Aggregate



PLUMMER

00934-006-01

April 1, 2021

Mr. Michael 'Lee' Perry, PE
Senior Engineer
New Braunfels Utilities (NBU)
355 FM 306
New Braunfels, Texas 78130

RE: 24-Inch McQueeney Road Water Line
NBU Job No.: 1071
Bid Recommendation

Dear Mr. Perry:

On March 19, 2021 at 10:00 AM, sealed bids were received and opened by New Braunfels Utilities (NBU) for the 24-Inch McQueeney Road Water Line Pipeline Project. Plummer Associates have tabulated the bid results and completed a review of the bid documents submitted, and a total of fourteen (14) bids were received with total (corrected) bid amounts ranging from \$3,901,270 to \$6,996,770. These bid amounts reflect the installation of ductile iron pipe. Harper Brothers Construction, LLC (Harper Brothers) has been determined to be the lowest responsible bidder. The contractor acknowledged and reflected the items identified in the three addendums associated with the request for bids.

Plummer has contacted three (3) references listed for similar projects submitted by Harper Brothers in their company information packet to inquire about their experience working with this contractor with regard to items such as maintenance of schedule, quality of work, and change order negotiation. The references' responses are included as Attachment A. After having worked with Harper Brothers on the Avery Park Water Main Improvements Project as the construction manager, I also included a referenced summary as well. All references were acceptable as they all noted positive feedback. It is apparent that Harper Brothers has performed exceptionally well on all the referenced projects.

Additionally, Adam Willard, P.E. with NBU provided brief input regarding his experience with Harper Brothers. Adam spoke highly of Harper Brothers and his experience working with them regarding the Avery Park Water Main Improvements Project.

A summary of the reference contact information is contained in the table below.

Reference No.	Owner	Contact	Telephone No.	Project	Scope
A-1	City of Houston	John Mudd, PE	832-975-1560	54" Waterline Vicery Drive	54" Waterline Installation
A-2	City of Houston	John Mudd, PE	832-975-1560	108" Waterline Lee Rd. to Vickery Dr.	108" Waterline Installation
A-3	Texas Department of Transportation	John Elan, PE	281-319-6400	Eastside Street Improvements	Storm Drain Installation and Road Expansion
A-4	Plummer Associates, Inc.	Jesse Guerra, PE	210-510-0888	Avery Park Waterline	30" Waterline Installation

Harper Brothers also submitted current Total Recordable Incident Rate and Effective Experience Modification Factor data. Both ratings were below established averages of 3 and 1, respectively.

Lastly, an independent 2019 audit performed by Melton & Melton, LLC. (2020's audit is probably still being performed) indicated that Harper Brothers' operations and cash flows ended with generally accepted accounting principles.

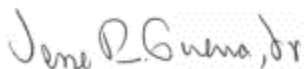
A review of their bid tabulation did not seem to reflect any areas of concern. The widely fluctuant steel costs accounts for most of the project cost differences with respect to the OPCC Plummer provided.

Therefore, based on our review of the bid proposal, favorable references for similar projects, submitted bid proposal, and their overall company's financial audit, Plummer's recommendation is to award the 24-Inch McQueeney Road Water Line Project contract to Harper Brothers Construction, LLC in the amount of \$3,901,270.00.

If you have any questions regarding this recommendation, please feel free to contact me at (210) 510-1278 or by email at jguerra@plummer.com.

Respectfully,

PLUMMER



Jesse R. Guerra, Jr., PE
Senior Project Manager

Attachments [1]:

Attachment A – Reference Checks (A1-A4)

Attachment A
Reference Checks (A1-A4)

PLUMMER REFERENCE CHECK QUESTIONNAIRE
NBU – 24-INCH MCQUEENEY ROAD WATER LINE
NBU PROJECT NO.: 1071

Reference No. 1: 54" Waterline Vicery Drive
Owner: City of Houston **Name:** John Mudd, PE
Title: Practice Leader **Phone Number:** (832) 975-1560
Project Summary: Installation of a 54" waterline from Vicery Dr. (Aeropark) to World Houston in Houston, Texas. **Email:** N/A
Project Cost: \$16.2 Million
Project Completion: March 2020

1. Did the Contractor meet the project schedule? If not, why?
Yes, 54" completed as scheduled
2. How would you rate the Contractor's willingness to work with the City of Houston, TxDOT, and others in carrying out the intent of the contract documents? (Excellent, Average, Very Poor)
Excellent.
3. Did you think the contractor understood the intent of the specifications and the expectations of the owner? **Yes**
4. If issues arose regarding the specifications or the intent of the project, did the contractor handle the matter in a fair manner with the interest of the owner under consideration?
Yes, positive feedback. Contractor held owner's best interest at for front.
5. How would you rate the contractor in dealing with private owners? Were there any complaints on the project?
Excellent
6. If there were change orders, were they handled in a fair manner by the Contractor? (Yes, No) Were they owner requested?
Yes, handled in a fair manner. All but one change order was initiated by the owner.
7. Were there any claims or lawsuits between the Contractor and City of Houston, TxDOT, or others? (Yes, No) If so, how were they resolved?
No
8. What overall rating would you give the Contractor? (Excellent, Average, Very Poor) Would you work with this contractor again?
Excellent and yes, they would work with the contractor again.
9. Do you know any of the staff on the listed project? If so, what was your experience with them?
N/A
10. Is there any additional information regarding this project or contractor that you would like to share?
This is a very competent contractor that is easy to get along with.

PLUMMER REFERENCE CHECK QUESTIONNAIRE
NBU – 24-INCH MCQUEENEY ROAD WATER LINE
NBU PROJECT NO.: 1071

Reference No. 2: 108" Waterline from Lee Rd to Vickery Drive
Owner: City of Houston **Name:** John Mudd, PE
Title: Practice Leader **Phone Number:** (832) 975-1560
Project Summary: Installation of a 108" waterline from Leed Road to Vickery Drive in the City of Houston **Email:** N/A
Project Cost: \$16.2 Million
Project Completion: March 2020

1. Did the Contractor meet the project schedule? If not, why?
Yes, 108" was completed ahead of schedule
2. How would you rate the Contractor's willingness to work with the City of Houston, TxDOT, and others in carrying out the intent of the contract documents? (Excellent, Average, Very Poor)
Excellent.
3. Did you think the contractor understood the intent of the specifications and the expectations of the owner? **Yes**
4. If issues arose regarding the specifications or the intent of the project, did the contractor handle the matter in a fair manner with the interest of the owner under consideration?
Yes, positive feedback. Contractor held owner's best interest at for front.
5. How would you rate the contractor in dealing with private owners? Were there any complaints on the project?
Excellent
6. If there were change orders, were they handled in a fair manner by the Contractor? (Yes, No) Were they owner requested?
Yes, handled in a fair manner. All but one change order was initiated by the owner.
7. Were there any claims or lawsuits between the Contractor and City of Houston, TxDOT, or others? (Yes, No) If so, how were they resolved?
No
8. What overall rating would you give the Contractor? (Excellent, Average, Very Poor) Would you work with this contractor again?
Excellent and yes, they would work with the contractor again.
9. Do you know any of the staff on the listed project? If so, what was your experience with them?
N/A
10. Is there any additional information regarding this project or contractor that you would like to share?
This is a very competent contractor that is easy to get along with.

PLUMMER REFERENCE CHECK QUESTIONNAIRE
NBU – 24-INCH MCQUEENEY ROAD WATER LINE
NBU PROJECT NO.: 1071

Reference No. 3: Eastside Street
Owner: Texas Department of Transportation **Name:** John Elan, PE
Title: Project Engineer **Phone Number:** (281) 319-6400
Project Summary: Road improvements and storm drain installation. **Email:** N/A
Project Cost: \$5.8 Million
Project Completion: January 2020

1. Did the Contractor meet the project schedule? If not, why?
Yes
2. How would you rate the Contractor's willingness to work with the City of Sugar Land, TxDOT, and others in carrying out the intent of the contract documents? (Excellent, Average, Very Poor)
Good contractor.
3. Did you think the contractor understood the intent of the specifications and the expectations of the owner? **Yes**
4. If issues arose regarding the specifications or the intent of the project, did the contractor handle the matter in a fair manner with the interest of the owner under consideration?
Yes
5. How would you rate the contractor in dealing with private owners? Were there any complaints on the project?
Contractor is very professional and held the owner's interest at the forefront. We had no complaints.
6. If there were change orders, were they handled in a fair manner by the Contractor? (Yes, No) Were they owner requested?
Yes
7. Were there any claims or lawsuits between the Contractor and City of Houston, TxDOT, or others? (Yes, No) If so, how were they resolved?
No
8. What overall rating would you give the Contractor? (Excellent, Average, Very Poor) Would you work with this contractor again?
Good rating, we would work with the contractor again.
9. Do you know any of the staff on the listed project? If so, what was your experience with them?
N/A
10. Is there any additional information regarding this project or contractor that you would like to share?
This is a very competent contractor that is easy to get along with.

PLUMMER REFERENCE CHECK QUESTIONNAIRE
NBU – 24-INCH MCQUEENEY ROAD WATER LINE
NBU PROJECT NO.: 1071

Reference No. 4 Avery Park Water Line Project

Owner: New Braunfels Utilities

Name: Jesse Guerra, PE

Title: Construction Manager

Phone Number: (210) 510-1278

Project Summary: Installation of a 30" waterline from Interstate 35 to Weltner Road in New Braunfels, Texas.

Email: jguerra@plummer.com

Project Cost: \$12.6 Million

Project Completion: March 2021

1. Did the Contractor meet the project schedule? If not, why?
Yes, 30" completed as scheduled.
2. How would you rate the Contractor's willingness to work with the City of New Braunfels, TxDOT, and others in carrying out the intent of the contract documents? (Excellent, Average, Very Poor)
Excellent.
3. Did you think the contractor understood the intent of the specifications and the expectations of the owner? Yes
4. If issues arose regarding the specifications or the intent of the project, did the contractor handle the matter in a fair manner with the interest of the owner under consideration?
For the most part, yes. There was a claim early in the project regarding the work associated with the HDD portion of the work, but HBC ultimately did the work with no executed change order.
5. How would you rate the contractor in dealing with private owners? Were there any complaints on the project?
The project scope involved disturbing many different parcels, in order to complete the project. I believe all the complaints were satisfactorily addressed.
6. If there were change orders, were they handled in a fair manner by the Contractor? (Yes, No) Were they owner requested?
Yes, handled in a fair manner. Most change orders were initiated by NBU.
7. Were there any claims or lawsuits between the Contractor and City of Houston, TxDOT, or others? (Yes, No) If so, how were they resolved?
No
8. What overall rating would you give the Contractor? (Excellent, Average, Very Poor) Would you work with this contractor again?
Excellent and yes, they would work with the contractor again.
9. Do you know any of the staff on the listed project? If so, what was your experience with them?
Yes. The superintendent worked for another contractor, when previously doing work for SAWS.
10. Is there any additional information regarding this project or contractor that you would like to share?
This is a competent contactor that is easy to get along with.



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with JM Pipeline, LLC for the Construction of the Nautilus Tract Offsite Sewer Project

BACKGROUND

In an effort to promote job growth in the greater New Braunfels area, the New Braunfels Economic Development Corporation (“NBEDC”) and Continental Automotive Systems (“Continental”) negotiated a contract for Continental to locate a new automotive parts manufacturing facility in New Braunfels (the “NBEDC Contract”). On February 27, 2020, the New Braunfels Utilities (“NBU”) Board of Trustees approved a sewer extension contract with NBEDC in connection with the NBEDC Contract with Continental that requires (i) NBU to construct a sewer line extension and (ii) NBEDC to pay all of the costs associated with the construction of said sewer line extension (the “Sewer Extension Contract”). The work contemplated in the Sewer Extension Contract specifically includes the installation of approximately 4,800 linear feet (“LF”) of new 12” sewer line from Alligator Creek to the proposed Continental site near Kohlenberg Road (the “Nautilus Offsite Sewer Project” or the “Project”).

On March 12, 2021, New Braunfels Utilities (“NBU”) issued a request for bids for the Project. NBU received twelve (12) bids on March 31, 2021, for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of JM Pipeline, LLC (“JM Pipeline”) for the Project. JM Pipeline was the lowest responsible bidder with a base bid of \$882,162.

NBU staff requests that the Board of Trustees approve the construction contract with JM Pipeline for the Project.

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

FINANCIAL IMPACT

The total construction contract with JM Pipeline for the Project is \$882,162. The Project is budgeted within the fiscal year 2021 through fiscal year 2022 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency in the amount of \$88,216, which is roughly 10% of the contract amount, is being added to the project construction budget. The total contract amount plus contingency equals \$970,378. The NBEDC will reimburse all costs associated with this project to NBU.

LINK TO STRATEGIC PLAN

Provide a Safe and Secure Environment

Be a Responsible Steward of Natural Resources

EXHIBITS

1. Construction Contract with JM Pipeline
2. Letter of Recommendation from Garver LLC

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

THIS AGREEMENT is dated as of the _____ day of _____ of the year 20__ by and between NEW BRAUNFELS UTILITIES (Owner or NBU) and JM PIPELINE, LLC, (Contractor).

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

ARTICLE 1 - WORK

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

The Contract Agreement with Exhibits
Standard General Conditions of the Contract
Special Conditions
Supplemental Conditions
Technical Specifications
Payment Bond
Performance Bond
General Requirements and Technical Specifications prepared by Garver, LLC, dated November 19, 2020
Design Drawings prepared by Garver, LLC, dated November 19, 2020

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 4,800 linear feet (LF) of 12-inch wastewater main; (ii) stormwater pollution prevention plan; (iii) fencing; (iv) clearing and grubbing; 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:

Nautilus Tract Offsite Sewer Extension Project

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

Greg T. Swoboda, P.E.
Garver, LLC
13750 San Pedro Avenue
Suite 350
San Antonio, TX 78232
(210) 447-6250

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

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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 Contract 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 and Ten (210) Calendar Days from the notice to proceed date**, and ready for final payment in accordance with Paragraph 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 this 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 Owner and 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, the Owner may withhold, deduct, or recover from Contractor all costs and damages for compensable delay caused by 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 the Owner as a result of such delay. Owner's delay damages may be incidental to and not directly associated with the Project.

C. Timely final completion is an essential condition of this Contract. 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 Paragraph 4.03, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and

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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 the Owner in the event of default or breach by the Contractor.

ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment within 30-days of NBU's acceptance of the payment application:

1. Prior to Substantial Completion, progress payments will be made 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 Engineer may determine or Owner may withhold, including but not limited to damages, in accordance with Paragraph 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 Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

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

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. 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.

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C. 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. 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 which 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 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. 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. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

G. Contractor has correlated the information known to 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. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to 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 General Conditions.

8.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are 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. Owner and 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.

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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 Owner and 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 Texas Public Information Act Requests

The Contractor recognizes that 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 the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to NBU's audit rights.

This provision applies if the Contract 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 Contractor must (1) preserve all contracting information related to the Contract Documents as provided by the records retention requirements applicable to NBU for the duration of the Contract; (2) promptly provide to NBU any contracting information related to the Contract Documents that is in the custody or possession of the Contractor on request of NBU; and (3) on completion of the Work, either:

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

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

8.06 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.

8.07 Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited.

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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>.

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.

8.08 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 Contract, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Contract.

ARTICLE 9 - INSURANCE

9.01 Evidence of Contractor's Insurance

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

Exhibit A – Insurance Rider (Attached)

Exhibit B – Contractor's Bid Form (Attached)

Exhibit C – Evidence of Insurance (To Be Supplied by Contractor)

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

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

OWNER:

NEW BRAUNFELS UTILITIES

By: _____

Printed Name: Ian TaylorTitle: CEO

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

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

CONTRACTOR:

JM PIPELINE, LLC.

By: Printed Name: Gaspar CaracheoTitle: Owner

[CORPORATE SEAL]

Attest: Title: Office Manager

Address for giving notices:

P.O Box 92614Horseshoe Bay, TX78654

License No.: W/A
 (Where Applicable)

Agent for service or process:

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

END OF DOCUMENT

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Exhibit A to Contract Agreement
Owner's Insurance Requirements of Contractor

1. Specific Insurance Requirements

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

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

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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 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

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<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. 	<p>the expiring retroactive date.</p> <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. 	<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.

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<p>* 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.</p> <p>* The policy must provide coverage for:</p> <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 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></td> </tr> <tr> <td>○ Preservation of property</td> <td>Included</td> </tr> <tr> <td>○ Theft</td> <td>Included</td> </tr> <tr> <td>• Deductible shall not exceed</td> <td></td> </tr> <tr> <td>○ All Risks of Direct Damage, Per Occurrence, except</td> <td>\$10,000</td> </tr> <tr> <td>○ Named Storm</td> <td>2% subject to \$50,000 minimum</td> </tr> <tr> <td></td> <td>\$100,000</td> </tr> <tr> <td>○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</td> <td>\$100,000</td> </tr> <tr> <td>○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V</td> <td></td> </tr> </table>	○ 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		○ Preservation of property	Included	○ Theft	Included	• Deductible shall not exceed		○ All Risks of Direct Damage, Per Occurrence, except	\$10,000	○ Named Storm	2% subject to \$50,000 minimum		\$100,000	○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence	\$100,000	○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V		<p>* Such insurance shall cover:</p> <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. <p>• No protective safeguard warranty shall be permitted.</p> <p>• 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:</p> <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. <p>• A waiver of subrogation provision shall be provided in favor of all insureds listed above.</p>
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○ Named Storm	2% subject to \$50,000 minimum																																		
	\$100,000																																		
○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence	\$100,000																																		
○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V																																			

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

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;

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

- 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

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

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.**

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

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: Nautilus Tract Off-Site Sewer Extension Project

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 Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance 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 himself/herself 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 which 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 paragraph 4.02 of the General Conditions; 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 paragraph 4.04 of the General Conditions.
 - 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 work for the following prices:

Sewer Items

<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	506	New Manhole Construction , 4-ft Dia.	EA	15	8,000. ⁰⁰	120,000. ⁰⁰
2	506	Special Manhole, (Dog house) 5-ft Dia.	EA	1	10,000. ⁰⁰	10,000. ⁰⁰
3	506	Extra Depth Manhole over 8-ft depth	LVF	39	190. ⁰⁰	7,410. ⁰⁰
4	510	Pipe, (SDR-26), 12-inch Diameter (all depths) by open cut, including excavation and backfill	LF	3,919	87. ⁰⁰	340,953. ⁰⁰
5	510	Pipe, (C900 DR-18), 12-inch Diameter (all depths) by open cut, including excavation and backfill	LF	336	170. ⁰⁰	57,120. ⁰⁰
6	510	Pipe, (SDR-26), 12-inch Diameter (all depths) by open cut, including excavation and backfill (Restrained)	LF	203	115. ⁰⁰	23,345. ⁰⁰
7	510	Carrier Pipe, (SDR-26), 12-inch Diameter for Jacking or Boring (Restrained) (Installed in Casing) (Including Spacers)	LF	335	67. ⁰⁰	22,445. ⁰⁰
8	501	Jacking or Boring (24-inch) (Steel Casing), including site prep and casing material	LF	335	350. ⁰⁰	117,250. ⁰⁰
9	-	Repair and Replace Concrete Ramp	LS	1	10,000. ⁰⁰	10,000. ⁰⁰
10	01 34 00	Post Construction Television Inspection	LF	4,793	2. ⁰⁰	9,586. ⁰⁰

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

Erosion Control Items

<u>Item No.</u>	<u>Spec. No.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
11	-	SWPPP (including SWPPP preparation, rock berm, and silt fencing)	LS	1	5,000. ⁰⁰	5,000. ⁰⁰
12	604	Seeding for Erosion Control (Frueholz Tract)	SY	14,600	1. ⁰⁰	14,600. ⁰⁰
13	604	Seeding for Erosion Control (Titan Tract South of Road)	SY	2,700	1. ²⁵	3,375. ⁰⁰
14	602	Bermuda Block Sodding (Drainage Ditch on Titan Tract)	SY	9,000	9. ⁰⁰	81,000. ⁰⁰

General Items

<u>Item No.</u>	<u>Spec. No.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
15	-	Temporary Chain-link Construction Fencing (Cattle Control on Frueholz Tract)	LF	6,350	5. ⁰⁰	31,750. ⁰⁰
16	-	Remove/Replace Existing 5-Strand Barbed Wire Fencing	LF	269	15. ⁰⁰	4,035. ⁰⁰
17	-	Remove/Replace Existing Electric Fencing	LF	140	25. ⁰⁰	3,500. ⁰⁰
18	102	Clearing & Grubbing	LS	1	10,000. ⁰⁰	10,000. ⁰⁰
19	509	Trench Safety Plan Requirements and Implementation (All Depths)	LF	4,793	1. ⁰⁰	4,793. ⁰⁰
20	-	Hand Dig Under Active Gas Lines (Per Enterprise Products Pipeline Regulations)	LF	30	200. ⁰⁰	6,000. ⁰⁰

TOTAL BASE BID

\$ 882,162.⁰⁰

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with paragraph 14.07 of the General Conditions within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to damages and special damages in the event of failure to complete the Work on time.

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

6. The following documents are attached to and made a condition of this Bid:
 - a) Required Bid Security of five percent (5%) of the Bidder's maximum base bid price and in the form of approved bid bond.
7. Communication concerning this Bid shall be addressed to:
 New Braunfels Utilities
 Purchasing Manager
 355 FM 306,
 New Braunfels, TX 78130
 Phone: 830-608-8867
 Email: Purchasing@NBUTexas.com
8. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.
9. The undersigned acknowledges receipt of the following addenda:

Addendum No. 1 dated <u>3/24/21</u>	Received <u>GNC</u>
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

[Handwritten Signature]

 Secretary, *if bidder is a corporation

(Seal)

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

Jm Pipeline, LLC

 Company Name of Bidder

[Handwritten Signature]

 Authorized Signature

3/31/21

 Date

Gaspar Caracheo

 Printed Name of Authorized Signature

P.O. Box 8614

Horseshoe Bay, TX, 78607

 Address

830-953-1010 gasparh@jmutilityllc.com

 Telephone Number/Email

END OF DOCUMENT

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

Exhibit C-Evidence of Insurance

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM)
04/15 Item 6.

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Nitsche Group 143 East Austin Giddings, TX 78942-3299 979 542-3666	CONTACT NAME: Rachelle Lehmann PHONE (A/C, No, Ext): 979 540-2255 FAX (A/C, No): E-MAIL ADDRESS: RachelleL@TheNitscheGroup.com														
INSURED JM Pipeline LLC PO Box 8614 Horseshoe Bay, TX 78657	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : FCCI Insurance Company</td> <td>10178</td> </tr> <tr> <td>INSURER B : Texas Mutual Insurance Company</td> <td>22945</td> </tr> <tr> <td>INSURER C : Monroe Guaranty Insurance Company</td> <td>32506</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : FCCI Insurance Company	10178	INSURER B : Texas Mutual Insurance Company	22945	INSURER C : Monroe Guaranty Insurance Company	32506	INSURER D :		INSURER E :		INSURER F :	
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INSURER E :															
INSURER F :															

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


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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:2,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			CPP10006082300	09/08/2020	09/08/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			CA10006082400	09/08/2020	09/08/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			UMB1006082500	09/08/2020	09/08/2021	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	0002025636	01/01/2021	01/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Inland Marine			CPP10006082300	09/08/2020	09/08/2021	Rented/Leased Equipment \$150,000

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

As per policy provision, Certificate Holder is listed as additional insured in regard to the auto and general liability policies as provided by blanket additional insured endorsement when required by written contract. A blanket waiver of subrogation endorsement is provided to the Certificate Holder in regard to the auto, general liability and workers compensation policies as per policy provision when required by written contract. As per policy provision the general liability policy contains a blanket endorsement with (See Attached Descriptions)

CERTIFICATE HOLDER**CANCELLATION**

New Braunfels Utilities 355 FM 306 New Braunfels, TX 78130	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 
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DESCRIPTIONS (Continued from Page 1)

Item 6.

Primary and Noncontributory wording when required by written contract. General liability, auto and workers compensation policies include(s) a 30 Days Notice of Cancellation endorsement providing 30 days advance notice if policy is canceled by the company other than for nonpayment of premium, or direct cancellation by named insured as per policy provision.

SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGE A and B is amended as follows:

All references to SUPPLEMENTARY PAYMENTS – COVERAGES A and B are amended to SUPPLEMENTARY PAYMENTS – COVERAGES A, B, D, E, G, and H.

1. Cost of Bail Bonds

Paragraph 1.b. is replaced with the following:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Loss of Earnings

Paragraph 1.d. is replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit”, including actual loss of earnings up to \$500 a day because of time off from work.

SECTION II – WHO IS AN INSURED is amended as follows:

1. Incidental Malpractice

Paragraph 2.a.(1)(d) is replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to a nurse, emergency medical technician or paramedic employed by you to provide medical services, unless:
 - (i) You are engaged in the occupation or business of providing or offering medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction; or
 - (ii) The “employee” has another insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

2. Broadened Who Is An Insured

The following are added to Paragraph 2.:

Subsidiaries

- e. Your subsidiaries if:
 - (1) They are legally incorporated entities; and
 - (2) You own more than 50% of the voting stock in such subsidiaries as of the effective date of this policy. If such subsidiaries are not shown in the Declarations, you must report them to us within 180 days of the inception of your original policy.

Additional Insureds

- f. Any person or organization described in paragraphs g. through k. below whom you are required to add as an additional insured on this policy under a written contract or agreement in effect during the term of this policy, provided the written contract or agreement was executed prior to the “bodily injury”, “property damage” or “personal and advertising injury” for which the additional insured seeks coverage.

However, the insurance afforded to such additional insured(s):

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
- (3) Will not be broader than that which is afforded to you under this policy;
- (4) Is subject to the conditions described in paragraphs g. through k. below; and
- (5) Nothing herein shall extend the term of this policy.

SCHEDULE OF FORMS AND ENDORSEMENTS

FCCI Insurance Company

Named Insured J.M. Pipeline LLC

Effective Date: 09-08-20
12:01 A.M., Standard Time

Agent Name NITSCHKE GROUP INC

Agent No. 07095-001

COMMON POLICY FORMS AND ENDORSEMENTS

CO-DEC	10-13	COMMON POLICY DECLARATIONS
FORM-SCHED	01-97	SCHEDULE OF FORMS AND ENDORSEMENTS
LOC-SCHED	01-97	SCHEDULE OF LOCATIONS
IL 00 03	09-08	CALCULATION OF PREMIUM
IL 00 17	11-98	COMMON POLICY CONDITIONS
IL 00 21	09-08	NUCLEAR ENERGY LIABILITY EXCLUSION ENDT
IL 01 68	03-12	TEXAS CHANGES-DUTIES
IL 02 75	11-13	TEXAS CHANGES-CANC & NONREN
IL 008	01-15	TOTAL LEAD EXCLUSION ENDORSEMENT
IL 009	01-15	TOTAL ASBESTOS EXCLUSION ENDORSEMENT
IL 011	01-15	AMENDED NOTICE OF CANCEL PROVIDED BY US
IL 050	01-18	TX - TWO OR MORE COV FORMS OR POLICIES
IL 060	07-13	BLANKET NOTIFICATION TO OTHERS OF CANCEL
IL 065	06-16	NOTICE OF TERRORISM INSURANCE COVERAGE

PROPERTY FORMS AND ENDORSEMENTS

PF-DEC	01-97	COMM PROPERTY COV PART SUPP DEC
CP 00 10	10-12	BUILDING & PERSONAL PROPERTY COVERAGE
CP 00 90	07-88	COMMERCIAL PROPERTY CONDITIONS
CP 01 40	07-06	EXCL OF LOSS DUE TO VIRUS OR BACTERIA
CP 01 42	03-12	TEXAS CHANGES
CP 10 30	09-17	CAUSES OF LOSS - SPECIAL FORM
CP 10 36	10-12	LIMITATIONS ON COVG FOR ROOF SURFACING
CFP 006	02-10	EQUIPMENT BREAKDOWN COVERAGE
CFP 022	06-16	FIRST CHOICE CONTRACTORS PROP W/BI & EE
CFP 033	01-12	TEXAS CHANGES

GENERAL LIABILITY FORMS AND ENDORSEMENTS

GL-DEC	12-01	COMM GENERAL LIABILITY COVERAGE SUPP DEC
1-UNGL-9575-MU-04	10-13	EPLI DEC
GL-SCHED	01-97	COMM GENERAL LIABILITY COVERAGE SCHEDULE
SGL 001	01-16	FIRST CHOICE CYBER COVERAGE SCHEDULE
CG 00 01	04-13	COMMERCIAL GENERAL LIABILITY COV FORM
CG 01 03	06-06	TEXAS CHANGES
CG 03 00	01-96	DEDUCTIBLE LIABILITY INSURANCE
CG 04 37	05-14	ELECTRONIC DATA LIABILITY ENDORSEMENT
CG 21 67	12-04	FUNGI OR BACTERIA EXCLUSION
CG 21 86	12-04	EXCL-EXTERIOR INSULATION & FINISH SYSTEM
CG 21 96	03-05	SILICA OR SILICA-RELATED DUST EXCLUSION
CG 22 34	04-13	EXCL-CONSTRUCTION MANAGEMENT ERR & OMISS
CG 22 79	04-13	EXCL-CONTRACTORS-PROF LIAB
CG 24 04	05-09	WAIVER OF TRANSFER RIGHTS OF RECOVERY
CG 26 39	12-07	TX CHANGES-EMPLOY RELATED PRACTICES EXCL
CGL 037	01-15	LIMITED POLLUTION COV-"WORK SITES"
CGL 088	01-15	FIRST CHOICE CONTRACTORS LIAB ENDT
CGL 091	11-13	LIMITED EXCL WRAP-UP INS PROGRAM-LMT EXC
CGL 121	04-13	TX ADDL INSD-ONGOING OPER/PRODCOMP OPER
CGL 123	10-13	EPLI COVERAGE ENDORSEMENT
CGL 133	10-13	TEXAS CHANGES (EPLI)
CGL 141-TX	01-16	FIRST CHOICE CYBER COVERAGE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
BUSINESSOWNERS COVERAGE FORM
COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM
COMMERCIAL OUTPUT POLICY
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA COVERAGE FORM
GARAGE COVERAGE FORM
LIQUOR LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium we will mail notice of cancellation to any person or organization to whom you have agreed in a written contract that notice of cancellation of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first Named Insured shown in the Declarations receives notice from us of the cancellation of this policy; and,
2. We receive such written request at least 45 days before the effective date of cancellation.

We will mail such notice at least 30 days before the effective date of the cancellation.

Irrespective of any of the provisions above, nothing herein is intended to vest any right in the person or organization to be given notice, and said person or organization shall have no rights under this policy if he/it does not receive notice per this endorsement.

POLICY NUMBER: CPP100060823-00

COMMERCIAL GENERAL LIABILITY
CGL 121 (04 13)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –
AUTOMATIC STATUS WHEN REQUIRED IN CONTRACT OR AGREEMENT –
ONGOING OPERATIONS AND PRODUCTS-COMPLETED OPERATIONS
(TEXAS LIMITED SOLE NEGLIGENCE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE (OPTIONAL)**Name of Additional Insured Persons or Organizations**

(As required by written contract or agreement per Paragraph A. below.)

Locations of Covered Operations

(As per the written contract or agreement, provided the location is within the "coverage territory".)

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

A. **Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement in effect during the term of this policy that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above; and
3. The particular person or organization, if any, scheduled above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" occurring after the execution of the contract or agreement described in Paragraph 1. above and caused, in whole or in part, by:

- a. Your acts or omissions; or
 - b. The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for the additional insured; or
- c. "Your work" performed for the additional insured and included in the "products-completed operations hazard" if such coverage is specifically required in the written contract or agreement.

With respect to liability of the additional insured for "bodily injury" of an employee or agent of a named insured or the employee of a named insured's subcontractor, coverage shall apply for the partial or sole negligence of the additional insured, but only if such coverage is specifically required in the written contract or agreement.

However, the insurance afforded to such additional insured(s) described above:

- a. Only applies to the extent permitted by law;
 - b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
 - c. Will not be broader than that which is afforded to you under this policy; and
 - d. Nothing herein shall extend the term of this policy.
- B. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
- 1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - 2. Supervisory, inspection, architectural or engineering activities.
- C. This insurance is excess over any other valid and collectible insurance available to the additional insured whether on a primary, excess, contingent or any other basis; unless the written contract or agreement requires that this insurance be primary and non-contributory, in which case this insurance will be primary and non-contributory relative to insurance on which the additional insured is a Named Insured.
- D. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement described in Paragraph A.1.; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- E. **Section IV – Commercial General Liability Conditions** is amended as follows:

The Duties In The Event of Occurrence, Offense, Claim or Suit condition is amended to add the following additional conditions applicable to the additional insured:

An additional insured under this endorsement must as soon as practicable:

1. Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
2. Send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions; and
3. Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement and agree to make available all such other insurance. However, this condition does not affect Paragraph C. above.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive from the additional insured written notice of a claim or "suit".

- F. This endorsement does not apply to any additional insured or project that is specifically identified in any other additional insured endorsement attached to the Commercial General Liability Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FIRST CHOICE CONTRACTORS LIABILITY ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Commercial General Liability Coverage Form, and will apply unless excluded by separate endorsement(s) to the Commercial General Liability Coverage Form.

The COMMERCIAL GENERAL LIABILITY COVERAGE FORM is amended as follows:

SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE is amended as follows:

1. Extended "Property Damage"

Exclusion 2.a., Expected or Intended Injury, is replaced with the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

2. Non-owned Watercraft

Exclusion 2.g. (2) (a) is replaced with the following:

- (a) Less than 51 feet long; and

3. Property Damage Liability – Borrowed Equipment

The following is added to Exclusion 2.j. (4):

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations. The most we will pay for "property damage" to any one borrowed equipment item under this coverage is \$25,000 per "occurrence". The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

4. Limited Electronic Data Liability

Exclusion 2.p. is replaced with the following:

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

The most we will pay under Coverage A for "property damage" because of all loss of "electronic data" arising out of any one "occurrence" is \$10,000.

We have no duty to investigate or defend claims or "suits" covered by this Limited Electronic Data Liability coverage.

The following definition is added to **SECTION V – DEFINITIONS** of the Coverage Form:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

For purposes of this **Limited Electronic Data Liability** coverage, the definition of "Property Damage" in **SECTION V – DEFINITIONS** of the Coverage Form is replaced by the following:

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it;
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For purposes of this insurance, "electronic data" is not tangible property.

SECTION I – COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY is amended as follows:

Paragraph 2.e. Exclusions – the Contractual Liability Exclusion is deleted.

SECTION I – COVERAGES, the following coverages are added:

COVERAGE D. VOLUNTARY PROPERTY DAMAGE

1. Insuring Agreement

We will pay, at your request, for "property damage" caused by an "occurrence", to property of others caused by you, or while in your possession, arising out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

2. Exclusions

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Property owned by, rented to, leased to, loaned to, borrowed by, or used by you;
- d. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- e. Property caused by or arising out of the "products-completed operations hazard";
- f. Motor vehicles;
- g. "Your product" arising out of it or any part of it; or
- h. "Your work" arising out of it or any part of it.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

4. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE D is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

Coverage D covers unintentional damage or destruction, but does not cover disappearance, theft, or loss of use.

The insurance under COVERAGE D does not apply if a loss is paid under COVERAGE E.

COVERAGE E. CARE, CUSTODY OR CONTROL

1. Insuring Agreement

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence", to property of others while in your care, custody, or control or property of others as to which you are exercising physical control if the "property damage" arises out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

2. Exclusions

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- d. Property caused by or arising out of the "products-completed operations hazard";
- e. Motor vehicles;
- f. "Your product" arising out of it or any part of it; or
- g. "Your work" arising out of it or any part of it.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

4. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE E is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

The insurance under COVERAGE E does not apply if a loss is paid under COVERAGE D.

COVERAGE F. LIMITED PRODUCT WITHDRAWAL EXPENSE

1. Insuring Agreement

- a. If you are a "seller", we will reimburse you for "product withdrawal expenses" associated with "your product" incurred because of a "product withdrawal" to which this insurance applies.

The amount of such reimbursement is limited as described in SECTION III - LIMITS OF INSURANCE. No other obligation or liability to pay sums or perform acts or services is covered.

- a. This insurance applies to a "product withdrawal" only if the "product withdrawal" is initiated in the "coverage territory" during the policy period because:
 - (1) You determine that the "product withdrawal" is necessary; or
 - (2) An authorized government entity has ordered you to conduct a "product withdrawal".
- c. We will reimburse only those "product withdrawal expenses" which are incurred and reported to us within one year of the date the "product withdrawal" was initiated.
- d. The initiation of a "product withdrawal" will be deemed to have been made only at the earliest of the following times:
 - (1) When you have announced, in any manner, to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to conduct a "product withdrawal" This applies regardless of whether the determination to conduct a "product withdrawal" is made by you or is requested by a third party;
 - (2) When you received, either orally or in writing, notification of an order from an authorized government entity to conduct a "product withdrawal"; or
 - (3) When a third party has initiated a "product withdrawal" and you communicate agreement with the "product withdrawal", or you announce to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to participate in the "product withdrawal", whichever comes first.
- e. "Product withdrawal expenses" incurred to withdraw "your products" which contain:
 - (1) The same "defect" will be deemed to have arisen out of the same "product withdrawal"; or
 - (2) A different "defect" will be deemed to have arisen out of a separate "product withdrawal" if newly determined or ordered in accordance with paragraph 1.b of this coverage.

2. Exclusions

This insurance does not apply to "product withdrawal" expenses" arising out of:

- a. Any "product withdrawal" initiated due to:
 - (1) The failure of "your products" to accomplish their intended purpose, including any breach of warranty of fitness, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause "bodily injury" or physical damage to tangible property.
 - (2) Copyright, patent, trade secret or trademark infringements;
 - (3) Transformation of a chemical nature, deterioration or decomposition of "your product", except if it is caused by:
 - (a) An error in manufacturing, design, processing or transportation of "your product"; or
 - (b) "Product tampering".
 - (4) Expiration of the designated shelf life of "your product".
- b. A "product withdrawal", initiated because of a "defect" in "your product" known to exist by the Named Insured or the Named Insured's "executive officers", prior to the inception date of this Coverage Part or prior to the time "your product" leaves your control or possession.
- c. Recall of any specific products for which "bodily injury" or "property damage" is excluded under Coverage A - Bodily Injury And Property Damage Liability by endorsement.
- d. Recall of "your products" which have been banned from the market by an authorized government entity prior to the policy period.
- e. The defense of a claim or "suit" against you for "product withdrawal expenses".

3. For the purposes of the insurance afforded under COVERAGE F, the following is added to 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition under SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

e. Duties In The Event Of A "Defect" Or A "Product Withdrawal"

- (1) You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your products", or any governmental investigation, that may result in a "product withdrawal". To the extent possible, notice should include:
 - (a) How, when and where the "defect" was discovered;
 - (b) The names and addresses of any injured persons and witnesses; and
 - (c) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product".
- (2) If a "product withdrawal" is initiated, you must:
 - (a) Immediately record the specifics of the "product withdrawal" and the date it was initiated;
 - (b) Send us written notice of the "product withdrawal" as soon as practicable; and
 - (c) Not release, consign, ship or distribute by any other method, any product, or like or similar products, with an actual, suspected or threatened defect.
- (3) You and any other involved insured must:
 - (a) Immediately send us copies of pertinent correspondence received in connection with the "product withdrawal";
 - (b) Authorize us to obtain records and other information; and
 - (c) Cooperate with us in our investigation of the "product withdrawal".

4. For the purposes of this Coverage F, the following definitions are added to the Definitions Section:

- a. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
- b. "Product tampering" is an act of intentional alteration of "your product" which may cause or has caused "bodily injury" or physical injury to tangible property.

When "product tampering" is known, suspected or threatened, a "product withdrawal" will not be limited to those batches of "your product" which are known or suspected to have been tampered with.
- c. "Product withdrawal" means the recall or withdrawal of "your products", or products which contain "your products", from the market or from use, by any other person or organization, because of a known or suspected "defect" in "your product", or a known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property.
- d. "Product withdrawal expenses" means those reasonable and necessary extra expenses, listed below paid and directly related to a "product withdrawal":
 - (1) Costs of notification;
 - (2) Costs of stationery, envelopes, production of announcements and postage or facsimiles;
 - (3) Costs of overtime paid to your regular non-salaried employees and costs incurred by your employees, including costs of transportation and accommodations;
 - (4) Costs of computer time;
 - (5) Costs of hiring independent contractors and other temporary employees;
 - (6) Costs of transportation, shipping or packaging;
 - (7) Costs of warehouse or storage space; or

(8) Costs of proper disposal of "your products", or products that contain "your products", that cannot be reused, not exceeding your purchase price or your cost to produce the products; but "product withdrawal expenses" does not include costs of the replacement, repair or redesign of "your product", or the costs of regaining your market share, goodwill, revenue or profit.

- e. "Seller" means a person or organization that manufactures, sells or distributes goods or products. "Seller" does not include a "contractor" as defined elsewhere in this endorsement.

The insurance under COVERAGE F does not apply if a loss is paid under COVERAGE G.

COVERAGE G. CONTRACTORS ERRORS AND OMISSIONS

1. Insuring Agreement

If you are a "contractor", we will pay those sums that you become legally obligated to pay as damages because of "property damage" to "your product", "your work" or "impaired property", due to faulty workmanship, material or design, or products including consequential loss, to which this insurance applies. The damages must have resulted from your negligent act, error or omission while acting in your business capacity as a contractor or subcontractor or from a defect in material or a product sold or installed by you while acting in this capacity. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

We have no duty to investigate or defend claims or "suits" covered by this Contractors Errors and Omissions coverage.

This coverage applies only if the "property damage" occurs in the "coverage territory" during the policy period.

This coverage does not apply to additional insureds, if any.

Supplementary Payments – Coverage A and B do not apply to Coverage G. Contractors Errors and Omissions.

2. Exclusions

This insurance does not apply to:

- a. "Bodily injury" or "personal and advertising injury".
- b. Liability or penalties arising from a delay or failure to complete a contract or project, or to complete a contract or project on time.
- c. Liability because of an error or omission:
 - (1) In the preparation of estimates or job costs;
 - (2) Where cost estimates are exceeded;
 - (3) In the preparation of estimates of profit or return on capital;
 - (4) In advising or failure to advise on financing of the work or project; or
 - (5) In advising or failing to advise on any legal work, title checks, form of insurance or suretyship.
- d. Any liability which arises out of any actual or alleged infringement of copyright or trademark or trade dress or patent, unfair competition or piracy, or theft or wrongful taking of concepts or intellectual property.
- e. Any liability for damages:
 - (1) From the intentional dishonest, fraudulent, malicious or criminal acts of the Named Insured, or by any partner, member of a limited liability company, or executive officer, or at the direction of any of them; or
 - (2) Which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended.

- f. Any liability arising out of manufacturer's warranties or guarantees whether express or implied.
- g. Any liability arising from "property damage" to property owned by, rented or leased to the insured.
- h. Any liability incurred or "property damage" which occurs, in whole or in part, before you have completed "your work." "Your work" will be deemed completed at the earliest of the following times:
 - (1) When all of the work called for in your contract or work order has been completed;
 - (2) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service or maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as complete.

- i. Any liability arising from "property damage" to products that are still in your physical possession.
- j. Any liability arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
 - (1) Providing engineering, architectural or surveying services to others; and
 - (2) Providing or hiring independent professionals to provide engineering, architectural or surveying services in connection with construction work you perform.

Professional services include the preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications. Professional services also include supervisory or inspection activities performed as part of any related architectural or engineering activities.

But, professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.

- k. Your loss of profit or expected profit and any liability arising therefrom.
- l. "Property damage" to property other than "your product," "your work" or "impaired property."
- m. Any liability arising from claims or "suits" where the right of action against the insured has been relinquished or waived.
- n. Any liability for "property damage" to "your work" if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- o. Any liability arising from the substitution of a material or product for one specified on blueprints, work orders, contracts or engineering specifications unless there has been written authorization, or unless the blueprints, work orders, contracts or engineering specifications were written by you, and you have authorized the changes.
- p. Liability of others assumed by the insured under any contract or agreement, whether oral or in writing. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

3. For the purposes of Coverage G, the following definition is added to the Definitions section:

- a. "Contractor" means a person or organization engaged in activities of building, clearing, filling, excavating or improvement in the size, use or appearance of any structure or land. "Contractor" does not include a "seller" as defined elsewhere in this endorsement.

4. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. The limits of insurance will not be reduced by the application of the deductible amount.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit", and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

5. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance under COVERAGE G does not apply if a loss is paid under COVERAGE F.

COVERAGE H. LOST KEY COVERAGE

1. Insuring Agreement

We will pay those sums, subject to the limits of liability described in SECTION III LIMITS OF INSURANCE in this endorsement and the deductible shown below, that you become legally obligated to pay as damages caused by an "occurrence" and due to the loss or mysterious disappearance of keys entrusted to or in the care, custody or control of you or your "employees" or anyone acting on your behalf. The damages covered by this endorsement are limited to the:

- a. Actual cost of the keys;
- b. Cost to adjust locks to accept new keys; or
- c. Cost of new locks, if required, including the cost of installation.

2. Exclusions

This insurance does not apply to:

- a. Keys owned by any insured, employees of any insured, or anyone acting on behalf of any insured;
- b. Any resulting loss of use; or
- c. Any of the following acts by any insured, employees of any insured, or anyone acting on behalf of any insured:
 - 1) Misappropriation;
 - 2) Concealment;
 - 3) Conversion;
 - 4) Fraud; or
 - 5) Dishonesty.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$1,000. The limits of insurance will not be reduced by the application of the deductible amount.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

EXPANDED COVERAGE FOR TENANT'S PROPERTY AND PREMISES RENTED TO YOU

The first paragraph after subparagraph (6) in Exclusion j., Damage to Property is amended to read as follows:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGE A and B is amended as follows:

All references to SUPPLEMENTARY PAYMENTS – COVERAGES A and B are amended to SUPPLEMENTARY PAYMENTS – COVERAGES A, B, D, E, G, and H.

1. Cost of Bail Bonds

Paragraph 1.b. is replaced with the following:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Loss of Earnings

Paragraph 1.d. is replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit”, including actual loss of earnings up to \$500 a day because of time off from work.

SECTION II – WHO IS AN INSURED is amended as follows:**1. Incidental Malpractice**

Paragraph 2.a.(1)(d) is replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to a nurse, emergency medical technician or paramedic employed by you to provide medical services, unless:
 - (i) You are engaged in the occupation or business of providing or offering medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction; or
 - (ii) The “employee” has another insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

2. Broadened Who Is An Insured

The following are added to Paragraph 2.:

Subsidiaries

e. Your subsidiaries if:

- (1) They are legally incorporated entities; and
- (2) You own more than 50% of the voting stock in such subsidiaries as of the effective date of this policy. If such subsidiaries are not shown in the Declarations, you must report them to us within 180 days of the inception of your original policy.

Additional Insureds

- f. Any person or organization described in paragraphs g. through k. below whom you are required to add as an additional insured on this policy under a written contract or agreement in effect during the term of this policy, provided the written contract or agreement was executed prior to the “bodily injury”, “property damage” or “personal and advertising injury” for which the additional insured seeks coverage.

However, the insurance afforded to such additional insured(s):

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
- (3) Will not be broader than that which is afforded to you under this policy;
- (4) Is subject to the conditions described in paragraphs g. through k. below; and
- (5) Nothing herein shall extend the term of this policy.

g. Owner, Lessor or Manager of Premises

If the additional insured is an owner, lessor or manager of premises, such person or organization shall be covered only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you and subject to the following additional exclusions:

- (1) Any "occurrence" that takes place after you cease to occupy those premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

h. State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations

If the additional insured is the state or any political subdivision, the state or political subdivision shall be covered only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit or authorization. This insurance does not apply to:

- (1) "Bodily injury", "property damage", or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

i. Lessor of Leased Equipment

If the additional insured is a lessor of leased equipment, such lessor shall be covered only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s). With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

j. Mortgagee, Assignee, or Receiver

If the additional Insured is a mortgagee, assignee, or receiver of premises, such mortgagee, assignee or receiver of premises is an additional insured only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

k. Vendor

If the additional insured is a vendor, such vendor is an additional insured only with respect to "bodily injury" or "property damage" caused by "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- (1) The insurance afforded to the vendor does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in absence of the contract or agreement.
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in "your product" made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - i. The exceptions contained in Subparagraphs d. or f.; or
 - ii. Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3. Newly Formed or Acquired Organizations

Paragraph 3. is amended as follows:

- a. Coverage under this provision is afforded until the end of the policy period.
- d. Coverage A does not apply to product recall expense arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

SECTION III – LIMITS OF INSURANCE is amended as follows:

1. Paragraph 2. is replaced with the following:

- 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
 - c. Damages under Coverage B;
 - d. Voluntary "property damage" payments under Coverage D;
 - e. Care, Custody or Control damages under Coverage E.; and
 - f. Lost Key Coverage under Coverage H.

2. Paragraph 5. is replaced with the following:

- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A;
 - b. Medical expenses under Coverage C;
 - c. Voluntary "property damage" payments under Coverage D;
 - d. Care, Custody or Control damages under Coverage E;
 - e. Limited Product Withdrawal Expense under Coverage F;
 - f. Contractors Errors and Omissions under Coverage G.; and
 - g. Lost Key Coverage under Coverage H.

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

3. Paragraph 6. is replaced with the following:

- 6. Subject to Paragraph 5. above the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you,

or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.

The Damage to Premises Rented to You Limit is the higher of the Each Occurrence Limit shown in the Declarations or the amount shown in the Declarations as Damage To Premises Rented To You Limit.

4. Paragraph 7. is replaced with the following:

7. Subject to Paragraph 5. above, the higher of \$10,000 or the Medical Expense Limit shown in the Declarations is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

5. Paragraph 8. is added as follows:

8. Subject to Paragraph 5. above, the most we will pay under Coverage D. Voluntary Property Damage for loss arising out of any one "occurrence" is \$1,500. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$3,000.

6. Paragraph 9. is added as follows:

9. Subject to Paragraph 5. above, the most we will pay under Coverage E. Care, Custody or Control for "property damage" arising out of any one "occurrence" is \$1,000. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$5,000.

7. Paragraph 10. is added as follows:

10. Subject to Paragraph 5. above, the most we will pay under Coverage F. Limited Product Withdrawal Expense for "product withdrawal expenses" in any one-policy period, regardless of the number of insureds, "product withdrawals" initiated or number of "your products" withdrawn is \$10,000.

8. Paragraph 11. is added as follows:

11. Subject to Paragraph 5. above, the most we will pay under Coverage G. Contractors Errors and Omissions for damage in any one-policy period, regardless of the number of insureds, claims or "suits" brought, or persons or organizations making claim or bringing "suits" is \$10,000.

For errors in contract or job specifications or in recommendations of products or materials to be used, this policy will not pay for additional costs of products and materials to be used that would not have been incurred had the correct recommendations or specifications been made.

9. Paragraph 12. is added as follows:

12. Subject to Paragraph 5. above, the most we will pay under Coverage H., Lost Key Coverage for damages arising out of any one occurrence is \$50,000.

10. Paragraph 13. is added as follows:

13. The General Aggregate Limit applies separately to:

- a. Each of your projects away from premises owned by or rented to you; or
- b. Each "location" owned by or rented to you.

"Location" as used in this paragraph means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

11. Paragraph 14. is added as follows:

14. With respect to the insurance afforded to any additional insured provided coverage under this endorsement:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or

- b. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

1. Subparagraph 2.a. of Duties In The Event Of Occurrence, Offense, Claim, or Suit is replaced with the following:

- a. You must see to it that we are notified as soon as practicable of an “occurrence” or an offense which may result in a claim. This requirement applies only when the “occurrence” or offense is known to the following:
- (1) An individual who is the sole owner;
 - (2) A partner, if you are a partnership or joint venture;
 - (3) An “executive officer” or insurance manager, if you are a corporation;
 - (4) A manager, if you are a limited liability company;
 - (5) A person or organization having proper temporary custody of your property if you die;
 - (6) The legal representative of you if you die; or
 - (7) A person (other than an “employee”) or an organization while acting as your real estate manager.

To the extent possible, notice should include:

- (1) How, when and where the “occurrence” or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the “occurrence” or offense.

2. The following is added to Subparagraph 2.b. of Duties In The Event Of Occurrence, Offense, Claim, or Suit:

The requirement in 2.b.applies only when the “occurrence” or offense is known to the following:

- (1) An individual who is the sole owner;
- (2) A partner or insurance manager, if you are a partnership or joint venture;
- (3) An “executive officer” or insurance manager, if you are a corporation;
- (4) A manager or insurance manager, if you are a limited liability company;
- (5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization;
- (6) A person or organization having proper temporary custody of your property if you die;
- (7) The legal representative of you if you die; or
- (8) A person (other than an “employee”) or an organization while acting as your real estate manager.

3. The following is added to paragraph 2. of Duties in the Event of Occurrence, Offense, Claim or Suit:

- e. If you report an “occurrence” to your workers compensation carrier that develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such an “occurrence” to us at the time of the “occurrence” shall not be deemed a violation of paragraphs a., b., and c. above. However, you shall give written notice of this “occurrence” to us as soon as you become aware that this “occurrence” may be a liability claim rather than a workers compensation claim.

4. Paragraph 6. is replaced with the following:

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Any error or omission in the description of, or failure to completely describe or disclose any premises, operations or products intended to be covered by the Coverage Form will not invalidate or affect coverage for those premises, operations or products, provided such error or omission or failure to completely describe or disclose premises, operations or products was not intentional.

You must report such error or omission to us as soon as practicable after its discovery. However, this provision does not affect our right to collect additional premium charges or exercise our right of cancellation or nonrenewal.

5. The following is added to paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:

However, we waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" included in the "products-completed operations hazard" under the following conditions:

- a) Only when you have agreed in writing to waive such rights of recovery in a contract or agreement;
- b) Only as to the person/entity as to whom you are required by the contract to waive rights of recovery; and
- c) Only if the contract or agreement is in effect during the term of this policy, and was executed by you prior to the loss.

6. Paragraph 10. is added as follows:

10. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in the applicable state(s).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
BUSINESSOWNERS COVERAGE FORM
COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM
COMMERCIAL OUTPUT POLICY
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA COVERAGE FORM
GARAGE COVERAGE FORM
LIQUOR LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium we will mail notice of cancellation to any person or organization to whom you have agreed in a written contract that notice of cancellation of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first Named Insured shown in the Declarations receives notice from us of the cancellation of this policy; and,
2. We receive such written request at least 45 days before the effective date of cancellation.

We will mail such notice at least 30 days before the effective date of the cancellation.

Irrespective of any of the provisions above, nothing herein is intended to vest any right in the person or organization to be given notice, and said person or organization shall have no rights under this policy if he/it does not receive notice per this endorsement.

TEXAS NOTICE OF MATERIAL CHANGE ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

1. Number of days advance notice: 30
2. Notice will be mailed to: Crystal Clear Special Utility District and M&S Engineering
LLC
2370 FM 979
Pflugerville, TX 78660 US

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 1/1/21 at 12:01 a.m. standard time, forms a part of:

Policy no. 0002025636 of Texas Mutual Insurance Company effective on 1/1/21

Issued to: JM PIPELINE LLC

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

12/17/20

**WORKERS' COMPENSATION AND
EMPLOYERS LIABILITY POLICY**

WC 42 06 01

Insured copy

TEXAS NOTICE OF MATERIAL CHANGE ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

1. Number of days advance notice: 30
2. Notice will be mailed to: MONARCH UTILITIES I LP & SWWC UTILITIES INC
12535 REED ROAD
SUGAR LAND, TX 77478 US

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 1/1/21 at 12:01 a.m. standard time, forms a part of:

Policy no. 0002025636 of Texas Mutual Insurance Company effective on 1/1/21

Issued to: JM PIPELINE LLC

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

12/17/20

TEXAS NOTICE OF MATERIAL CHANGE ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

1. Number of days advance notice: 30
2. Notice will be mailed to:
STONEWALL DEVELOPMENT LLC
Attn: PARKER ATKINS
309 SPANISH PASS RD
BOERNE, TX 78006 US

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 1/1/21 at 12:01 a.m. standard time, forms a part of:

Policy no. 0002025636 of Texas Mutual Insurance Company effective on 1/1/21

Issued to: JM PIPELINE LLC

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

12/17/20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
BUSINESSOWNERS COVERAGE FORM
COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM
COMMERCIAL OUTPUT POLICY
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA COVERAGE FORM
GARAGE COVERAGE FORM
LIQUOR LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium we will mail notice of cancellation to any person or organization to whom you have agreed in a written contract that notice of cancellation of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first Named Insured shown in the Declarations receives notice from us of the cancellation of this policy; and,
2. We receive such written request at least 45 days before the effective date of cancellation.

We will mail such notice at least 30 days before the effective date of the cancellation.

Irrespective of any of the provisions above, nothing herein is intended to vest any right in the person or organization to be given notice, and said person or organization shall have no rights under this policy if he/it does not receive notice per this endorsement.



13750 San Pedro Ave.
Suite 350
San Antonio, TX 78232
TEL 210.447.6250
www.GarverUSA.com

04/01/2021

Mr. Michael Perry, P.E.
New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

Re: New Braunfels Utilities
NBU Nautilus Off-Site Sewer Project
Recommendation of Award

Dear Mr. Michael Perry, P.E.:

Bids were opened for the NBU Nautilus Off-Site Sewer Project at a virtual meeting at 2 P.M. on 03/31/21. The bids have been checked for accuracy and references have been contacted. A tabulation of the bids received is enclosed with this letter.

A total of 12 bids were received on the project. JM Pipeline submitted the low bid for the project in the amount of \$882,162.00. The Engineer's Opinion of Probable Cost was \$1,814,252.00.

We believe that the bid submitted by JM Pipeline represents a good value for NBU and based on their references will complete the project in a timely fashion, while also providing quality work to NBU. Therefore, we recommend that the construction contract for the NBU Nautilus Off-Site Sewer Project be awarded to JM Pipeline.

Please call me if you have any questions.

Sincerely,

GARVER, LLC

Michelle Lacks, P.E.
Project Manager
512-685-9758

Attachments: Bid Tabulation

	NBU													
	NBU Nautilus Off-Site Sewer Project													
	BID TABULATION -SCHEDULE 1													
	BID OPENING: 03/31/21; 2:00 PM													
				ENGINEER'S ESTIMATE			JM Pipeline		Atlas Construction Corporation		RAM II General Contractor		D Guerra Construction LLC	
ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	506	New Manhole Construction, 4- ft Dia.	EA	15	\$8,000.00	\$120,000.00	\$8,000.00	\$120,000.00	\$4,964.25	\$74,463.75	\$6,000.00	\$90,000.00	\$6,700.00	\$100,500.00
2	506	Special Manhole, (Dog house) 5-ft Dia.	EA	1	\$20,000.00	\$20,000.00	\$10,000.00	\$10,000.00	\$7,901.53	\$7,901.53	\$10,000.00	\$10,000.00	\$9,750.00	\$9,750.00
3	506	Extra Depth Manhole over 8-ft depth	LVF	39	\$500.00	\$19,500.00	\$190.00	\$7,410.00	\$1,472.71	\$57,435.69	\$400.00	\$15,600.00	\$450.00	\$17,550.00
4	510	Pipe, (SDR-26), 12-inch Diameter (all depths) by open cut, including excavation and backfill	LF	3919	\$170.00	\$666,230.00	\$87.00	\$340,953.00	\$73.05	\$286,282.95	\$100.00	\$391,900.00	\$95.00	\$372,305.00
5	510	Pipe, (C900 DR-18), 12-inch Diameter (all depths) by open cut, including excavation and backfill	LF	336	\$190.00	\$63,840.00	\$170.00	\$57,120.00	\$68.72	\$23,089.92	\$100.00	\$33,600.00	\$112.50	\$37,800.00
6	510	Pipe, (SDR-26), 12-inch Diameter (all depths) by open cut, including excavation and backfill (Restrained)	LF	203	\$190.00	\$38,570.00	\$115.00	\$23,345.00	\$66.39	\$13,477.17	\$110.00	\$22,330.00	\$112.50	\$22,837.50
7	510	Carrier Pipe, (SDR-26), 12-inch Diameter for Jacking or Boring (Restrained) (Installed in Casing) (Including Spacers)	LF	335	\$90.00	\$30,150.00	\$67.00	\$22,445.00	\$94.36	\$31,610.60	\$80.00	\$26,800.00	\$140.00	\$46,900.00
8	501	Jacking or Boring (24-inch) (Steel Casing), including site prep and casing material	LF	335	\$575.00	\$192,625.00	\$350.00	\$117,250.00	\$426.66	\$142,931.10	\$250.00	\$83,750.00	\$350.00	\$117,250.00
9	-	Repair and Replace Concrete Ramp	LS	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$4,673.19	\$4,673.19	\$10,000.00	\$10,000.00	\$11,500.00	\$11,500.00
10	01 34 00	Post Construction Television Inspection	LF	4,793	\$2.75	\$13,180.75	\$2.00	\$9,586.00	\$3.17	\$15,193.81	\$5.00	\$23,965.00	\$1.50	\$7,189.50
11	-	SWPPP (including SWPPP preparation, rock berm, and silt fencing)	LS	1	\$30,500.00	\$30,500.00	\$5,000.00	\$5,000.00	\$35,832.52	\$35,832.52	\$30,000.00	\$30,000.00	\$25,000.00	\$25,000.00
12	604	Seeding for Erosion Control (Frueholz Tract)	SY	14,600	\$2.50	\$36,500.00	\$1.00	\$14,600.00	\$1.90	\$27,740.00	\$2.00	\$29,200.00	\$0.60	\$8,760.00
13	604	Seeding for Erosion Control (Titan Tract South of Road)		2,700	\$2.50	\$6,750.00	\$1.25	\$3,375.00	\$3.98	\$10,746.00	\$2.00	\$5,400.00	\$0.70	\$1,890.00
14	602	Bermuda Block Sodding (Drainage Ditch on Titan Tract)	SY	9,000	\$6.50	\$58,500.00	\$9.00	\$81,000.00	\$8.03	\$72,270.00	\$8.00	\$72,000.00	\$8.00	\$72,000.00
15	-	Temporary Chain-link Construction Fencing (Cattle Control on Frueholz Tract)	SY	6,350	\$5.00	\$31,750.00	\$5.00	\$31,750.00	\$6.22	\$39,497.00	\$5.00	\$31,750.00	\$10.00	\$63,500.00
16	-	Remove/Replace Existing 5-Strand Barbed Wire Fencing	LF	269	\$7.50	\$2,017.50	\$15.00	\$4,035.00	\$11.15	\$2,999.35	\$10.00	\$2,690.00	\$30.00	\$8,070.00
17	-	Remove/Replace Existing Electric Fencing	LF	140	\$10.00	\$1,400.00	\$25.00	\$3,500.00	\$11.15	\$1,561.00	\$5.00	\$700.00	\$20.00	\$2,800.00
18	102	Clearing & Grubbing	LF	1	\$2,500.00	\$2,500.00	\$10,000.00	\$10,000.00	\$38,987.44	\$38,987.44	\$40,269.99	\$40,269.99	\$2,000.00	\$2,000.00
19	509	Trench Safety Plan Requirements and Implementation (All Depths)	LF	4,793	\$2.00	\$9,586.00	\$1.00	\$4,793.00	\$1.95	\$9,346.35	\$1.00	\$4,793.00	\$10.00	\$47,930.00
20	-	Hand Dig Under Active Gas Lines (Per Enterprise Products Pipeline Regulations)	LF	30	\$350.00	\$10,500.00	\$200.00	\$6,000.00	\$232.79	\$6,983.70	\$100.00	\$3,000.00	\$100.00	\$3,000.00
21														
22		Subtotal				\$1,364,099.25		\$882,162.00		\$903,023.07		\$927,747.99		\$978,532.00
23														
24		Mobilization, Bonds, Insurance		5%		\$68,204.96								
25		Contractor's Overhead and Profit		18%		\$245,537.87								
26		Contingency		10%		\$136,409.93								
27														
28		Total Items This Sheet				\$1,814,252.00								
		INDICATES CORRECTION TO BID												

	NBU													
	NBU Nautilus Off-Site Sewer Project													
	BID TABULATION -SCHEDULE 1													
	BID OPENING: 03/31/21; 2:00 PM													
					Pesado Construction		Spiess Construction Co., Inc.		Harper Brothers		Lupe Rubio Construction Co., Inc.		Pronto Sandblasting & Coating, Inc.	
ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	506	New Manhole Construction, 4- ft Dia.	EA	15	\$9,452.00	\$141,780.00	\$6,700.00	\$100,500.00	\$10,500.00	\$157,500.00	\$7,076.00	\$106,140.00	\$12,000.00	\$180,000.00
2	506	Special Manhole, (Dog house) 5-ft Dia.	EA	1	\$9,312.00	\$9,312.00	\$11,000.00	\$11,000.00	\$15,000.00	\$15,000.00	\$12,212.20	\$12,212.20	\$15,000.00	\$15,000.00
3	506	Extra Depth Manhole over 8-ft depth	LVF	39	\$1,078.00	\$42,042.00	\$100.00	\$3,900.00	\$284.00	\$11,076.00	\$433.10	\$16,890.90	\$400.00	\$15,600.00
4	510	Pipe, (SDR-26), 12-inch Diameter (all depths) by open cut, including excavation and backfill	LF	3919	\$79.20	\$310,384.80	\$129.00	\$505,551.00	\$101.00	\$395,819.00	\$115.15	\$451,272.85	\$100.00	\$391,900.00
5	510	Pipe, (C900 DR-18), 12-inch Diameter (all depths) by open cut, including excavation and backfill	LF	336	\$112.50	\$37,800.00	\$150.00	\$50,400.00	\$101.00	\$33,936.00	\$146.62	\$49,264.32	\$200.00	\$67,200.00
6	510	Pipe, (SDR-26), 12-inch Diameter (all depths) by open cut, including excavation and backfill (Restrained)	LF	203	\$88.00	\$17,864.00	\$150.00	\$30,450.00	\$130.00	\$26,390.00	\$136.70	\$27,750.10	\$180.00	\$36,540.00
7	510	Carrier Pipe, (SDR-26), 12-inch Diameter for Jacking or Boring (Restrained) (Installed in Casing) (Including Spacers)	LF	335	\$396.00	\$132,660.00	\$50.00	\$16,750.00	\$101.00	\$33,835.00	\$159.16	\$53,318.60	\$600.00	\$201,000.00
8	501	Jacking or Boring (24-inch) (Steel Casing), including site prep and casing material	LF	335	\$95.30	\$31,925.50	\$565.00	\$189,275.00	\$490.00	\$164,150.00	\$539.26	\$180,652.10	\$150.00	\$50,250.00
9	-	Repair and Replace Concrete Ramp	LS	1	\$55,050.00	\$55,050.00	\$12,000.00	\$12,000.00	\$8,300.00	\$8,300.00	\$8,540.00	\$8,540.00	\$9,000.00	\$9,000.00
10	01 34 00	Post Construction Television Inspection	LF	4,793	\$1.70	\$8,148.10	\$2.00	\$9,586.00	\$3.00	\$14,379.00	\$2.44	\$11,694.92	\$3.00	\$14,379.00
11	-	SWPPP (including SWPPP preparation, rock berm, and silt fencing)	LS	1	\$31,770.00	\$31,770.00	\$35,000.00	\$35,000.00	\$60,000.00	\$60,000.00	\$19,520.00	\$19,520.00	\$68,000.00	\$68,000.00
12	604	Seeding for Erosion Control (Frueholz Tract)	SY	14,600	\$2.60	\$37,960.00	\$0.50	\$7,300.00	\$3.00	\$43,800.00	\$2.12	\$30,952.00	\$1.00	\$14,600.00
13	604	Seeding for Erosion Control (Titan Tract South of Road)		2,700	\$2.60	\$7,020.00	\$0.50	\$1,350.00	\$3.00	\$8,100.00	\$6.21	\$16,767.00	\$1.00	\$2,700.00
14	602	Bermuda Block Sodding (Drainage Ditch on Titan Tract)	SY	9,000	\$6.90	\$62,100.00	\$6.00	\$54,000.00	\$6.00	\$54,000.00	\$7.35	\$66,150.00	\$7.00	\$63,000.00
15	-	Temporary Chain-link Construction Fencing (Cattle Control on Frueholz Tract)	SY	6,350	\$9.20	\$58,420.00	\$5.00	\$31,750.00	\$12.00	\$76,200.00	\$9.78	\$62,103.00	\$30.00	\$190,500.00
16	-	Remove/Replace Existing 5-Strand Barbed Wire Fencing	LF	269	\$14.10	\$3,792.90	\$10.00	\$2,690.00	\$25.00	\$6,725.00	\$6.46	\$1,737.74	\$10.00	\$2,690.00
17	-	Remove/Replace Existing Electric Fencing	LF	140	\$13.20	\$1,848.00	\$10.00	\$1,400.00	\$8.00	\$1,120.00	\$9.24	\$1,293.60	\$150.00	\$21,000.00
18	102	Clearing & Grubbing	LF	1	\$39,700.00	\$39,700.00	\$10,000.00	\$10,000.00	\$15,000.00	\$15,000.00	\$24,839.20	\$24,839.20	\$15,000.00	\$15,000.00
19	509	Trench Safety Plan Requirements and Implementation (All Depths)	LF	4,793	\$6.30	\$30,195.90	\$1.00	\$4,793.00	\$2.00	\$9,586.00	\$4.22	\$20,226.46	\$3.00	\$14,379.00
20	-	Hand Dig Under Active Gas Lines (Per Enterprise Products Pipeline Regulations)	LF	30	\$550.00	\$16,500.00	\$500.00	\$15,000.00	\$240.00	\$7,200.00	\$48.88	\$1,466.40	\$900.00	\$27,000.00
21														
22		Subtotal				\$1,076,273.20		\$1,092,695.00		\$1,142,116.00		\$1,162,791.39		\$1,399,738.00
23														
24		Mobilization, Bonds, Insurance		5%										
25		Contractor's Overhead and Profit		18%										
26		Contingency		10%										
27														
28		Total Items This Sheet												
		INDICATES CORRECTION TO BID												

NBU										
NBU Nautilus Off-Site Sewer Project										
BID TABULATION -SCHEDULE 1										
BID OPENING: 03/31/21; 2:00 PM										
					Wampole Miller		Qro Mex Construction Co., Inc.		Triun, LLC	
ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	506	New Manhole Construction, 4- ft Dia.	EA	15	\$8,349.00	\$125,235.00	\$12,800.00	\$192,000.00	\$12,000.00	\$180,000.00
2	506	Special Manhole, (Dog house) 5-ft Dia.	EA	1	\$10,561.78	\$10,561.78	\$26,500.00	\$26,500.00	\$13,000.00	\$13,000.00
3	506	Extra Depth Manhole over 8-ft depth	LVF	39	\$263.35	\$10,270.65	\$600.00	\$23,400.00	\$320.00	\$12,480.00
4	510	Pipe, (SDR-26), 12-inch Diameter (all depths) by open cut, including excavation and backfill	LF	3919	\$105.09	\$411,847.71	\$110.00	\$431,090.00	\$185.00	\$725,015.00
5	510	Pipe, (C900 DR-18), 12-inch Diameter (all depths) by open cut, including excavation and backfill	LF	336	\$130.24	\$43,760.64	\$120.00	\$40,320.00	\$190.00	\$63,840.00
6	510	Pipe, (SDR-26), 12-inch Diameter (all depths) by open cut, including excavation and backfill (Restrained)	LF	203	\$175.14	\$35,553.42	\$160.00	\$32,480.00	\$198.00	\$40,194.00
7	510	Carrier Pipe, (SDR-26), 12-inch Diameter for Jacking or Boring (Restrained) (Installed in Casing) (Including Spacers)	LF	335	\$82.16	\$27,523.60	\$342.00	\$114,570.00	\$125.00	\$41,875.00
8	501	Jacking or Boring (24-inch) (Steel Casing), including site prep and casing material	LF	335	\$897.00	\$300,495.00	\$690.00	\$231,150.00	\$300.00	\$100,500.00
9	-	Repair and Replace Concrete Ramp	LS	1	\$13,340.00	\$13,340.00	\$16,000.00	\$16,000.00	\$5,000.00	\$5,000.00
10	01 34 00	Post Construction Television Inspection	LF	4,793	\$3.83	\$18,357.19	\$6.00	\$28,758.00	\$4.50	\$21,568.50
11	-	SWPPP (including SWPPP preparation, rock berm, and silt fencing)	LS	1	\$24,955.00	\$24,955.00	\$44,000.00	\$44,000.00	\$20,000.00	\$20,000.00
12	604	Seeding for Erosion Control (Frueholz Tract)	SY	14,600	\$7.20	\$105,120.00	\$1.40	\$20,440.00	\$1.00	\$14,600.00
13	604	Seeding for Erosion Control (Titan Tract South of Road)		2,700	\$7.37	\$19,909.99	\$1.40	\$3,780.00	\$1.00	\$2,700.00
14	602	Bermuda Block Sodding (Drainage Ditch on Titan Tract)	SY	9,000	\$7.30	\$65,700.00	\$8.00	\$72,000.00	\$13.00	\$117,000.00
15	-	Temporary Chain-link Construction Fencing (Cattle Control on Frueholz Tract)	SY	6,350	\$8.25	\$52,387.50	\$8.00	\$50,800.00	\$18.00	\$114,300.00
16	-	Remove/Replace Existing 5-Strand Barbed Wire Fencing	LF	269	\$32.88	\$8,844.72	\$38.00	\$10,222.00	\$20.00	\$5,380.00
17	-	Remove/Replace Existing Electric Fencing	LF	140	\$179.53	\$25,134.20	\$18.00	\$2,520.00	\$75.00	\$10,500.00
18	102	Clearing & Grubbing	LF	1	\$21,390.00	\$21,390.00	\$4,000.00	\$4,000.00	\$55,000.00	\$55,000.00
19	509	Trench Safety Plan Requirements and Implementation (All Depths)	LF	4,793	\$16.16	\$77,454.88	\$10.00	\$47,930.00	\$5.00	\$23,965.00
20	-	Hand Dig Under Active Gas Lines (Per Enterprise Products Pipeline Regulations)	LF	30	\$312.83	\$9,385.00	\$600.00	\$18,000.00	\$200.00	\$6,000.00
21										
22		Subtotal				\$1,407,226.28		\$1,409,960.00		\$1,572,917.50
23										
24		Mobilization, Bonds, Insurance		5%						
25		Contractor's Overhead and Profit		18%						
26		Contingency		10%						
27										
28		Total Items This Sheet								
		INDICATES CORRECTION TO BID								



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Landa Pump Station Phase 2 Project

BACKGROUND

This Professional Services Agreement between New Braunfels Utilities (“NBU”) and Freese and Nichols, Inc. (“FNI”) for the Landa Pump Station Phase 2 project (the “Project”) includes preliminary design, final design, permitting, bid, and construction phase services.

The Project will (i) increase the production capacity of the Landa Pump Station and Well #5 from 6.5 million gallons per day (“MGD”) to a total of approximately 10 MGD, (ii) expand the chemical storage and feed facilities to accommodate the increase in capacity of the Landa Pump Station and Well #5, (iii) decommission the Texas Pump Station and ground storage tank/standpipe located on Texas Avenue, (iv) include piping improvements to bypass the Texas Pressure Zone, (v) rehabilitate the existing 1.5 million gallon Landa Ground Storage Tank, (vi) improve the current electrical, SCADA, and piping for the Landa Pump Station and Well #5, and (vii) improve the access road and fencing at the Land Pump Station within the Landa Park Golf Course.

NBU staff requests that the Board of Trustees approve the Professional Services Agreement with FNI for the Project.

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

Upon completion of the final design, NBU staff will solicit a construction contract for the Project and anticipates bringing the construction contract to the Board for approval in May of 2022. NBU staff anticipates beginning construction on the Project in June of 2022 and completing construction on the Project in June of 2023.

FINANCIAL IMPACT

The total contract amount for the Professional Services Agreement with FNI for the Project, including supplemental services, is \$1,445,142. The Project is not a specific fiscal year 2021 budgeted project. However, a portion of the Project will be funded as part of the overall fiscal year 2021 Water Capital Improvement Plan Budget. The remaining portion of the Project will be included within the proposed budget for fiscal year 2022 through fiscal year 2023 Water Capital Improvement Plan Budget scheduled to go before the Board in June for approval.

LINK TO STRATEGIC PLAN

Recognized as a Trusted Community Partner Dedicated to Excellence in Service

Be a Responsible Steward of Natural Resources

EXHIBITS

1. Professional Services Agreement with FNI

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **FRESE AND NICHOLS, INC.**, a Texas corporation (the “Professional”).

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

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

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

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

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

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

(B) Additional Work. NBU retains the right to make changes to the Services at any time by a written order. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by supplemental agreement 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 supplemental agreement for the additional work and NBU shall compensate the Professional for the additional work on the same basis of the rates for the Services contained in Exhibit B. If the changes deduct from the extent of the scope of work for the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by the Professional not previously approved as additional work shall be at risk of the Professional.

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

Section 6. Personnel. The Professional shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Professional agrees that, upon commencement of the Services to be performed

under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Professional shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

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

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

Section 9. Indemnification.

(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:

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

(B) REIMBURSEMENT OF NBU'S FEES IN DEFENSE OF CLAIMS. TO THE EXTENT NBU INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST NBU THAT ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF THE PROFESSIONAL DESCRIBED IN THIS SECTION, THE PROFESSIONAL SHALL REIMBURSE NBU ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE PROFESSIONAL'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

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

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- 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 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 commencing any the Services under this Agreement, the Professional shall provide NBU with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Professional's insurance provider(s) as evidence that policies are in place with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies 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 declaration page(s) to NBU thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement will be identified by referencing this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded.

(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. 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. Vehicle Liability. The Professional shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Professional’s owned, hired and non-owned vehicles 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 a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the declaration page(s) of each insurance policy, 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, transaction privilege taxes and property taxes, including any interest or penalties.

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

If to NBU:

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

With copy to:

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

If to the Professional:

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

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

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

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

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of

partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, 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. 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, the Professional shall notify NBU immediately. **TO THE EXTENT PERMITTED BY SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, ANY TIER OF SUBCONTRACTOR, OR ANY ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.**

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with 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 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. 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 20. Electronic Signatures. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 20____.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

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

By: _____
Name: _____
Title: _____

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide project management, design, bid, and construction phase services (collectively the “Services”) for the Landa Pump Station Expansion Project (the “Project”) located at the Landa Pump Station at the Landa Park Golf Course (the “Project Site”) and the Texas Pump Station and Ground Storage Tank (the “Secondary Project Site”). The Project shall include the facilities and/or improvements described herein.

Water Pump Station

The Professional shall perform Services for the water pump station scope described below.

- 1) Expanding the existing Landa Pump Station from 6.5 million gallons per day (“MGD”) to 10 MGD, including pumps, motors, piping, valves, electrical equipment, pump station building, and an electrical equipment canopy. Pump station expansion will include chemical feed, heating, ventilation and air conditioning, architectural, structural, plumbing, electrical, instrumentation, and controls as required.
- 2) Expanding the existing 6.5 MGD Well #5 Pump to 10 MGD.
- 3) Evaluating and expanding chemical storage and feed facilities to accommodate 10 MGD flow. Initial analysis indicates that the following equipment will need to be upgraded or replaced: chlorinators, ejectors, chlorine booster pumps, a Liquid Ammonium Sulfide (“LAS”) storage tank, a Hydrofluorosilic Acid (“HFSA”) storage tank, LAS and HFSA feed pumps, and chemical feed piping.
- 4) Providing site improvements that include: site piping, valves, flowmeters, site power distribution, site lighting, grading and drainage, detention ponds, site water and wastewater utilities, potable water lines, and field instrumentation.
- 5) Providing electrical improvements that include: replacing the existing supervisory control and data acquisition (“SCADA”) cabinet, 480V motor control center, motor starters associated with the downtown and Texas pressure zone pumps, and associated 120V panelboards and step-

down transformer. Electrical equipment shall be located outside on an electrical equipment pad with canopy.

- 6) Providing a back-up electric diesel generator and containment pad and an automatic throw over controller or transfer switch.
- 7) Reusing the existing communications method (radio antenna or fiber) to connect the proposed SCADA cabinet to the overall SCADA system.
- 8) Replacing security facilities including fencing and gates.
- 9) Re-paving of pump station approximately 1,100 linear feet (“LF”) of access road between Elizabeth Ave and Landa Pump Station.
- 10) Decommissioning the Texas Pump Station and Grounds Storage Tank/Standpipe to include:
 - a) demolition of two vertical turbine pumps, wet well, and associated piping and appurtenances;
 - b) demolition of electrical building and associated equipment and appurtenances; and
 - c) site civil improvements including but not limited to seeding/sodding and tree clearing.

Water Pipeline

The Professional shall perform Services for the water pipeline scope described below.

- 1) Install approximately 85 LF of new 24-inch water main installed by open-cut methods including all appurtenances, starting at the Landa Pump Station Downtown Pressure Zone discharge header and continuing to the cart path adjacent to the Landa Pump Station site fence.
- 2) Install approximately 130 LF of new 12-inch water main installed by open-cut methods including all appurtenances, starting upstream of the existing Texas Pump Station and tying into the existing 12-inch water main downstream of the existing Texas Pump Station.

Ground Storage Tank

The Professional shall perform Services for the ground storage tank scope described below.

- 1) Rehabilitate existing 1.5 million gallon (“MG”) ground welded/bolted steel storage tank at the Project Site. Improvements are as follows:
 - a) recoat interior and exterior of the tank;

- b) repair corroding rafters, ceiling and center support;
 - c) repair corroding chime around the exterior of the tank;
 - d) repair corrosion on tank appurtenances, ladders, and manway;
 - e) demolish and replace existing overflow weir and pipe to accommodate higher flows;
 - f) replace roof landing and add safety improvements including guardrail;
 - g) replace interior and exterior ladders and add safety devices;
 - h) replace roof vent and screen, and add gasket material to the access hatch to prevent intrusion;
 - i) add gasket material at all interior ladder/safety rail connections;
 - j) add pressure gauge;
 - k) backfill erosion areas around tank perimeter;
 - l) add concrete channel to guide overflow off the site;
 - m) repair of cracking and spalling concrete around tank perimeter; and
 - n) possible repair of corrosion areas on the tank floor.
- 2) Decommission existing 0.235 MG bolted ground storage tank at the Secondary Project Site. Improvements are as described herein.
- a) Perform testing of tank coating:
 - i) Retain a testing laboratory to perform laboratory analysis for lead, barium, cadmium and chromium on the existing tank and piping coating systems at the site by Environmental Protection Agency Method 6010.
 - ii) Obtain a maximum of six coating samples and test for total lead, cadmium, and chromium:
 - (1) one sample: interior coating of ground storage tank;
 - (2) two samples: exterior coating of ground storage tank; and
 - (3) two samples: existing structures and piping. Locations to be determined during site evaluation.
 - iii) Collect up to four soil samples, locations to be determined during field investigation, depending upon factors such as homogeneity, evidence of contamination, etc. The samples will be analyzed for:
 - (1) lead;
 - (2) cadmium; and

- (3) chromium.
- iv) Compare sample results to protective concentration limits (“PCLs”) established by the Texas Commission on Environmental Quality (“TCEQ”) under the Texas Risk Reduction Program and waste classification guidelines. In cases where sample results exceed relevant PCLs, additional testing such as Synthetic Precipitation Leaching Procedure (“SPLP”) and/or Toxicity Characteristic Leaching Procedure (“TCLP”) will be necessary in order to determine potential impacts to groundwater or waste classification if initial results indicate that soils may not be suitable for reuse on site.
- v) Analysis for a SPLP and TCLP on samples exceeding PCLs are not included within these Services.
- b) Demolish a 0.235 MG bolted ground storage tank.

SERVICES

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

Task 1. Project Management

1. The Professional shall provide the following project management services described herein.
 - 1.1. SCHEDULE. The Professional shall develop a baseline design schedule for the Project and prepare updated design schedules for the Project on a monthly basis on or before the 25th day of each month for NBU to monitor progress and identify design submittal dates. Schedules shall be provided to the NBU Project Manager via email.
 - 1.2. QUALITY CONTROL. The Professional shall develop a quality assurance/quality control (“QA/QC”) program for the Project, which shall be explained in detail via a written document and provided to NBU’s Project Manager via email within 30 days of notice to proceed (“NTP”).
 - 1.3. PROGRESS REPORTS. The Professional shall provide NBU with electronic monthly Project progress reports and submit written invoices on or before the 25th day of each month for the previous month’s effort. Progress reports shall be provided to the NBU Project Manager via email.
 - 1.4. MEETING AGENDA/MINUTES. The Professional shall provide meeting agenda one

(1) day prior to meetings and provide a copy of the documented meeting minutes and action item logs to NBU's Project Manager within one (1) week after each meeting.

1.5. PROJECT CONTROLS. The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, the following:

- 1.5.1. assigning a senior advisor to oversee the QA/QC program;
- 1.5.2. developing cost estimates using recent bid tabs from similar projects or vendor prices;
- 1.5.3. using Microsoft Project to manage the schedule; and
- 1.5.4. coordinating communication with sub consultants through emails and meetings.

Task 2. Preliminary Engineering Phase

2. Upon NBU providing NTP to the Professional, the Professional shall perform the preliminary engineering phase services described below.

2.1. MEETINGS. The Professional shall provide meeting agenda and meeting minutes to NBU for the following meetings:

- 2.1.1. Project kick-off meeting with NBU (1 meeting);
- 2.1.2. monthly progress status meetings (3 meetings);
- 2.1.3. study memorandum review meeting;
- 2.1.4. 30% Design review meeting;
- 2.1.5. meetings with the City of New Braunfels ("CoNB") (1 meeting);
- 2.1.6. meetings with the CoNB Parks Department (2 meetings);
- 2.1.7. site visit at Landa Ground Storage Tank ("GST") (2 meetings); and
- 2.1.8. meeting at Texas Pump Station ("PS") site (2 meetings).

2.2. PUMP STATION ANALYSIS. The Professional shall analyze the pump station design requirements as described herein.

- 2.2.1. The Professional shall determine pump station system capacity and head requirements over the study period, determine system operation protocols in conjunction with NBU, and utilize hydraulic model of the pumping station, pipeline, and related facilities prepared by NBU's modeling consultant.

- 2.2.2. The Professional shall determine preferred location of facilities based upon hydraulic conditions, ease of operations and site conditions.
- 2.2.3. The Professional shall determine the electrical equipment required and provide an electrical layout, a one-line diagram and overall process diagram for the pump station.
- 2.2.4. The Professional shall determine size and capacity of pump stations, pipelines, and related facilities.
- 2.2.5. The Professional shall determine chemical feed improvements required and the required facilities to house these improvements.

2.3. 30% DESIGN DOCUMENTS

- 2.3.1. The Professional shall perform collection and review of existing data, reports, mapping, and records from NBU. The Professional shall review documents associated with the Project. The Professional shall provide analyses of NBU's requirements for the Project, including planning, surveys, site evaluations and comparative studies of prospective sites and solutions.
- 2.3.2. The Professional shall prepare 30% design drawings including plan views of all proposed infrastructure within the Project Site.
- 2.3.3. The Professional shall prepare a Class 4 opinion of probable construction cost ("OPCC") based on 30% design drawings.

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

2.5. DELIVERABLES. The Professional shall provide the following Preliminary Engineering Phase deliverables to NBU:

- 2.5.1. a PER and Class 4 OPCC – one (1) PDF electronic file; and
- 2.5.2. 30% design drawings – one (1) PDF electronic file, one (1) electronic Keyhole Markup language Zipped ("KMZ") or shape ("SHP") file and three (3) hard copies

of 11x17 size plans.

Task 3. Final Design Phase

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

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

- 3.1.1. 60% design review meeting;
- 3.1.2. 90% design review meeting;
- 3.1.3. monthly design meetings (8 meetings); and
- 3.1.4. permitting meeting with CoNB (1 meeting).

3.2. 60% DESIGN DOCUMENTS. The Professional shall prepare 60% plans, specifications and an OPCC based on decisions made in the preliminary design phase. Design documents shall include:

- 3.2.1. plan view and/or site layout the proposed facilities;
- 3.2.2. process diagrams of the overall pump station and any chemical feed facilities;
- 3.2.3. electrical drawings to include major electrical duct bank and conduit routing, electrical layout and a one-line diagram;
- 3.2.4. profile view of water pipelines greater than 24 inches diameter;
- 3.2.5. mechanical drawings to include major design components of the pump station and Landa GST rehabilitation;
- 3.2.6. call outs for major design items;
- 3.2.7. table of contents for all required specifications and specifications that are provided by the Professional with the exception of NBU's standard specifications; and
- 3.2.8. Class 2 OPCC based on 60% design documents.

3.3. 90% DESIGN DOCUMENTS. Upon approval of 60% design documents, the Professional shall prepare 90% plans, specifications and an OPCC. 90% design documents shall include:

- 3.3.1. call outs for all design items on the plan sheets;
- 3.3.2. complete specifications; and
- 3.3.3. Class 1 OPCC based on 90% design documents.

- 3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare 100% plans, specifications and an OPCC. 100% design documents shall include:
- 3.4.1. final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase. NBU shall provide the Professional easement requirements for each parcel via email to incorporate into the plans;
 - 3.4.2. Project files to include; .dwg, .mxd, and .kmz;
 - 3.4.3. preparation of the bid form; and
 - 3.4.4. Class 1 OPCC based on 100% design documents.
- 3.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU:
- 3.5.1. 60% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, one (1) PDF electronic file of a Class 2 OPCC and three (3) hard copies of 11x17 size plans and specifications;
 - 3.5.2. 90% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, one (1) PDF electronic file of a Class 1 OPCC and three (3) hard copies of 11x17 size plans and specifications; and
 - 3.5.3. 100% design - the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, one (1) PDF electronic file of a Class 1 OPCC and three (3) hard copies of 11x17 size plans and specifications.

Task 4. Field Services

- 4. The Professional shall perform the field services described below.
 - 4.1. TOPOGRAPHIC SURVEY. The Professional shall obtain a topographic, utility, and boundary survey as described herein.
 - 4.1.1. The Professional shall tie in all existing surface topographic features and structures within the Landa Pump Station site. This shall include, but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges and flow line), channels and drainage ways (tops, toes and flow line), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and

structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits, visible valves, meters, clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits) mailboxes, etc. Trees shall be tagged and tabulated by size and species in compliance with the City of New Braunfels (CoNB) Tree Preservation Ordinance as defined in New Braunfels City Code Chapter 5.3-5i. The survey limits shall extend approximately 100 feet on intersecting streets. The Professional shall provide sufficient ground shots to create one (1) foot contours for the Project.

- 4.1.2. The Professional shall conduct a utility survey and locate existing utilities within the Landa Pump Station. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipal owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey. The Professional shall bear all costs for the services associated with utility locates.
- 4.1.3. The Professional shall locate up to two (2) geotechnical borings and tie them in to the Project survey.
- 4.1.4. The Professional shall set and install control points and/or benchmarks as required for the survey work (minimum 1-foot intervals). The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing.
- 4.1.5. The Professional shall conduct a survey of the site's perimeter. The Professional shall provide a description of the site's metes and bounds.
- 4.2. GEOTECHNICAL DATA REPORT. The Professional shall conduct a geotechnical investigation to complete a Geotechnical Data Report ("GDR") for the Project as described herein.
 - 4.2.1. Field Exploration shall be conducted as described herein.
 - 4.2.1.1. The Professional shall determine the required boring locations on the Project Site. The Professional shall provide a Project Site boring location map that shows the exploratory borings within the vicinity of the proposed improvements

and along the proposed water main alignments.

- 4.2.1.2. The Professional shall coordinate with NBU, CoNB, and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.
- 4.2.1.3. The Professional shall drill two (2) exploratory borings to a maximum depth of 20 feet below existing grade for the proposed improvements.
- 4.2.1.4. The borings conducted on the Project Site shall be advanced using standard rotary drilling equipment with continuous-flight augers or rotary wash methods. Subsurface samples shall be collected using 2-inch diameter split-spoon sampler in conjunction with the standard penetration test ("SPT"). Intermittent 3-inch diameter Shelby tube samples shall be collected in between the SPTs.
- 4.2.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.
- 4.2.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.
- 4.2.1.7. The Professional shall patch borings drilled through pavement with like material (asphalt, concrete) upon completion of backfilling.
- 4.2.1.8. The Professional shall have personnel experienced in logging borings directing the drilling, and handling and transporting the samples. The Professional shall provide visual classification of the subsurface stratigraphy, in general accordance with the American Society for Testing and Materials, standard number D2488 and the Unified Soil Classification System during drilling and sampling.
- 4.2.2. The Professional shall provide laboratory testing to include the following:
 - 4.2.2.1. testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials; and
 - 4.2.2.2. laboratory tests assigned for the specific subsurface materials encountered during exploration on the Project Site, but which are expected to include the following number and type of tests:
 - 4.2.2.2.1. Atterberg limits tests (up to a 6 tests);
 - 4.2.2.2.2. Percent Passing the #200 Sieve (up to 6 tests);

4.2.2.2.3. Moisture content tests (up to 14 tests); and

4.2.2.2.4. Unconfined compressive strength tests (with unit weights; up to 2 tests).

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

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

4.2.3.2. boring logs and laboratory testing results;

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

4.2.3.4. trenchless water main construction feasibility and recommendations of auger boring and/or horizontal directional drilling;

4.2.3.5. general discussion of expected construction related issues; and

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

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

4.3. ENVIRONMENTAL AND CULTURAL INVESTIGATION AND COORDINATION.

The Professional shall perform environmental investigation and coordinate with the cultural consultant hired directly by NBU. The Professional shall perform the tasks described herein.

4.3.1. Waters of the United States (“WOTUS”) DESKTOP SURVEY AND DELINEATION. The Professional shall perform a desktop survey to determine if potential WOTUS are present within the Project footprint(s). Spatial data sources shall include, but are not limited to: US Geological Survey (“USGS”) 7.5-minute topographic maps; USGS National Hydrography Dataset (“NHD”); US Fish and Wildlife Service’s (“USFWS”) National Wetland Inventory (“NWI”); Federal Emergency Management Agency (“FEMA”) floodplain maps; Natural Resource Conservation Service (“NRCS”) soils data; and recent and past aerial imagery. Following the desktop survey, the Professional shall perform a delineation of WOTUS that were identified by the desktop survey. This delineation would follow

the 1987 U.S. Army Corps of Engineers (“USACE”) Wetland Delineation Manual, the Regional Supplement for the Great Plains, and various USACE guidance such as Regulatory Guidance Letters. If applicable, Wetland Determination Data Forms shall be prepared as supporting documentation, along with representative photographs. If applicable, following the WOTUS delineation, the Professional shall coordinate with the Project design team to determine the area (acres) and volume (cubic yards) of fills that would be discharged within the potential WOTUS.

4.3.2. **FEDERALLY LISTED SPECIES HABITAT ASSESSMENT.** The Professional shall first perform a desktop survey and file review to determine if a proposed project may affect a federally listed species. This effort will first include obtaining information from USFWS Information for Planning and Consultation and Texas Parks and Wildlife Department’s Natural Diversity Database. Given the NBU service area, the Professional shall review karst geological information, such as karst zone maps. Spatial data sources may also include, but are not limited to, USGS 7.5-minute topographic maps, USGS NHD, USFWS NWI, FEMA floodplain maps, NRCS soils data, and recent and past aerial imagery. The Professional shall compile information on life history or habitat requirements of each potentially occurring species. Following the desktop survey and file review, the Professional shall perform a field survey as part of the habitat assessment. Using information obtained during the desktop effort and habitat assessment, the Professional shall determine if the Project Site may include potential habitat for federally listed species.

4.3.3. **CULTURAL RESOURCE EVALUATION AND COORDINATION.** The Professional shall attend up to two (2) meetings to coordinate with the NBU hired on-call cultural resources consultant so that the hired consultant may provide a coordination letter and desktop review to the Texas Historical Commission (“THC”) that identifies areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys. The Professional shall coordinate with the hired consultant to summarize results of the cultural evaluation.

4.4. **EASEMENT DOCUMENTS.** The Professional shall prepare a metes and bounds description and exhibits for required easements of the Project for one (1) permanent utility

easement and one (1) temporary construction easement at the Project Site based on the criteria described herein.

4.4.1. The Professional shall perform deed, plat and a courthouse record research, request title reports and obtain copies of deeds and easement documents.

4.4.2. The Professional shall survey property corners, fences and appurtenant property evidence.

4.4.3. Easements shall consist of a permanent easement and a temporary construction easement. There shall be a separate document for permanent easements and temporary easements for each parcel. Easements shall be signed and sealed by a registered professional land surveyor, currently registered in the State of Texas. Each easement shall have attached to it a copy of the corresponding deed for that property and a closure computation sheet for the easement tract. A draft copy of the easement shall be submitted for review by the Professional to NBU. The Professional shall incorporate comments as appropriate and submit one final copy of the easement and deed to NBU. Each draft metes and bounds exhibit shall be revised up to one (1) time per NBU's review.

4.4.4. Exhibit plat and legal description must meet all the rules of the Texas Board of Professional Land Surveying and the Professional Land Surveying Practices Act and the Manual of Practice for Land Surveying in the State of Texas as published by the Texas Society of Professional Surveyors. The latest revisions shall be used.

4.4.5. Legal descriptions shall include sufficient information to identify the location, boundaries, monumentation, and area of the described tract, as well as its relationship to the parent tract out of which it is surveyed. Each legal description shall be accompanied by an exhibit plat that depicts the worded description. Legal descriptions and exhibit plats shall be reproduced on 8.5" x 14" size paper. All must be legible. The exhibit plat or legal description shall be able to stand alone.

4.4.6. The Professional shall stake final easement boundaries.

4.5. DELIVERABLES:

4.5.1. a GDR (electronic submission with 100% design specifications); and

4.5.2. an Environmental Compliance Technical Memorandum – deliverable will outline compliance requirements pertaining to Section 404 of the Clean Waters Act,

Endangered Species Act, Section 106 of the National Historic Preservation Act, and Antiquities Code of Texas.

Task 5. Permitting & Stakeholders

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

5.1. The TEXAS HISTORICAL COMMISSION. The Professional shall coordinate with the consultant hired directly by NBU who will prepare and provide a coordination letter and desktop review to the THC and to coordinate areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys.

5.2. The TEXAS COMMISSION ON ENVIRONMENTAL QUALITY. The Professional shall prepare and submit permit applications to the Texas Commission on Environmental Quality for approval of all design documents. The permit applications shall include the following:

5.2.1. a variance letter (if needed); and

5.2.2. an approval letter for water supply improvements.

5.3. The CITY OF NEW BRAUNFELS. The Professional shall prepare and submit permit applications to the CoNB to obtain permits for:

5.3.1. a floodplain; and

5.3.2. a commercial development.

5.4. DELIVERABLES:

5.4.1. TCEQ permit(s)/ approval letter -one (1) PDF electronic copy; and

5.4.2. CoNB permit(s) - one (1) PDF electronic copy.

Task 6. Bid Phase Services

6. Upon completion of the final design, the Professional shall proceed with the bid phase services as described herein.

6.1. PRE-BID CONFERENCE. The Professional shall attend a pre-bid conference to be administered by NBU. The Professional shall assist NBU with preparation of agenda, provide NBU with meeting notes, and coordinate conference responses with NBU. Written responses to issues identified at the pre-bid conference shall be in the form of

addenda issued after the conference.

- 6.2. INTERPRET BID DOCUMENTS. The Professional shall assist NBU with responding to questions, interpreting bid documents, and prepare addenda to the bid documents if necessary.
- 6.3. BID EVALUATION. The Professional shall attend a bid-opening conference to be administered by NBU. The Professional shall assist NBU in the analyzing of the bids received for the Project. This includes researching contractor qualifications and references. The Professional shall recommend award of the contract or other actions as appropriate to be taken by NBU in the form of a letter of recommendation.
- 6.4. CONFORMED CONSTRUCTION DOCUMENTS. The Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications
- 6.5. DELIVERABLES.
 - 6.5.1. addenda - one (1) PDF electronic copy and bidders;
 - 6.5.2. letter of recommendation - one (1) PDF electronic copy; and
 - 6.5.3. conformed construction documents - one (1) PDF electronic copy and 3 hard copies.

Task 7. Construction Phase Services

7. Upon completion of the bid phase services, the Professional shall proceed and provide construction phase administration services as described herein. The Professional shall provide general construction contract administration services described below. It is understood in providing these services, that the Professional shall not have control over the construction contractor and is not responsible for the means, methods, techniques, safety precautions or sequence of construction undertaken by the construction contractor.
 - 7.1. FACILITY INTEGRATION AND OPERATIONS (“FIO”). The Professional shall develop a FIO memorandum that provides specific instructions on how the new facilities should be integrated into the existing water system, as well as special operating instructions. The FIO memorandum shall generally include:
 - 7.1.1. a description of the new facilities – major components and equipment, purpose and intent and how the new facilities tie to the existing infrastructure;

- 7.1.2. integration requirements - completion & testing procedures, NBU staff required, and responsibilities and notifications; and
- 7.1.3. operational & maintenance requirements - design settings & controls, and operating and maintenance procedures.

7.2. MEETINGS AND SITE VISITS. The Professional shall provide the services for meetings and site visits as described herein.

- 7.2.1. The Professional shall assist NBU in conducting a pre-construction conference with the construction contractor and prepare agenda, prepare and provide NBU with meeting notes and coordinate conference responses with NBU.
- 7.2.2. The Professional shall conduct one construction document control workshop for the contractor.
- 7.2.3. The Professional shall attend up to a total of 22 bi-weekly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor.
- 7.2.4. The Professional shall attend up to a total of 11 monthly site visits during construction of the Project to observe the progress and the quality of work and to determine if the work is proceeding in accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports for each site visit and notify NBU of any non-conforming work performed by the contractor observed on the site visits.
- 7.2.5. The Professional shall perform observations of the Ground Storage Tank floor during rehabilitation to identify corrosion areas in need of repair. The observation shall not exceed 2 calendar days.
- 7.2.6. The Professional shall conduct with NBU's representatives two substantial completion inspections 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.
- 7.2.7. The Professional shall conduct 2 final completion inspections 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.

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

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

- 7.3.1.1. shop drawings (up to 40);
- 7.3.1.2. record data (up to 10);
- 7.3.1.3. requests for information (up to 10);
- 7.3.1.4. schedules (up to 12);
- 7.3.1.5. certified test reports (up to 10);
- 7.3.1.6. operation and maintenance manuals (6); and
- 7.3.1.7. miscellaneous submittals (up to 10).

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

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

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

7.4.3. The Professional shall prepare field/change order documentation for up to 5 field orders for minor alterations and up to 10 change orders.

7.4.4. The Professional shall evaluate notices of contractor claims and make initial recommendations to NBU on the merit and value of the claim based on information submitted by the contractor or available Project documentation. The Professional shall negotiate a settlement value with the contractor at NBU's direction.

7.5. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret

the drawings and specifications for NBU and the contractor during the course of construction per the schedule assumed herein.

7.6. PAY ESTIMATES. The Professional shall review and comment on monthly and final estimates for payment to the contractor pursuant to the general conditions of the construction contract during the course of the construction per the schedule assumed herein.

7.7. CLOSE-OUT DOCUMENTS

7.7.1. RECORD DRAWINGS. The Professional shall prepare the record drawings based on the revised redline construction drawings and information furnished by the construction contractor reflecting changes in the Project made during construction. The Professional shall prepare one (1) set of record drawings at the completion of the Project and submit to NBU via email within 60 days of final completion.

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

- 7.7.2.1. address;
- 7.7.2.2. year built;
- 7.7.2.3. description;
- 7.7.2.4. square footage of building;
- 7.7.2.5. building value; and
- 7.7.2.6. contents value.

7.8. RESIDENT REPRESENTATION. The Professional shall have a part-time (20 hours per week) resident Project representative (“RPR”) on the Project Site for thirty-eight (38) weeks and provide an average of five (5) hours per week of construction management time for forty-six (46) weeks. The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, shall be performed as described herein.

7.8.1. COMMUNICATION

7.8.1.1. The Professional shall establish the communication procedures for all parties involved in the Project. The communication procedures shall detail the amount of time all parties have to respond to questions, submittals, or other

documents, and the most efficient transmission of communication (via email, phone, etc.). These procedures shall be provided in writing and reviewed with NBU, the engineer of record (“EOR”), and the contractor. NBU shall approve all communication procedures.

- 7.8.1.2. The Professional shall conduct periodic progress meetings with NBU, EOR, and contractor to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any Project related issues.
- 7.8.1.3. The Professional shall prepare and distribute an agenda prior to the progress meetings and record the meeting minutes. The Professional shall email the meeting minutes to NBU.
- 7.8.1.4. The Professional shall submit monthly reports of the construction progress to NBU. The reports shall describe the construction progress and summarize Project costs, cash flow, construction schedule, pending and approved contract modifications, change order status, and any outstanding issues.

7.8.2. QA/QC PROGRAM

- 7.8.2.1. The Professional shall observe the contractor’s work to determine if the work is proceeding in accordance with the contract. The Professional shall prepare daily reports to be submitted electronically to NBU documenting the Professional’s observations.
- 7.8.2.2. The Professional shall document when non-conforming work is observed and submit this documentation via email to NBU and the contractor. The Professional shall verify and document when the observed non-conforming work has been corrected and submit documentation to that effect to NBU via email.
- 7.8.2.3. The Professional shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.
- 7.8.2.4. The Professional shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in

accordance with applicable testing and inspection bureaus who set standards for the testing of materials, witness tests, and factory testing.

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

7.8.3. DOCUMENT MANAGEMENT

- 7.8.3.1. The Professional shall establish and maintain an electronic project management information system utilizing the web based FNiManager System.
- 7.8.3.2. The Professional shall manage the processing of contractor submittals, including the filing and retrieval of all Project documentation. The Professional shall receive contractor submittals including requests for information, modification requests, shop drawings, schedules, and other submittals. The Professional shall perform an initial review of the submittals and electronically send the submittals to the EOR and/or NBU for a detailed review and response.
- 7.8.3.3. The Professional shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties for documents, and of (ii) the EOR in reviewing and responding to submittals. The Professional shall verify that documentation is being processed according to the schedule.
- 7.8.3.4. The Professional shall prepare monthly reports that monitor the status of all submittals in the review process. The Professional shall submit an electronic copy of the report to NBU once a month.

7.8.4. SCHEDULE MANAGEMENT

- 7.8.4.1. The Professional shall review the baseline, the projected, and the monthly construction progress schedules submitted by the contractor. The Professional shall monitor the progress of the work completed relative to the planned progress and address any identified schedule delays by notifying via email, the EOR, NBU, and the contractor promptly.

7.8.5. COST MANAGEMENT

- 7.8.5.1. The Professional shall review the schedule of values and payment requests prepared by the contractor. The Professional shall establish with NBU and the contractor procedures to review the monthly quantities of work in place and the corresponding payment requests for work completed.
- 7.8.5.2. The Professional shall prepare monthly cash flow requirements based upon information provided by the contractor. The Professional shall update cash flow reports monthly and include these reports with monthly updates to NBU.
- 7.8.5.3. The Professional shall verify quantities of work in place, review the payment requests and supporting documentation, and provide an opinion of whether the payment requested matches the work completed to NBU via email.

7.8.6. ISSUE MANAGEMENT

- 7.8.6.1. The Professional shall provide an initial interpretation of the drawings and specifications when questions arise concerning the definition of the drawings and specifications. The Professional shall coordinate a resolution to these issues based upon a final interpretation of the drawings and specifications by the EOR, NBU, and the contractor.
- 7.8.6.2. The Professional shall track and document issues, procure a resolution, and notify the EOR, NBU, and the contractor via email promptly.

7.8.7. CHANGE MANAGEMENT

- 7.8.7.1. The Professional shall establish and document procedures for administering changes to the construction contract.
- 7.8.7.2. The Professional shall prepare documentation of the requested contract modifications. The Professional shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's State of Texas engineering seal affixed.
- 7.8.7.3. The Professional shall process contract modifications and negotiate with the contractor on behalf of NBU to determine the cost and time impacts of any modifications to the contract. The Professional shall prepare change order documents for approved modifications and have them executed by NBU.

The documentation of field orders that do not impact cost or schedule shall also be prepared and submitted to NBU.

- 7.8.7.4. The Professional shall receive and evaluate notices of contractor claims and make recommendations to NBU on the merit and value of the claim.

7.8.8. PROJECT COMPLETION

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

7.8.9. MATERIALS TRANSFER

7.8.9.1. The Professional shall manage and coordinate the transfer of and acceptance by the contractor of any NBU furnished equipment or materials.

7.8.9.2. The Professional shall manage and coordinate the transfer of and acceptance by NBU of any contractor furnished spare parts, materials, keys, etc.

7.8.10. RECORD DRAWINGS

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

7.8.11. LIMITATIONS OF AUTHORITY OF THE RPR

7.8.11.1. The Professional shall not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized by engineer of record ("EOR").

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

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

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

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

7.8.11.6. The Professional shall not accept shop drawings or sample submittals from anyone other than the contractor.

7.8.11.7. The Professional shall not participate in a specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by EOR.

7.9. TANK COATING AND WELDING INSPECTION. The Professional shall provide inspection and testing of the construction and painting of the 1.5 MG elevated storage tank at Landa Park.

7.9.1. The Professional shall attend the preconstruction meeting (1 meeting).

7.9.2. The Professional shall visit the Project Site up to twenty-four (24) times for steel erection and welding inspection.

7.9.3. The Professional shall visit the Project Site up to thirty-two (32) times for painting inspection of the steel tank.

7.9.4. For Holiday testing, the Professional shall only observe the contractor performing Holiday testing and will not conduct Holiday tests.

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

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

7.10.2. Project Site and Secondary Project Site visit memos and construction progress meeting minutes;

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

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

SUPPLEMENTAL SERVICES

Pursuant to Section 4(B) of this Agreement, the Professional shall seek prior written approval from NBU before commencing work on any services described in this Section. If NBU requests the Professional to perform the additional services, NBU and the Professional shall execute a contract amendment or supplemental agreement, as appropriate, detailing the services to be performed and the completion date. The Professional acknowledges the contract duration will not increase as a

result of engaging the supplemental service unless noted in the supplemental agreement or contract amendment, as appropriate.

The additional services shall include Project specific professional engineering services as contemplated in Chapter 2254 of the Texas Government Code, as amended, which may include but are not limited to:

- Miscellaneous Engineering – The Professional shall provide additional design caused by unknown site conditions.

TIME OF COMPLETION

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

Project Milestones	Start Date	End Date
Notice to Proceed	08/01/2021	
30% Preliminary Design	08/01/2021	08/01/2021
60% Final Design	08/01/2021	08/27/2021
90% Final Design	08/27/2021	11/12/2021
100% Final Design	11/12/2021	12/17/2021
Permitting	12/17/2021	3/11/2022
Bid Phase	12/17/2021	05/26/2022
Construction Phase (Substantial Completion)	06/01/2022	04/04/2023
Construction Phase (Final Completion)	04/04/2023	06/04/2023

The Professional shall complete the Services by **August 6, 2023**.

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 during the term of this Agreement in an amount not to exceed \$1,415,142.

Task	Cost
Task 1: Project Management	\$96,469
Task 2: Preliminary Design Phase	\$197,973
Task 3: Final Design Phase	\$614,913
Task 4: Field Services	\$38,329
Task 5: Permitting & Stakeholders	\$11,639
Task 6: Bid Phase	\$24,159
Task 7: Construction Phase	\$431,660
Total	\$1,415,142

Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$30,000; 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.

Exhibit C

Evidence of Insurance



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

From: Gregory Thomas **Reviewed by:** Gretchen Reuwer
 Chief Engineer of Electric Services Director of Electric Services and Compliance

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Contract with Siemens Industry, Inc. and a Contract with Siemens Energy, Inc. for the Installation and Purchase of Eleven (11) Substation Breakers

BACKGROUND

On June 25, 2020, New Braunfels Utilities (“NBU”) approved the fiscal year 2021 capital improvement plan (“CIP”) that included the expansions and upgrades to several NBU substations (the “Substation Upgrade Project”). As part of the Substation Upgrade Project, NBU must procure eleven (11) substation breakers to be installed at five (5) NBU substations (the “Substation Breaker Project”). Specifically, the Substation Breaker Project includes the purchase and installation of eight (8) medium voltage distribution class breakers and three (3) high voltage transmission class breakers.

On February 10, 2021, NBU staff issued a request for bids (“RFB”) for the Substation Breaker Project. On February 26, 2021, NBU received six (6) responses with two respondents subdividing their response into two companies for different breakers. FAPCO, LLC a representative for Siemens (a manufacturer of the breakers), broke up its bid response into two related but independent companies, Siemens Industry, Inc. (“Siemens Industry”) and Siemens Energy, Inc. (“Siemens Energy”). The Siemens Industry response includes the manufacturing and delivery of the eight (8) medium voltage breakers. The Siemens Energy response includes the manufacturing and delivery of the three (3) high voltage breakers. After evaluation, NBU staff recommends awarding the contracts to Siemens Industry and Siemens Energy as the combined lowest responsible bidder for the Project. A copy of the bid tabulation is included as an Exhibit below.

In order to reduce the cost associated with the Substation Upgrade Project and maintain critical schedules, NBU Electric elected to separate the Substation Breaker Project from the other components of the overall Substation Upgrade Project, including the Foundations Additions Project, which is also being presented to the NBU Board this month. NBU will begin the procurement process for remainder of the Substation Upgrade Project in summer of 2021 and present the related contracts to the Board in accordance with requirements of the Purchasing Policy.

This item is being presented to the Board because the cumulative total for the contract with Siemens Industry and Siemens Energy exceeds \$250,000.

FINANCIAL IMPACT

The total cost of the contract to Siemens Industries, Inc. is \$150,416 and the total cost of the contract for Siemens Energy, Inc. is \$202,024. The Project is budgeted within the fiscal year 2021 through fiscal year 2024 NBU Board approved capital improvements projects budget

LINK TO STRATEGIC PLAN

Maintain Organizational Reliability and Resiliency

EXHIBITS

1. Bid Tab – RFB 02570

<u>Bidder</u>	<u>Manufacturer</u>	<u>Medium Voltage Breakers</u>	<u>High Voltage Breakers</u>
<u>Siemens Industry, Inc. (FAPCO LLC)</u>	<u>Siemens</u>	<u>\$150,416</u>	<u>N/A</u>
<u>Siemens Energy, Inc. (FAPCO LLC)</u>	<u>Siemens</u>	<u>N/A</u>	<u>\$202,024</u>
Siemens Industry, Inc. (KBS Electrical Distributors, Inc.)	Siemens	\$158,341	N/A
Siemens Energy, Inc. (KBS Electrical Distributors, Inc.)	Siemens	N/A	\$212,665
M&I Electric, LLC (Alternative Bid)	Myers Controlled Power	\$192,224	No Bid
M&I Electric, LLC	Myers Controlled Power	\$200,067	No Bid
Texas Electric Cooperatives	General Electric	No Bid	\$205,536
HBI Energy Associates, LLC	ABB	No Bid	Incomplete Bid
Priester-Mell & Nicholson Inc.	S&C Electric Co.	No Bid	Incomplete Bid

2. Purchase Order Contract with Siemens Industry, Inc.

3. Purchase Order Contract with Siemens Energy, Inc.



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

From: Gregory Thomas **Reviewed by:** Gretchen Reuwer
Chief Engineer of Electric Director of Electric Services and
Services Compliance

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

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Contract with Lambda Construction I, Ltd. For Foundation Additions at the E.C. Mornhinweg, TXI, and Hortontown Substations

BACKGROUND

On June 25, 2020, New Braunfels Utilities (“NBU”) approved the fiscal year 2021 capital improvement plan (“CIP”) that included expansions and upgrades to several NBU substations (the “Substation Upgrade Project”). As part of the Substation Upgrade Project, NBU must complete foundation work at the E.C. Mornhinweg, TXI, and Hortontown Substations prior to the commencement of any expansion construction, upgrade construction, or delivery of any new power transformers (the “Foundation Additions Project”). Specifically, the Foundation Additions Project includes (i) foundation work at the Hortontown Substation to facilitate a 138kV switch stand relocation and (ii) foundation work at the E.C. Mornhinweg and TXI substations to accommodate the delivery of new power transformers that must be set by crane on concrete foundations.

On March 12, 2021, NBU staff issued a request for bids (“RFB”) for the Foundation Additions Project. On March 31, 2021, NBU received five (5) bids. NBU staff selected Lambda Construction I, Ltd. as the lowest responsible bidder; therefore, NBU staff recommends the selection of Lambda Construction I, Ltd. for the Foundation Additions Project. A copy of the bid tabulation is included as an Exhibit below.

In order to reduce the cost associated with the Substation Upgrade Project and maintain critical schedules, NBU Electric elected to separate the Foundations Additions Project from the other components of the overall Substation Upgrade Project, including the Substation Breaker Project, which is also being presented to the NBU Board this month. NBU will begin the procurement process for the remainder of the Substation Upgrade Project in summer of 2021 and present the related contracts to the Board in accordance with requirements of the Purchasing Policy.

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

FINANCIAL IMPACT

The total cost of the contract with Lambda Construction I, Ltd. for the Foundation Additions Project is \$362,070.50. This expenditure is included in the NBU Board of Trustees approved five-year CIP.

LINK TO STRATEGIC PLAN

Maintain Organizational Reliability and Resiliency

EXHIBITS

1. Bid Tab – RFB 02606

<u>Bidder, Labor & Materials Services</u>	<u>Bid Price</u>
<u>Lambda Construction I, Ltd.</u>	<u>\$362,070.50</u>
Primoris T&D Services	\$372,673.84
Dorazio Enterprises	\$394,779.00
Sayers Construction Services	\$507,999.92
Thompson Construction Services	\$553,704.34

2. Purchase Order Contract with Lambda Construction I, Ltd.



Meeting Date: May 25, 2021

Agenda Type: Consent Items for Action

From: Jason Theurer
Water Operations Manager

Reviewed by: Michael Short, P.E.
Director of Water Services

Submitted by: Ryan Kelso
Chief Operations Officer

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute an Amendment to the Services and Goods Agreement with Precision Calibrate for Large Water Meter Testing and Repair Services

BACKGROUND

On December 10, 2020, the New Braunfels Utilities Board of Trustees approved a Services and Goods Agreement with Precision Calibrate Meter Services (“PCMS”) for large water meter testing and repairing services (the “Agreement”). Shortly after commencement of the services under the Agreement, NBU staff and PCMS identified a need to modify the Agreement to enhance the original specifications and clarify the scope of work to include the flow rate limits and the number of tests required for each meter.

As a result of the identified need, NBU staff asks the Board to approve this Services and Goods Agreement Amendment with PCMS, which will provide flow rate limits and the requirement for one test for each meter tested (the “Amendment”). NBU staff notes that this Amendment will not change the compensation amount of the Agreement as the not-to-exceed amount remains \$150,000 for the duration of the Agreement.

This Amendment is being presented to the Board because it modifies the scope of work of a previously NBU Board approved contract.

FINANCIAL IMPACT

There is no financial impact due to this Amendment.

LINK TO STRATEGIC PLAN

Maintain Organizational Reliability and Resiliency

EXHIBITS

1. Services and Goods Agreement with Precision Calibrate Meter Services
2. Amendment to Services and Goods Agreement Large Meter Testing

**AMENDMENT TO SERVICES AND GOODS AGREEMENT
LARGE METER TESTING- PART A**

This **AMENDMENT TO SERVICES AND GOODS AGREEMENT** (the "Amendment") is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility ("NBU"), and **STEVE NOFFSINGER, AN INDIVIDUAL DBA PRECISION CALIBRATE METER SERVICES** (the "Vendor") (collectively, "the Parties").

RECITALS

WHEREAS, NBU and the Vendor entered into the Services and Goods Agreement dated January 20, 2021 (the "Agreement"), to provide qualified labor, materials, and equipment to test meters and develop work orders for repair (the "Services"); and

WHEREAS, NBU and the Vendor desire to amend the Agreement to modify the scope of services to include a one-time test for each meter for the duration of the Agreement and to modify the testing flow rate.

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 to include the clarification to specifications described by Exhibit A to this Amendment as of the effective date of this Amendment.

Section 2. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 3. Entire Agreement. This Amendment, together with Agreement, sets forth the entire understanding of NBU and the Vendor and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 4. Binding Effect. This Amendment will extend to and be binding upon NBU and the Vendor and their respective successors and permitted assigns.

Section 5. Severability. If any term or provision of this 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 Amendment shall not be affected thereby, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 6. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this Amendment on this the ____ day of _____, 20__.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

THE VENDOR:

STEVE NOFFSINGER
DBA: PRECISION CALIBRATE METER SERVICES

By: Steve Noffsinger
Name: Steve Noffsinger
Title: owner

EXHIBIT A – SCOPE OF SERVICES

The Vendor shall provide qualified labor, materials, and equipment to test meters and develop work orders for repair (the “Services”).

The following requirements and specifications shall be in addition to the other requirements contained herein and shall supersede the other requirements where applicable. In case of conflicts between Exhibit A Scope of Service and Exhibit D Technical Specifications, Exhibit A Scope of Service controls.

GENERAL INFORMATION AND REQUIREMENTS

- 1) The water meter testing shall consist of the testing of three (3) inch and larger customer water meters within the system to determine accuracy per American Water Works Association (“AWWA”) standard practices for new and rebuilt meters. There shall be one (1) set of testing per meter for the two (2)-year duration of the Agreement. If the meters do not meet the accuracy requirements specified by AWWA, the Vendor shall provide a recommendation for repair or replacement of water meters. If the high flow rates on the large meters are not able to be achieved when tested in place using a large meter tester, the Vendor shall use the highest possible gallons per minute flow rate at the time of performing the high flow test. The testing, repairs, and new meters shall be in conformance with Exhibit D: 33 12 11 Technical Specifications for Large Meter Testing and Repair.
- 2) NO CHANGE
- 3) NO CHANGE
- 4) NO CHANGE
- 5) NO CHANGE
- 6) NO CHANGE

NBU CONTRIBUTION TO PROJECT

- 1) NO CHANGE
- 2) NO CHANGE
- 3) NO CHANGE
- 4) NO CHANGE

SERVICES AND GOODS AGREEMENT

This **SERVICES AND GOODS AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **STEVE NOFFSINGER, an individual DBA PRECISION CALIBRATE METER SERVICES** (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, and will remain in full force and effect for a period of one (1) year from December 15, 2020, to December 14, 2021 (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 one (1) successive one-year term (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 December 14, 2022.
2. **Scope of Services, Purchases.**
 - 2.1. **Scope of Services.** Vendor shall perform the Services described in Exhibit A (the “Services”) within the timeframe specified therein.
 - 2.2. **Purchase of Goods.** Unless otherwise directed in writing by NBU, Vendor shall purchase, as needed, goods related to the Services described in Exhibit A, which shall be reimbursed in accordance with Section 3.
3. **Payment.**
 - 3.1. **Amount.** NBU shall pay Vendor in accordance with the terms and conditions herein the amount set forth in Exhibit B for the Services. Exhibit B shall contain the Total Compensation for the Vendor, which is the maximum dollar amount that Vendor can be paid under this Agreement for Services and goods.
 - 3.2. **Billing Period.** NBU shall pay Vendor within thirty (30) days after receipt and approval of invoices to the extent the Services have been satisfactorily performed under the terms of this Agreement. NBU shall pay Vendor for any goods purchased in accordance with the terms stated therein. All invoices provided by Vendor to NBU shall include documentation and itemization that is satisfactory to NBU of all work completed to date. In the event NBU fails to timely pay any uncontested portion of any invoice within thirty (30) days of receipt and approval of Vendor’s invoice, Vendor shall have the right to suspend work.
 - 3.3. **Reimbursable Expenses and Goods.** In order for a Vendor expense, including the purchase of a good related to the Services hereunder, to be reimbursable under this Agreement, each

such expense must first have been described in detail and/or contemplated in Exhibit A and shall be specifically described in detail in an invoice provided by Vendor to NBU after such expense has been incurred. All reimbursable expenses, including goods purchased in connection with performing the Services under this Agreement, shall be included in the calculation of the elements of the Total Compensation listed in Exhibit B. An expense not complying with these requirements shall not be reimbursable by NBU in NBU's sole discretion.

4. Obligations and Representations of Vendor.

- 4.1. Performance and Compliance with Laws. Vendor shall perform the Services in compliance with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested in writing by NBU, Vendor shall promptly furnish satisfactory proof of compliance to NBU.
- 4.2. Warranties.
 - a. Performance Warranty. Vendor warrants that the Services provided under this Agreement shall be of the highest quality and standards in accordance with such industry in this country. This warranty shall be in addition to and not in lieu of all other warranties or guaranties offered or provided by Vendor for the Services and goods.
 - b. Warranties for Goods. All manufacturer warranties and guaranties of goods provided pursuant to this Agreement shall inure to the benefit of NBU. Vendor shall warrant all work free of defects in materials and workmanship for a period of one (1) year from the date of final acceptance of all work. Vendor shall, within 30 calendar days after receipt of written notice, repair defects in materials and workmanship that may develop during said one (1) year period, and any damage to other work caused by such defects or the repairing of same, at Vendor's expense, in a manner acceptable to NBU. Vendor shall provide NBU the full original equipment manufacturer ("OEM") warranties and guaranties provided by the OEM for all Services and goods under this Agreement free of all liens, claims, and encumbrances. For example, if an OEM offers full replacement of a warranted product at no charge to the Vendor, then Vendor shall replace such item and shall not charge NBU for such replacement.
- 4.3. Personnel. Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Vendor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Vendor shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

- 4.4. Licenses; Materials. Vendor shall maintain in current status all federal, state, and local licenses and permits required for Vendor to perform the Services and operate its business. NBU has no obligation to provide Vendor, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to Vendor.
- 4.5. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE OR AGENT THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN “INDEMNIFIED PARTY”), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS’ FEES AND COURT COSTS) TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER (“CLAIMS”), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE GOODS OR SERVICES PROVIDED BY VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS FOR VENDOR SET FORTH HEREIN SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**
- 4.6. Insurance. Vendor shall continuously during the Term comply with the following requirements regarding insurance:
- a. Insurer Qualifications. Without limiting any obligations or liabilities of Vendor, Vendor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU’s option.
 - b. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect Vendor. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve Vendor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
 - c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured as specified under the respective coverage sections of this Agreement.

- d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- e. Primary Insurance. Vendor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- g. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by Vendor. Vendor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- i. Use of Subcontractors. Vendor shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, Vendor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and Vendor. Vendor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- j. Evidence of Insurance. Prior to commencing any the Services under this Agreement, Vendor shall provide NBU with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Vendor's insurance provider(s) as evidence that policies are in place with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this

Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be Vendor's responsibility to forward renewal certificates and declaration page(s) to NBU thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement will be identified by referencing the RFB number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFB number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

- k. Required Insurance Coverage. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.
 - i. Commercial General Liability. Vendor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. 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. Vehicle Liability. Vendor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Vendor's owned, hired and non-owned vehicles assigned to or used in the performance of the Services by Vendor under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
 - iii. Workers' Compensation and Employer's Liability Insurance. Vendor shall maintain Workers' Compensation insurance to cover Vendor's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

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

4.7. Additional Representations.

- a. Prohibited Gifts, Bonus, Commission, Money, and Other Consideration. Vendor represents and warrants that Vendor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. Violation of this Section shall subject this Agreement to termination under the Termination provisions of this Agreement. Vendor further agrees that Vendor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Vendor, Vendor shall immediately report that fact to NBU and, NBU, in its sole discretion, may terminate this Agreement.
- b. Prohibition on Contracts with Companies Boycotting Israel. Vendor hereby verifies that it and its parent company, wholly- or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.
- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. Vendor represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

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

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene

applicable federal or State law and excludes Vendor and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

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

5. Obligations and Representations of NBU.

5.1. Authority to Enter into Agreement. To the fullest extent authorized by law, NBU warrants that it has authority to execute and enter into this legally binding Agreement.

5.2. Binding Obligation. This Agreement constitutes a legal, valid, and binding obligation of NBU enforceable against it in accordance with the terms herein.

6. Termination.

- 6.1. For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to Vendor. Upon termination for convenience, Vendor will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, Vendor may suspend work if Vendor reasonably determines that working conditions at the site (outside Vendor’s control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by Vendor that are materially interfering with the normal progress of the work. Vendor’s suspension of work hereunder shall be without prejudice to any other remedy of Vendor at law or equity.
- 6.2. For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party’s nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the non-defaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for

cause by NBU, payment will be made by NBU to Vendor for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.

- 6.3. Non-Collusion. If NBU determines that Vendor gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, or if Vendor otherwise violated its obligations under Section 4.7(a), NBU may, in its sole discretion, terminate this Agreement.
- 6.4. Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep Vendor fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and Vendor shall be relieved of any subsequent obligation under this Agreement.

7. Confidentiality; Texas Public Information Act.

- 7.1. Confidentiality of Records. Vendor shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out Vendor's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Vendor's duties under this Agreement. Persons requesting such information should be immediately referred to NBU. Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Vendor as needed for the performance of duties under this Agreement.
- 7.2. Confidential Information. To the extent that confidential and proprietary information of each party ("Confidential Information") is exchanged and received in connection with the Services or goods, each party agrees not to use the other party's Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties. Use by third party contractors may be permitted so long as such contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section. "Confidential Information" includes (but is not limited to) Vendor Confidential Information (as defined below), and does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information previously known by or developed by the receiving party independent of the Confidential Information or (iii) information that the receiving party rightfully obtains without restrictions on use and disclosure.

- 7.3. Vendor Confidential Information. “Vendor Confidential Information” means any pre-existing proprietary or Confidential Information of Vendor created by Vendor and used to perform the Services, or included in any goods provided, including but not limited to software, appliances, methodologies, code, templates, tools, records, data or other intellectual property shall remain the exclusive property of Vendor.
- 7.4. Conflict with Applicable Statute or Law. Nothing in this Section is intended to reduce or conflict with any duty, obligation or provision contained in the Texas Public Information Act, the Texas Open Meetings Act, or any other applicable statute or rule.
- 7.5. Texas Public Information Act. Vendor recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, Vendor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU’s audit rights in Section 9.13.

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

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

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

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

8. Information Technology and Intellectual Property Infringement.

- 8.1. Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide Vendor with non-exclusive, limited access to NBU’s information technology infrastructure. Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU’s information technology infrastructure. Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all Vendor’s employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access

as may be necessary for the purpose of fulfilling the requirements of the Agreement. Vendor's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by Vendor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

- 8.2. Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, Vendor shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.
- 8.3. Data Security. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, Vendor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- 8.4. Compromised Security. In the event that data collected or obtained by Vendor in connection with this Agreement is believed to have been compromised, Vendor shall notify NBU immediately. **VENDOR SHALL INDEMNIFY AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM VENDOR'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.**
- 8.5. Intellectual Property Infringement. **VENDOR SHALL DEFEND AND INDEMNIFY NBU AGAINST ANY COSTS, LIABILITIES OR DAMAGES (INCLUDING ATTORNEY'S FEES) ARISING FROM A CLAIM THAT NBU'S AUTHORIZED USE OF ANY SERVICE OR GOODS PURCHASED PURSUANT TO THIS AGREEMENT INFRINGES ANY PATENT, COPYRIGHT, TRADEMARK OR TRADE SECRET.** NBU agrees to notify Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify Vendor of such claim or suit, NBU's failure to so notify Vendor shall not diminish Vendor's indemnity obligations hereunder. Vendor shall have control of any such suit and NBU shall cooperate with Vendor in connection with its defense at the expense of Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if Vendor believes that such Service or good is likely to become the subject of an infringement claim, Vendor shall (i) obtain the right for NBU to continue to use such Service or good or (ii) replace or modify the Service or good so as to make it non-infringing and equal to the functionality of such Service or good described in this Agreement.

9. Miscellaneous.

- 9.1. Independent Contractor. Vendor acknowledges that Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. Vendor shall not represent, either expressly or through implication, that Vendor is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of Vendor.
- 9.2. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- 9.3. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and Vendor.
- 9.4. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- 9.5. Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 9.6. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.
- 9.7. Subcontractors. Vendor shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve Vendor of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Vendor.
- 9.8. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial

exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- 9.9. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.
- 9.10. Liens. All goods or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.
- 9.11. Offset for Damages, Delinquent Fees or Taxes. In addition to all other remedies at law or equity, NBU may offset from any money due to Vendor any amount Vendor owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, goods, equipment rental, travel expenses and associated costs. NBU may offset from any money due to Vendor any amount Vendor owes to NBU for delinquent fees and transaction privilege taxes, 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 Vendor:

Precision Calibrate Meter Services
4244 Bee Creek Road
Spicewood, TX 78669

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

- 9.13. Right to Audit. NBU shall have the right to examine and audit the books and records of Vendor with regard to the Services and/or goods obtained pursuant to this Agreement, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- 9.14. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- 9.15. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- 9.16. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- 9.17. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 9.18. Exhibits. All Exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- 9.19. Conflicting Terms. In the case of any conflicts between the terms of this Agreement and an Exhibit to this Agreement, the statements in the body of this Agreement shall govern.
- 9.20. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties,

it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

- 9.21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 9.22. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.
- 9.23. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, 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. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.
- 9.24. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give written notice within five (5) business days to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

- 9.25. Survival. The sections of this Agreement that by their terms are intended to survive the termination of this Agreement shall so survive.
- 9.26. Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.
- 9.27. Electronic Signatures. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 20 ____ ("Effective Date").

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: **Ian Taylor**
Digitally signed by Ian Taylor
Date: 2021.01.20 15:42:41 -06'00'
Name: Ian Taylor
Title: CEO

VENDOR:

STEVE NOFFSINGER
DBA: PRECISION CALBRATE METER
SERVICES

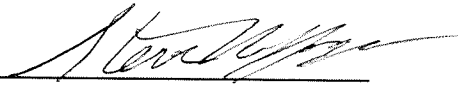
By: 
Name: Steve Noffsinger
Title: owner

Exhibit A – Scope of Services

The Vendor shall provide qualified labor, materials, and equipment to test meters and develop work orders for repair (the “Services”).

The following requirements and specifications shall be in addition to the other requirements contained herein and shall supersede the other requirements where applicable. In case of conflicts between Exhibit A Scope of Service and Exhibit D Technical Specifications, Exhibit A Scope of Service controls.

GENERAL INFORMATION AND REQUIREMENTS

- 1) The water meter testing shall consist of the testing of 3” and larger customer water meters within the system to determine their accuracy per American Water Works Association (“AWWA”) standard practices for new and rebuilt meters. If the meters do not meet the accuracy requirements specified by AWWA, the Vendor shall include a recommendation for repair or replacement of water meters. The testing, repairs, and new meters shall be in conformance with the attached Exhibit D: 33 12 11 Technical Specifications for Large Meter Testing and Repair.
- 2) NBU currently has a water utility service area that spans approximately 81 square miles. The approximate number of water meter accounts are as follows:
 - i) Customer Meters (See Exhibit E for list of Meters)
 - (1) 154 – 3”, 4”, or 6” Water Meters
 1. These are generally installed throughout the system for domestic water use or irrigation.
 - ii) Fire Hydrant Meters (See Exhibit E for list of Meters)
 - (1) 57 – 3” Water Meters
 1. These are generally used by contractors for construction throughout the NBU water system.
 - iii) Note: No guarantee of quantities is intended, either expressed or implied.
- 3) Services
 - a) Large Meter Testing
 - i) The Vendor shall test all large meters within the NBU service area as budget allows. NBU will provide the list and location of all meters or list of meters to test within budget.
 - ii) Anticipated Services:
 - (1) Customer Meter Testing:
 1. Field testing 3” and larger water meters in place through existing test ports with a testing meter.
 - (2) Fire Hydrant Meters
 1. Testing 3” fire hydrant meters at an NBU facility through an existing fire hydrant with an inline testing meter.
- 4) Contract Administration and Operations
 - a) The contract shall be administered by NBU.

- b) NBU shall maintain and organize the work via work orders with an annual list of meters to be tested. The work order shall indicate specific testing locations and meter sizes.
- 5) The Vendor shall follow all local, state and federal safety policies and codes.
- 6) All standard tools and equipment necessary to perform specified work shall be provided by the Vendor at no additional fee.

NBU CONTRIBUTION TO PROJECT

- 1) NBU shall provide all customer end-point address locations for locations and access information as needed (i.e. gate codes for any locked gates).
- 2) NBU shall provide IT support to provide a tablet or laptop computer with Virtual Private Network (“VPN”) connection into NBU enterprise system and a bar code scanner (subject to NBU’s IT security requirements).
- 3) NBU shall conduct a training workshop, including the following:
 - a) Contact information for NBU Control Center and main points of contact for the project.
 - b) Training on the use of NBU’s electronic documentation systems (mCare and Cityworks).
- 4) NBU shall provide vendor badges for the Vendor to identify workers, as well as a magnetic vehicle sign identifying them as a contractor for NBU.

Exhibit B

Price List/ Payment Terms

NBU shall pay the Vendor for the Services and goods under this Agreement Total Compensation not to exceed \$112,500 for the initial one-year term and \$37,500 for the second one-year term, which totals a not to exceed amount of \$150,000 for the duration of the Agreement.

SERVICES – LARGE METER TESTING

Item No.	Description	Unit	Estimated Quantity	Unit Cost	Extended Cost
Water Meter Testing – Customer Meters					
1	3” Compound or Turbine	EA	114	616.00	70,224.00
2	4” Compound or Turbine	EA	32	616.00	19,712.00
3	6” Compound or Turbine	EA	8	616.00	4,928.00
Water Meter Testing – Fire Hydrant/Contractor Meters					
4	3” Compound or Turbine	EA	57	350.00	19,950.00
Water Meter Repair					
5	3” Compound Low and High Flow Measuring Unit and Register Replacement (Neptune)	EA	3	1,352.00	4,056.00
6	3” Turbine UME and Register Replacement (Neptune)	EA	1	1,052.00	1,052.00
7	4” Compound Low and High Flow Measuring Unit and Register Replacement (Neptune)	EA	1	1,425.00	1,425.00
8	4” Turbine UME and Register Replacement (Neptune)	EA	1	1,129.95	1,129.95

9	6" Compound Low and High Flow Measuring Unit and Register (Neptune)	EA	1	1,639.00	1,639.00
10	6" Turbine UME and Register Replacement (Neptune)	EA	1	1,639.95	1,639.95
11	Overtime Rate for Repairs	HR	1	95.00	95.00
SUBTOTAL PRICE					125,850.90
ADDITIONAL COSTS ALLOWANCE					24,149.10
TOTAL					150,000.00

Additional Costs and Clarifications Provided by the Vendor:

New meter(s) will be supplied by NBU or paid for by NBU at the price of the new meter plus 5% and shipping and handling.

The following hourly repair costs were provided for the repair of low volume large meters in NBU's system: Elster 3", Rockwell 3", Master meter 3", Hersey 3", Seameters 3", Zenner 3" repair cost \$75/hour plus parts/shipping and handling upon approval from NBU.

Exhibit C

Evidence of Insurance

NBU Purchasing Insurance Verification Checklist

Verified by (Justin Wehman)

COMPANY INFORMATION

Company name:	Precision Calibrate Meter Service
Address:	4244 Bee Creek Rd Spicewood, TX 78669
Telephone number:	512-785-994
Email:	Noffy3@yahoo.com
Date contract started:	
Point of contact:	Steve Noffsinger
Contract Number/PSA	RFB 02567 Large Meter Testing

COVERAGE CHECKLIST

<input checked="" type="checkbox"/>	General Liability: Nautilus	Policy Number: NN1132242
	Effective/Expiration Date: 6/16/20 – 6/16/21	<input checked="" type="checkbox"/> Limits: \$1,000,000 /GA \$2,000,000
	Proof (Endorsements, declarations, exclusions): YES	<input checked="" type="checkbox"/> Additional Insured
	<input checked="" type="checkbox"/> Waiver of Sub	
<input checked="" type="checkbox"/>	Automobile Liability: Farmers Texas County Mutual	Policy Number: 606226448
	Effective/Expiration Date: 4/03/20 – 4/03/21	<input checked="" type="checkbox"/> Limits: \$1,000,000
	Proof (Endorsements, declarations, exclusions): YES	<input checked="" type="checkbox"/> Additional Insured
	<input checked="" type="checkbox"/> Waiver of Sub	
<input type="checkbox"/>	Umbrella/Excess Liability:	Policy Number:
	Effective/Expiration Date:	<input checked="" type="checkbox"/> Limits:
	Proof (Endorsements, declarations, exclusions):	<input checked="" type="checkbox"/> Additional Insured
	<input checked="" type="checkbox"/> Waiver of Sub	
<input type="checkbox"/>	Workers Compensation Liability: N/A	Policy Number:
	Effective/Expiration Date:	<input checked="" type="checkbox"/> Limits: \$
	Proof (Endorsements, declarations, exclusions):	<input type="checkbox"/> Additional Insured
	<input checked="" type="checkbox"/> Waiver of Sub	
<input type="checkbox"/>	Professional Services	Policy Number:
	Effective/Expiration Date:	<input type="checkbox"/> Limits
	Proof (Endorsements, declarations, exclusions)	<input type="checkbox"/> Additional Insured
	<input type="checkbox"/> Waiver of Sub	

<input type="checkbox"/>	Pollution Control:	Policy Number:
	Effective/Expiration Date:	<input type="checkbox"/> Limits:
	Proof (Endorsements, declarations, exclusions):	<input type="checkbox"/> Additional Insured
	<input type="checkbox"/> Waiver of Sub	
<input type="checkbox"/>	Builders Risk:	Policy Number:
	Effective/Expiration Date:	<input type="checkbox"/> Limits:
	Proof (Endorsements, declarations, exclusions)	<input type="checkbox"/> Additional Insured
	<input type="checkbox"/> Waiver of Sub	
<input type="checkbox"/>		Policy Number:
	Effective/Expiration Date:	<input type="checkbox"/> Limits
	Proof (Endorsements, declarations, exclusions)	<input type="checkbox"/> Additional Insured
	<input type="checkbox"/> Waiver of Sub	
<input type="checkbox"/>	Other:	Policy Number:
	Effective/Expiration Date:	<input type="checkbox"/> Limits
	Proof (Endorsements, declarations, exclusions)	<input type="checkbox"/> Additional Insured
	<input type="checkbox"/> Waiver of Sub	
<input type="checkbox"/>	Other:	Policy Number:
	Effective/Expiration Date:	<input type="checkbox"/> Limits
	Proof (Endorsements, declarations, exclusions)	<input type="checkbox"/> Additional Insured
	<input type="checkbox"/> Waiver of Sub	



CERTIFICATE OF LIABILITY INSURANCE

DATE (12/ Item 10.

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 Reginald Mahadeo Insurance Agency Inc 8627 N. Mopac Expwy Ste 220 Austin TX 78759		CONTACT NAME: Reggie Mahadeo PHONE (A/C, No, Ext): (512)246-2122 FAX (A/C, No): (512)243-6569 E-MAIL ADDRESS: rmahadeo@farmersagent.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Farmers Texas County Mutual	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 4712

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG \$ \$ \$ \$ \$ \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		606226448	04/03/2020	04/03/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) \$ 1,000,000 \$ \$ \$
	UMBRELLA LIAB EXCESS LIAB DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						EACH OCCURRENCE AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT \$ \$ \$

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

Ref: NBU Request for Bid (RFB) 02567 Large Meter Testing – Part A

CERTIFICATE HOLDER

New Braunfels Utilities 263 Main Plaza New Braunfels TX 78130	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
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POLICY DECLARATIONS BUSINESS AUTO

v 01.00

ITEM ONE

Named Insured NOFFSINGER, STEVE
PRECISION CALIBRATE METER SER

Mailing Address 4244 BEE CREEK RD
SPICEWOOD, TX 78669

Policy Number 60622-64-48

Policy Period From 04-03-2020
To 04-03-2021 12:01 A.M. Standard time at your mailing address shown above.

In return for the payment of premium and subject to all the terms of this policy, we agree with you to provide insurance as stated in this policy. We provide insurance only for those Coverages described and for which a specific limit of insurance is shown.

Your Agent Reginald Mahadeo Insurance Agency I
Reginald Mahadeo
8627 N Mopac Expy#220
Austin, TX 78759
(512) 879-4701
Email: rmahadeo@farmersagent.com
License #: 1947952

ITEM TWO - SCHEDULE OF COVERAGES AND COVERED AUTOS

***This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the COVERED AUTO Section of the Business Auto Coverage Form next to the name of the coverage.**

Coverage	*Covered Auto Designation Symbols	Limit Of Insurance	Premium
Liability	7	\$1,000,000	\$1,603
Personal Injury Protection (or equivalent No-Fault Coverage)	See End.	See ITEM THREE	\$51
Uninsured Motorist	See End.	See ITEM THREE	\$257
Underinsured Motorist	See End.	See ITEM THREE	Included
Uninsured Motorist Property Damage	See End.	See ITEM THREE	Included
Underinsured Motorist Property Damage	See End.	See ITEM THREE	Included
Comprehensive	7	Actual Cash Value or Cost of Repair, whichever is less, minus applicable deductible for each covered auto. But no deductible applies to loss caused by Fire or Lightning. See ITEM FOUR for hired or borrowed "Autos".	\$165
Collision	7	Actual Cash Value or Cost of Repair, whichever is less, minus applicable deductible for each covered auto. See ITEM FOUR for hired or borrowed "Autos".	\$327
**Premium for Other Coverages and Endorsements			
Total Premium			\$2,403

**For details of "Other Coverages", see ITEM FOUR, ITEM FIVE, and POLICY FORMS AND ENDORSEMENTS.

ITEM THREE - SCHEDULE OF COVERED AUTOS YOU OWN (DETAIL)

Covered Auto No.: 002		VIN: 1FTFW1ETXEKD26899
Description: 2014 FORD F150		Garaging Zip: 78669
Coverage	Limit Of Insurance Or Deductible	Premium
Liability	\$1,000,000	\$1,603
Personal Injury Protection	\$2,500	\$51
Uninsured Motorist	\$1,000,000	\$257
Underinsured Motorist	Included	Included
Uninsured Motorist Property Damage	Included	Included
Underinsured Motorist Property Damage	Included	Included
Comprehensive	\$500 Deductible	\$165
Collision	\$500 Deductible	\$327
Vehicle Total Premium		\$2,403

[illegible]

ITEM FOUR - HIRED OR BORROWED COVERED AUTO

Cost of hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your employees or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.

Liability Coverage Rating Basis, Cost Of Hire			
State	Estimated Annual Cost Of Hire For Each State		Premium

Physical Damage Coverage			
Coverage	Limit Of Insurance And Deductible	Estimated Annual Cost Of Hire	Premium
Subtotal			

ITEM FIVE - NON-OWNERSHIP LIABILITY

Non-Ownership Liability covers bodily injury or property damage arising out of the maintenance or use of a non-owned automobile in the business by any person other than the insured.

Named Insured's Business	Rating Basis	Number	Premium
Other than a Social Service Agency	Number of Employees		
	Number of Partners		
Social Service Agency	Number of Employees		
	Number of Volunteers		
Subtotal			

POLICY FORMS AND ENDORSEMENTS

Number	Title
25-9200	Farmers Privacy Notice
25-9230ED3	Reminder-Review Your Coverages
25-9344ED1	TX Loss Control Notice (25-9344)
56-5223ED5	Additional Conditions
CA00010310	Business Auto Coverage Form
CA01960312	Texas Changes
CA02431113	Texas Changes Canc And Non Ren
CA21090513	TX Um/Uim Motorist Covg
CA22640708	Personal Injury Protection
CA23840106	Exclusion Of Terrorism
CA23940306	Silica Or Silica-Related Dust Ex
CA99880306	Individual Named Insured
CA99951201	Supplementary Death Benefit
E2015-ED2	Family Exclusion Form
IL00171198	Common Policy Conditions
J6738-ED1	Two Or More Coverage Forms
J7153-ED1	Additional Benefits And Services
S1929-ED3	Loss Payable Endorsement
S1966-ED1	No Covg-Cert Computer Rel Losses
W2178-ED1	Rideshare And Carshare Exclusion

LOSS PAYEES

CAPITAL ONE AUTO FINANCE P O BOX 660068 SACRAMENTO CA 958660068		
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Countersigned (Date)

By Authorized Representative



CERTIFICATE OF LIABILITY INSURANCE

DATE (12/ Item 10.

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PRODUCER Blancken Insurance Group 5541 McNeil Drive Austin TX 78729		CONTACT NAME: Russ Blancken PHONE (A/C, No. Ext): (512) 293-9588 E-MAIL ADDRESS: russ@bigoftexas.com FAX (A/C, No): (512) 675-1500	
INSURED Precision Calibrate Meter Service 4244 Bee Creek Rd Spicewood TX 78669		INSURER(S) AFFORDING COVERAGE INSURER A: NAUTILUS INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			NN1132242	06/16/2020	06/16/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

CERTIFICATE HOLDER**CANCELLATION**

New Braunfels Utilities 355 FM 306 New Braunfels TX 78130	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
---	---

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

POLICY NUMBER: NN1132242

☐ Extension of Declarations is attached.

Effective Date: 06/16/2020 12:01 A.M. Standard Time

LIMITS OF INSURANCE		<input type="checkbox"/> If box is checked, refer to form S132 Amendment of Limits of Insurance.
General Aggregate Limit (Other Than Products/Completed Operations)	\$	2,000,000
Products/Completed Operations Aggregate Limit	\$	Included
Personal and Advertising Injury Limit	\$	1,000,000 Any One Person Or Organization
Each Occurrence Limit	\$	1,000,000
Damage To Premises Rented To You Limit	\$	100,000 Any One Premises
Medical Expense Limit	\$	5,000 Any One Person

RETROACTIVE DATE (CG 00 02 ONLY)

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" which occurs before the Retroactive Date, if any, shown here: (Enter Date or "NONE" if no Retroactive Date applies)

BUSINESS DESCRIPTION AND LOCATION OF PREMISES

BUSINESS DESCRIPTION: Water Meter Calibration

LOCATION OF ALL PREMISES YOU OWN, RENT, OR OCCUPY: ☒ Location address is same as mailing address.

1 4244 Bee Creek Road, Spicewood, TX 78669

Additional locations (if any) will be shown on form **S170**, Commercial General Liability Coverage Part Declarations Extension.

LOCATION OF JOB SITE (If Designated Projects are to be Scheduled):

CODE # -	CLASSIFICATION	*	PREMIUM BASIS	RATE		ADVANCE PREMIUM
				Prem/Ops	Prod/Comp Ops	
47367 -	Sales or Service Organizations	p+	40,000	27.747	Included	1,110 Included
90609 -	L803 Primary and Noncontributory (CGL)	t	1	100.000		100
-						
-						

*** PREMIUM BASIS SYMBOLS** **+ = Products/Completed Operations are subject to the General Aggregate Limit**

a = Area (per 1,000 sq. ft. of area) **o** = Total Operating Expenditures (per \$1,000 Total Operating Expenditures) **s** = Gross Sales (per \$1,000 of Gross Sales)
c = Total Cost (per \$1,000 of Total Cost) **t** = See Classification
m = Admissions (per 1,000 Admissions) **p** = Payroll (per \$1,000 of Payroll) **u** = Units (per unit)

PREMIUM FOR THIS COVERAGE PART \$ 1,210

FORMS AND ENDORSEMENTS (other than applicable Forms and Endorsements shown elsewhere in the policy)

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:
Refer to Schedule of Forms and Endorsements

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

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NAUTILUS INSURANCE COMPANY

POLICY NUMBER: NN1132242

ENDORSEMENT # 2

Named Insured: Precision Calibrate Meter Service

Agency # 04236 00

Endorsement Effective Date: 07/20/2020

CRC
 Galleria North Tower One
 13737 Noel Rd, 10th Floor
 Dallas, TX 75240

GENERAL CHANGE ENDORSEMENT

It is hereby agreed the policy is amended as follows:

-Amending Limits of Insurance on form S150 (07-09) Commercial General Liability Coverage Part Declarations as follows:

Increasing Each Occurrence Limit to \$2,000,000

Guaranty Fund Nonparticipation Notice

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a 4.85 percent tax on gross premium.

Surplus Lines Agent: CRC Insurance Services, License# 18530

Address: 1 Metroplex Drive, Suite 400, Birmingham, AL 35209

Tax & Fee Schedule		PREMIUM: <input type="checkbox"/> None <input checked="" type="checkbox"/> AP <input type="checkbox"/> RP		\$	750.00
Surplus Lines Tax	\$	36.38			
Stamping Office Fee		1.13		Total Taxes & Fees	\$ 37.51
				TOTAL PREMIUM DUE	\$ 787.51

All other terms and conditions remain unchanged.



Authorized Representative

07/21/2020 JTRAYNU Date Issued: 07/21/2020

S901 (07/13)

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Exhibit D

Technical Specifications 33 12 11

SECTION 33 12 11

LARGE WATER METERS TESTING, REPAIR, AND REPLACEMENT

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Large Water Meter Testing, Refurbishment, and Replacement for (3-inch and larger)

B. Related Specification and Details include, but are not necessarily limited to:

1. Series 500 – Pipe and Appurtenances
2. Series 700 – Traffic Control
3. Standard Details
 - a. Series 200 – Water
 - 1) 204 - Compound Meter Installation 3" Size
 - 2) 205 - Compound Meter Installation 4" Size
 - 3) 206 - Compound Meter Installation 6" Size

1.2 REFERENCES

A. Reference Standards

1. Reference standards cited in this Specification refer to the current reference

standard published at the time of the latest revision date logged at the end of this Specification, unless a date is specifically cited.

2. ASTM International (ASTM):

- a. A48, Standard Specification for Gray Iron Castings.
- b. A536, Standard Specification for Ductile Iron Castings.
- c. B88, Standard Specification for Seamless Copper Water Tube.
- d. B98, Standard Specification for Copper-Silicon Alloy Rod, Bar and Shapes.
- e. D883, Standard Terminology Relating to Plastics.
- f. D1693, Standard Test Method for Environmental Stress-Cracking of Ethylene Plastics

3. American Water Works Association (AWWA):

- a. C700, Cold-Water Meters - Displacement Type, Bronze Main Case.
- b. C701, Cold-Water Meters - Turbine Type, for Customer Service.
- c. C702, Cold-Water Meters - Compound Type.

- d. C703, Cold-Water Meters – Fire Service Type.
- e. C800, Underground Service Line Valves and Fittings.
- f. M6, Water Meters – Selection, Installation, Testing, and Maintenance

4. NSF International (NSF):

- a. 61, Drinking Water System Components - Health Effects.

5. Reduction of Lead in Drinking Water Act

- a. Public Law 111-380 (P.L. 111-380)

6. General Services Administration (GSA):

- a. RR-F-621E, Frames, Covers, Gratings, Steps, Sump and Catch Basin, Manhole

1.3 ADMINISTRATIVE REQUIREMENTS

A. Meter Testing Reports

1. A report will be prepared for each meter (new, rebuilt, or existing) and inputted in the Owner's Cityworks, the Owner's workorder system, and provided in excel format. Procedures and testing shall be in accordance with the AWWA M6 Chapter 5 Testing of Meters and shall include at a minimum:
 - a. Turbine Meters
 - 1) Meter Size
 - 2) Meter Register Type
 - 3) Register Reading
 - a) Prior and preceding tests
 - 4) Model
 - 5) Make
 - 6) Meter Serial Number

- 7) Register Serial Number
- 8) Flow Rates and Accuracy (Start/Low//Intermediate/High) – gallons/cubic feet
 - a) Actual flow
 - b) Measure Flow
 - c) % Accuracy
- 9) Test Results – Pass / Fail
- 10) Recommend Action – Repair /Replace
- b. Compound Meters
 - 1) Meter Size
 - 2) Meter Register Type
 - 3) Register Reading
 - a) Prior and preceding tests
 - 4) Model
 - 5) Make
 - 6) Meter Serial Number
 - 7) Registers Serial Number
 - 8) Flow Rates and Accuracy (Low/Below Crossover/Crossover/Above Crossover/Intermediate/High) – gallons/cubic feet
 - a) Actual flow
 - b) Measure Flow
 - c) % Accuracy
 - 9) Test Results – Pass / Fail
 - 10) Recommend Action – Repair /Replace

1.4 ACTION SUBMITTALS/INFORMATIONAL SUBMITTALS

A. Product Data and Shop Drawings

1. Sample Flow Testing Report to be submitted with bid
2. Sample Refurbishment Recommendation Report/PO to be submitted with bid
3. Meter Repair Kits and Parts
4. Meters and Registers

B. Testing Methodology to be submitted with bid

C. Meter Testing Calibration Information to be submitted with bid

D. Completed Meter Testing Results

1.5 QUALITY ASSURANCE

A. Qualifications

1. Manufacturers

- 1 a. Water Services shall meet or exceed the latest revisions of AWWA C800, NSF
2 61, the Reduction of Lead in Drinking Water Act and shall meet or exceed the
3 requirements of this Specification.

4 B. Testing

- 5 1. All meters existing, rebuilt, and new shall be tested in accordance with AWWA
6 C701 and C702. All testing shall meet or exceed the requirements of AWWA M6
7 Chapter 5 for testing water meters bench or field-testing procedures.
- 8 2. Meters shall be marked for repair or replacement based on AWWA criteria for
9 testing of new and rebuilt meters across the various flow rates tested.
- 10 3. The following minimum accuracy (most stringent applies) for new, repaired, or
11 existing meters for acceptance by NBU is required:
 - 12 a. Turbine
 - 13 1) Low Flow: 95-101.5%
 - 14 2) Intermediate and High Flow: 98-102%
 - 15 b. Compound
 - 16 1) Low Flow, Below, and Above Crossover: 95-101%
 - 17 2) Crossover: 90-103%
 - 18 3) Intermediate and High Flows: 97-103%
 - 19 c. AWWA criteria for new or rebuilt meters.

20 1.6 DELIVERY, STORAGE, AND HANDLING

21 A. Storage and Handling Requirements

- 22 1. Protect all parts such that no damage or deterioration will occur during a prolonged
23 delay from the time of shipment until installation is completed and the units and
24 equipment are ready for operation.
- 25 2. Protect all equipment and parts against any damage during a prolonged period at the
26 site.
- 27 3. Prevent plastic and similar brittle items from being directly exposed to sunlight or
28 extremes in temperature.

29 1.7 FIELD [SITE] CONDITIONS

30 A. Water Meter Locations

- 31 1. Locations will be throughout the Owner's water service area

32 B. Initial Inspection

- 33 1. An initial inspection with photos is required to verify site, working area, and
34 location for each meter.

35 PART 2 - PRODUCTS

36 2.1 EQUIPMENT, PRODUCT TYPES, MATERIALS

37 A. Meter and Strainer Replacement

- 38 1. Meters

a. Unitized Measuring Element (UME) Construction

1) Features

- a) A calibration vane allows field calibration of the UME to lengthen service life and to ensure accurate registration.

b. Meeting or Exceeding the Requirements of AWWA:

- 1) C701 for Turbines
2) C702 for Compound

c. Materials

- 1) Made from lead free, high-copper alloy
2) Compound
a) Two magnetic-driven, roll-sealed

d. Registers

- 1) Manual register type compatible with Itron radio endpoints

e. Manufacturer

1) Meter Body

- a) Compounds
(1) Neptune Tru/Flo
(2) Or Approved Equal

b) Turbines

- (1) Neptune High Performance
(2) Or Approved Equal

2. Strainers

a. Materials

1) Body

- a) Made from lead free, high-copper alloy
b) Flanged in accordance with AWWA C701
c) Vent screw for bleeding of air

2) Strainer Plate and Bolts

- a) Stainless steel strainer plate and coverbolts

b. Pressure Rating

- 1) Working Pressure: 150 psi

c. Manufacturer

- 1) Neptune
2) Or Approved Equal

B. Meter Repairs to provide Rebuilt Meter Accuracies

1. Repairs to include:

a. UME and Register

- 1) UME and Register to be a factory tested replacement unit/
2) Including certified accuracy and factory testing.
3) Provide all other standard wear parts, seals, and kit for complete rebuild of meter.
4) Original equipment manufacturer (OEM) parts are required.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Inspection for Testing and Refurbishment or Replacement

1. Once given notice to proceed for yearly allocation of meter testing.

- a. Complete initial assessment of each location.
- b. Make contact with property owner for scheduling of work and short-term interruption
 - 1) Provide introduction letter with scheduling and technician contact information
- c. Complete a visual inspection of meter condition, location, access, and isolation
 - 1) Take photos of existing installation conditions.
- d. Verify meter numbers, size, and type

3.2 TESTING OF METERS

- A. Verify information for service order (i.e. meter number, interpreter number, etc.)
- B. Record Data (Gallons) prior to commencing testing
- C. Complete testing in accordance with AWWA M6 Chapter 5 requirements and record data in accordance with submitted and approved testing procedures.
- D. Record Data (Gallons) once testing is complete
- E. Upload data to workorder system
- F. If accuracy is not within required limits, make written recommendation to NBU staff to replace or repair.

3.3 REMOVAL AND INSTALLATION

- A. For removal and installation of water meters identified for repair or replacement and approved by NBU's Supervisor
 1. Make contact with property owner for scheduling of work and short-term interruption
 - a. Provide introduction letter with scheduling and technician contact information
 2. Take picture of existing meter while still in service.
 3. Do a visual inspection of meter, valves, customer cut-off and meter vault.
 4. Shut off water to residence.
 5. Remove old meter and install rebuilt or new meter. Customer may be served through bypass if appropriately sized for swap out.
 6. Install New Meter
 - a. New or rebuilt meters meeting or exceeding required accuracy requirements.
 7. Place a tag (provided by NBU) on each removed meter; write the removal address on the tag.
 8. Provide appropriate handheld device to record old meter reading, new meter data, and create jpeg type file on meter read for reference.
 9. Scan communications module (interpreter) bar code.
 10. Scan utility meter number bar code.
 11. Capture Survey Grade GPS coordinates.
 12. Take pictures of the new or rebuilt meter.
 13. Flush out customer service line.
 14. Clean up area around meter installation and return site to its original appearance.
 15. Transfer electronically completed meter information daily.

16. Address all problems associated with a water meter installation, to include, but not limited to: private property damage, leaks, all other issues associated with installation services.

3.4 REPAIR OF METERS TO REBUILT ACCURACY

A. All meters shall be rebuilt to meet minimum accuracy requirements.

B. Work shall be in accordance with manufacturer and AWWA rebuilt requirements.

1. Sample meter installation and repair guides can be found here for Neptune Meters:

a. Turbine

1) https://www.neptunetg.com/globalassets/products/literature/publication_im-hp-turbine-03.20.pdf

b. Compound

1) https://www.neptunetg.com/globalassets/products/literature/publication_im-truflo-08.15.pdf

C. Rebuilt meters shall be flow tested and accuracies meeting or exceeding specified values and report submitted prior to installation.

END OF SECTION

Exhibit E

Existing Water Meters

EXHIBIT E - CUSTOMER METERS

Count	meter_no	meter_type	manufacturer	meter_size	install_date	account_type
1	0001514938	3"	OUT	3"	10/8/1997 0:00	PUB
2	0001130142	3"	OUT	3"	4/7/2010 0:00	COM-IRR
3	0098860570	3"	OUT	3"	2/22/2013 0:00	DOM
4	0070329785	3"	Neptune	3"	9/1/2016 0:00	PUB-IRR
5	0070329786	3"	Neptune	3"	5/11/2017 0:00	DOM
6	0028517677	301	ROCKWELL	3"	1/1/1942 0:00	PUB
7	0001201454	301	ROCKWELL	3"	10/21/1987 0:00	PUB
8	0005104018	302	MASTER	3"	8/13/2007 0:00	DOM
9	0005099075	302	MASTER	3"	4/25/2018 0:00	DOM
10	0006171324	302	MASTER	3"	10/1/2019 0:00	DOM
11	0005368371	302	MASTER	3"	1/22/2019 0:00	DOM
12	0003777452	302	MASTER	3"	3/21/2019 0:00	DOM
13	0006171323	302	MASTER	3"	1/4/2018 0:00	DOM
14	0006171320	302	MASTER	3"	3/15/2016 0:00	DOM
15	0005368365	302	MASTER	3"	4/20/2018 0:00	DOM
16	0012005179	303	SEAMETRICS	3"	10/13/2014 0:00	DOM
17	0001880576	304	NEPTUNE	3"	4/21/2005 0:00	COM
18	0070147915	304	NEPTUNE	3"	1/26/2009 0:00	DOM
19	0070278453	304	NEPTUNE	3"	8/20/2013 0:00	DOM
20	0070115531	305	NEPTUNE	3"	3/19/2004 0:00	DOM
21	0070096441	305	NEPTUNE	3"	12/19/2002 0:00	PUB
22	0070338395	305	NEPTUNE	3"	10/31/2017 0:00	COM
23	0070193252	305	NEPTUNE	3"	2/21/2018 0:00	COM
24	0070297913	305	NEPTUNE	3"	3/26/2015 0:00	COM
25	0070336923	305	NEPTUNE	3"	6/29/2017 0:00	COM
26	0070336922	305	NEPTUNE	3"	10/30/2017 0:00	DOM
27	0070029353	305	NEPTUNE	3"	10/27/2015 0:00	DOM
28	0070029365	305	NEPTUNE	3"	1/27/2016 0:00	DOM
29	0070341378	305	NEPTUNE	3"	10/5/2017 0:00	DOM
30	0070352558	305	NEPTUNE	3"	1/23/2020 0:00	DOM
31	0070341379	305	NEPTUNE	3"	10/5/2017 0:00	DOM
32	0070338394	305	NEPTUNE	3"	10/31/2017 0:00	DOM
33	0070352559	305	NEPTUNE	3"	3/9/2018 0:00	COM
34	0070162913	305	NEPTUNE	3"	5/10/2018 0:00	DOM
35	0070265952	306	NEPTUNE	3"	4/6/2018 0:00	COM
36	0070274864	306	NEPTUNE	3"	6/25/2013 0:00	COM
37	0070162915	306	NEPTUNE	3"	9/15/2017 0:00	COM
38	0070096721	306	NEPTUNE	3"	12/3/2015 0:00	COM
39	0070280413	306	NEPTUNE	3"	4/4/2014 0:00	COM
40	0070029362	306	NEPTUNE	3"	4/25/2012 0:00	COM
41	0070045605	306	NEPTUNE	3"	9/14/2015 0:00	COM-IRR
42	0070203007	306	NEPTUNE	3"	1/3/2013 0:00	PUB
43	0070113516	306	NEPTUNE	3"	9/9/2015 0:00	PUB
44	0070193251	306	NEPTUNE	3"	9/22/2017 0:00	DOM
45	0070162914	306	NEPTUNE	3"	12/22/2017 0:00	DOM

EXHIBIT E - CUSTOMER METERS

Count	meter_no	meter_type	manufacturer	meter_size	install_date	account_type
46	0070306597	306	NEPTUNE	3"	7/7/2016 0:00	COM
47	0070029345	306	NEPTUNE	3"	11/12/2012 0:00	PUB
48	0070325028	306	Neptune	3"	7/25/2016 0:00	COM
49	0070029354	306	NEPTUNE	3"	4/28/2017 0:00	DOM
50	0070209077	306	NEPTUNE	3"	11/7/2008 0:00	DOM
51	0070209078	306	NEPTUNE	3"	1/21/2016 0:00	COM
52	0070113515	306	NEPTUNE	3"	1/10/2018 0:00	DOM
53	0070189593	306	NEPTUNE	3"	8/24/2007 0:00	DOM
54	0070265951	306	NEPTUNE	3"	9/27/2012 0:00	COM
55	0070189592	306	NEPTUNE	3"	8/24/2007 0:00	DOM
56	0070297912	306	NEPTUNE	3"	3/26/2015 0:00	COM
57	0070029348	306	NEPTUNE	3"	7/7/2014 0:00	COM
58	0070029349	306	NEPTUNE	3"	10/3/2006 0:00	COM
59	0022307721	308	ELSTER	3"	2/13/2013 0:00	DOM
60	0018449690	308	ELSTER	3"	4/9/2009 0:00	COM
61	0019163132	308	ELSTER	3"	7/23/2009 0:00	COM
62	0018449692	308	ELSTER	3"	1/26/2012 0:00	COM
63	0019163131	308	ELSTER	3"	1/26/2012 0:00	COM
64	0013802605	351	HERSEY	3"	12/14/2018 0:00	DOM
65	0013802606	351	HERSEY	3"	12/31/2018 0:00	DOM
66	0012806229	351	HERSEY	3"	1/24/2020 0:00	DOM
67	0070338396	AMI352	NEPTUNE	3"	10/9/2018 0:00	PUB
68	0070029357	AMI352	NEPTUNE	3"	10/16/2018 0:00	DOM
69	0070258260	AMI352	NEPTUNE	3"	10/2/2018 0:00	DOM
70	0070029347	AMI352	NEPTUNE	3"	12/12/2018 0:00	COM
71	0070029355	AMI352	NEPTUNE	3"	3/7/2019 0:00	COM
72	0070011676	AMI352	NEPTUNE	3"	10/4/2018 0:00	COM
73	0070029350	AMI352	NEPTUNE	3"	1/29/2019 0:00	COM
74	0070278454	AMI352	NEPTUNE	3"	3/12/2019 0:00	COM
75	0070193253	AMI352	NEPTUNE	3"	10/22/2019 0:00	DOM
76	0070029343	AMI352	NEPTUNE	3"	10/24/2018 0:00	COM
77	0070332453	AMI352	NEPTUNE	3"	8/10/2018 0:00	COM
78	0070115530	AMI352	NEPTUNE	3"	6/4/2019 0:00	PUB
79	0070145408	AMI352	NEPTUNE	3"	7/15/2019 0:00	DOM
80	0070029346	AMI352	NEPTUNE	3"	7/11/2019 0:00	DOM
81	0070158678	AMI352	NEPTUNE	3"	6/13/2019 0:00	PUB
82	0070093804	AMI352	NEPTUNE	3"	8/16/2019 0:00	DOM
83	0070029364	AMI352	NEPTUNE	3"	1/25/2019 0:00	DOM
84	0070272609	AMI352	NEPTUNE	3"	8/2/2019 0:00	DOM
85	0070145409	AMI352	NEPTUNE	3"	3/12/2019 0:00	DOM
86	0070306596	AMI352	NEPTUNE	3"	2/12/2019 0:00	COM
87	0070366310	AMI352	NEPTUNE	3"	11/21/2018 0:00	DOM
88	0070366311	AMI352	NEPTUNE	3"	11/21/2018 0:00	DOM
89	0070366312	AMI352	NEPTUNE	3"	11/21/2018 0:00	DOM
90	0070203008	AMI352	NEPTUNE	3"	3/13/2019 0:00	COM

EXHIBIT E - CUSTOMER METERS

Count	meter_no	meter_type	manufacturer	meter_size	install_date	account_type
91	0070298967	AMI352	NEPTUNE	3"	10/9/2018 0:00	DOM
92	0070280414	AMI352	NEPTUNE	3"	4/10/2019 0:00	COM
93	0070029352	AMI352	NEPTUNE	3"	12/20/2018 0:00	COM
94	0070335807	AMI352	NEPTUNE	3"	1/11/2019 0:00	COM
95	0070029363	AMI352	NEPTUNE	3"	5/6/2019 0:00	COM
96	0070271577	AMI352	NEPTUNE	3"	9/11/2019 0:00	DOM
97	0070274105	AMI352	NEPTUNE	3"	10/9/2018 0:00	DOM
98	0070250683	AMI352	NEPTUNE	3"	10/8/2018 0:00	DOM
99	0070044401	AMI352	NEPTUNE	3"	8/1/2019 0:00	DOM
100	0070159107	AMI352	NEPTUNE	3"	10/4/2018 0:00	DOM
101	0070362724	AMI352	NEPTUNE	3"	6/13/2019 0:00	DOM
102	0070080557	AMI352	NEPTUNE	3"	5/31/2019 0:00	DOM
103	0070298963	AMI352	NEPTUNE	3"	10/8/2018 0:00	DOM
104	0070274106	AMI352	NEPTUNE	3"	3/5/2020 0:00	DOM
105	0070271580	AMI352	NEPTUNE	3"	1/9/2020 0:00	DOM
106	0070042776	AMI352	NEPTUNE	3"	1/28/2020 0:00	DOM
107	0070262258	AMI352	NEPTUNE	3"	2/27/2020 0:00	DOM
108	0070005837	AMI352	NEPTUNE	3"	5/10/2019 0:00	DOM
109	0070271579	AMI352	NEPTUNE	3"	10/17/2019 0:00	DOM
110	0070272405	AMI352	NEPTUNE	3"	9/16/2019 0:00	DOM
111	0070271581	AMI352	NEPTUNE	3"	10/23/2018 0:00	DOM
112	0070189591	AMI352	NEPTUNE	3"	11/12/2018 0:00	DOM
113	0070117217	AMI352	NEPTUNE	3"	10/4/2018 0:00	DOM
114	0070080558	AMI352	NEPTUNE	3"	1/3/2020 0:00	DOM
115	0001342429	4"	OUT	4"	11/20/1996 0:00	COM
116	0070029225	4"	OUT	4"	11/24/2014 0:00	PUB
117	0031982420	402	NEPTUNE	4"	11/6/2019 0:00	COM
118	0070148242	403	NEPTUNE	4"	2/29/2016 0:00	DOM
119	0000158677	403	NEPTUNE	4"	9/13/2006 0:00	DOM
120	0070029232	403	NEPTUNE	4"	7/26/2011 0:00	PUB
121	0070342620	404	NEPTUNE	4"	10/31/2017 0:00	DOM
122	0070148240	404	NEPTUNE	4"	12/21/2017 0:00	COM
123	0070316847	404	NEPTUNE	4"	10/30/2017 0:00	DOM
124	0070280517	404	NEPTUNE	4"	11/10/2014 0:00	DOM
125	0070352551	404	NEPTUNE	4"	1/22/2020 0:00	DOM
126	0022289419	405	ELSTER	4"	1/27/2014 0:00	PUB-IRR
127	0021251991	406	ELSTER	4"	6/20/2013 0:00	COM
128	0021170661	407	ELSTER	4"	3/9/2012 0:00	COM
129	0018423341	407	ELSTER	4"	12/8/2011 0:00	COM
130	0070029230	AMI401	Neptune	4"	2/11/2019 0:00	COM
131	0070303956	AMI401	Neptune	4"	3/11/2019 0:00	COM
132	0070029224	AMI401	Neptune	4"	3/19/2019 0:00	COM
133	0070303957	AMI401	Neptune	4"	1/24/2019 0:00	COM
134	0070288157	AMI401	Neptune	4"	3/15/2019 0:00	DOM
135	0070025319	AMI401	Neptune	4"	10/22/2019 0:00	DOM

EXHIBIT E - CUSTOMER METERS

Count	meter_no	meter_type	manufacturer	meter_size	install_date	account_type
136	0070148241	AMI401	Neptune	4"	3/21/2019 0:00	DOM
137	0070162873	AMI401	Neptune	4"	10/25/2018 0:00	COM
138	0070029229	AMI401	Neptune	4"	2/11/2019 0:00	COM
139	0070089230	AMI401	Neptune	4"	3/21/2019 0:00	COM
140	0070162874	AMI401	Neptune	4"	8/10/2018 0:00	DOM
141	0070131622	AMI401	Neptune	4"	7/24/2018 0:00	DOM
142	0070029228	AMI401	Neptune	4"	10/25/2018 0:00	PUB
143	0070034789	AMI401	Neptune	4"	2/22/2019 0:00	DOM
144	0070029231	AMI401	Neptune	4"	4/10/2019 0:00	PUB
145	0070029227	AMI401	Neptune	4"	9/21/2018 0:00	PUB
146	0070153166	AMI401	Neptune	4"	8/10/2018 0:00	DOM
147	0070029386	6"	OUT	6"	12/5/2008 0:00	DOM
148	0070275610	600	UNKNOWN	6"	6/20/2013 0:00	COM
149	0070029682	603	NEPTUNE	6"	7/16/2015 0:00	COM
150	0070339646	603	NEPTUNE	6"	2/9/2018 0:00	DOM
151	0070283197	AMI601	NEPTUNE	6"	1/15/2019 0:00	COM
152	0070290992	AMI601	NEPTUNE	6"	3/2/2017 0:00	COM
153	0070029681	AMI601	NEPTUNE	6"	12/20/2018 0:00	COM
154	0070280525	AMI601	NEPTUNE	6"	2/7/2019 0:00	DOM

EXHIBIT E - FIRE HYDRANT METERS

	meter_no	manufacturer	meter_size	install_date
1	0014338559	ZENNER	3"	5/17/2018 0:00
2	0017084894	ZELLNER	3"	10/1/2019 0:00
3	0014338101	ZENNER	3"	7/30/2019 0:00
4	0014337625	ZENNER	3"	1/15/2019 0:00
5	0016062929	ZENNER	3"	9/21/2017 0:00
6	0014338623	ZENNER	3"	2/27/2019 0:00
7	0022316549	OUT	3"	12/18/2017 0:00
8	0008142505	OUT	3"	11/30/2018 0:00
9	0070361480	NEPTUNE	3"	10/14/2019 0:00
10	0013800478	HERSEY	3"	12/6/2019 0:00
11	0014337918	ZENNER	3"	8/17/2016 0:00
12	0016062993	ZENNER	3"	2/10/2020 0:00
13	0000099828	OUT	3"	2/2/2012 0:00
14	0070359611	NEPTUNE	3"	10/2/2019 0:00
15	0014338558	ZENNER	3"	10/23/2019 0:00
16	0017084935	ZENNER	3"	1/30/2019 0:00
17	0014338573	ZENNER	3"	9/11/2019 0:00
18	0016005358	ZENNER	3"	10/10/2017 0:00
19	0022199616	OUT	3"	11/9/2018 0:00
20	0017030215	ZENNER	3"	2/19/2019 0:00
21	0015125089	zenner	3"	9/11/2019 0:00
22	0014338550	ZENNER	3"	3/12/2019 0:00
23	0070359612	NEPTUNE	3"	10/14/2019 0:00
24	0070361479	NEPTUNE	3"	10/1/2019 0:00
25	0014338626	ZENNER	3"	10/5/2016 0:00
26	0015124615	zenner	3"	2/14/2020 0:00
27	0001525635	OUT	3"	1/2/2019 0:00
28	0070361481	NEPTUNE	3"	10/1/2019 0:00
29	0016062940	ZENNER	3"	2/26/2020 0:00
30	0021261840	OUT	3"	5/28/2014 0:00
31	0070382534	NEPTUNE	3"	3/9/2020 0:00
32	0017084909	ZELLNER	3"	5/8/2019 0:00
33	0014338580	ZENNER	3"	3/2/2018 0:00
34	0016038651	Zenner	3"	1/8/2020 0:00
35	0014338554	ZENNER	3"	11/8/2019 0:00
36	0014338644	ZENNER	3"	10/1/2015 0:00
37	0022316553	OUT	3"	2/26/2020 0:00
38	0008114993	OUT	3"	12/31/2018 0:00
39	0014338585	ZENNER	3"	10/14/2019 0:00
40	0014337605	ZENNER	3"	11/15/2017 0:00
41	0017030222	ZENNER	3"	2/19/2019 0:00
42	0022199615	OUT	3"	1/3/2020 0:00
43	0017084916	ZELLNER	3"	2/19/2020 0:00
44	0008150266	OUT	3"	9/4/2019 0:00
45	0017030226	ZENNER	3"	11/26/2019 0:00

EXHIBIT E - FIRE HYDRANT METERS

	meter_no	manufacturer	meter_size	install_date
46	0014338557	ZENNER	3"	12/16/2019 0:00
47	0017084931	ZELLNER	3"	9/13/2019 0:00
48	0016062979	ZENNER	3"	7/16/2018 0:00
49	0016005355	ZENNER	3"	1/7/2020 0:00
50	0022199618	OUT	3"	2/5/2020 0:00
51	0070366313	NEPTUNE	3"	10/18/2019 0:00
52	0070361482	NEPTUNE	3"	10/2/2019 0:00
53	0016062988	ZENNER	3"	10/16/2019 0:00
54	0017084928	ZENNER	3"	2/24/2020 0:00
55	0016005365	ZENNER	3"	3/26/2019 0:00
56	0017030223	ZENNER	3"	11/26/2019 0:00
57	0016038645	Zenner	3"	12/4/2019 0:00



Meeting Date: May 25, 2021 **Agenda Type:** Consent Items for Action

From: Ian Taylor **Reviewed by:** Ian Taylor
 Chief Executive Officer Chief Executive Officer

Submitted by: Ian Taylor **Approved by:** Ian Taylor
 Chief Executive Officer Chief Executive Officer

RECOMMENDED ACTION: Adopt Resolution #2021-146 by the Board of Trustees of New Braunfels Utilities (i) Approving Amendments to Chapter 130, Article II, Section 130-30 of the Code of Ordinances of the City of New Braunfels Providing the Right to Board Members to Waive Annual Compensation and to Revoke Such Waiver and Reinstate Annual Compensation At Any Time and (ii) Authorizing Presentation of Same to the City Council of New Braunfels for Its Consideration and Passage

BACKGROUND

Chapter 130, Article II, Section 130-30 of the New Braunfels Code of Ordinances (“Code of Ordinances”) requires that members of the New Braunfels Utilities (“NBU”) Board of Trustees, excluding the Mayor, receive an annual compensation of not less than \$1,200. From time to time, NBU Board members have requested NBU staff to waive the \$1,200 Board compensation required in Section 130-30 of the Code of Ordinances. In order to accommodate this request, NBU staff proposes modifying Section 130-30 of the Code of Ordinances to provide the right to NBU Board members to waive their annual compensation by written request to the CEO and to revoke such waiver and reinstate the Board member’s annual compensation at any time.

If the Board approves the recommended changes to Section 130-30 of the Code of Ordinances, NBU will present the first reading of the ordinance revisions to City Council on June 14, 2021, and the second reading of the revisions on June 28, 2021.

FINANCIAL IMPACT

The financial impact is a potential savings of \$1,200 or a pro rata portion of such amount for each Board member who waives his or her compensation.

LINK TO STRATEGIC PLAN

Recognized as a Trusted Community Partner Dedicated to Excellence in Service

Be a Responsible Steward of Natural Resources

EXHIBITS

1. Board Member Compensation Resolution
2. City of New Braunfels Ordinance – Board Member Compensation
3. Chapter 130, Article II, Section 130-30 of the Code of Ordinances Relating to Board Member Compensation (Redlined)
4. Chapter 130, Article II, Section 130-30 of the Code of Ordinances Relating to Board Member Compensation (Clean)

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES (I) APPROVING A PROPOSED AMENDMENT TO CHAPTER 130, ARTICLE II, SECTION 130-30, CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS (I) PROVIDING THE RIGHT TO BOARD MEMBERS TO WAIVE ANNUAL COMPENSATION AND TO REVOKE SUCH WAIVER AND REINSTATE ANNUAL COMPENSATION AT ANY TIME AND (II) AUTHORIZING PRESENTATION OF SAME TO THE CITY COUNCIL OF NEW BRAUNFELS FOR ITS CONSIDERATION AND PASSAGE

WHEREAS, the City Council of the City of New Braunfels (the “City Council”) has established an ordinance designating the complete management and control of New Braunfels Utilities (“NBU”) to a Board of Trustees to manage its electric, water, and wastewater systems;

WHEREAS, Chapter 130, Article II, Section 130-30 of the City’s Code of Ordinances provides that NBU board members, excluding the mayor, shall receive an annual compensation of not less than \$1,200;

WHEREAS, the Board of Trustees of NBU is of the opinion that it is now necessary and advisable that Chapter 130, Article II, Section 130-30 of the Code of Ordinances relating to board member compensation be amended; and

WHEREAS, the Board of Trustees has reviewed the proposed amendment and is of the opinion that the same should be approved and submitted to the City Council for its consideration and passage.

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

SECTION 1. The Board of Trustees hereby approves the proposed amendment to Chapter 130, Article II, Section 130-30 of the City’s Code of Ordinances as set forth in attached Exhibit A to allow a member of the Board of Trustees the right to (i) waive his or her annual compensation at any time by providing written notice of such waiver to the CEO and (ii) revoke such waiver and reinstate annual compensation at any time by providing written notice of such reinstatement to the CEO.

SECTION 2. The Board of Trustees hereby recommends approval of such amendment to the City Council and authorizes and directs the CEO of NBU to present the proposed ordinance amendment in ordinance form to the City Council for its consideration and passage as provided by law.

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED, this the 25th day of May, 2021.

John A. Harrell
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ian Taylor
Secretary to the Board
New Braunfels Utilities

Exhibit A

ORDINANCE NO. 2021-_____

AN ORDINANCE AMENDING CHAPTER 130, ARTICLE II, SECTION 130-30, CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS PROVIDING THE RIGHT TO NEW BRAUNFELS UTILITIES BOARD OF TRUSTEES MEMBERS TO WAIVE ANNUAL COMPENSATION AND TO REVOKE SUCH WAIVER AND REINSTATE ANNUAL COMPENSATION AT ANY TIME; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; CONTAINING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of New Braunfels, Texas (the "City"), owns and operates by and through New Braunfels Utilities its own electric, water, and wastewater system in accordance with the laws of the State of Texas and the charter of said City; and

WHEREAS, the City Council has established an ordinance providing for the complete management and control of New Braunfels Utilities through a board of trustees, which ordinance has been codified as Chapter 130, Article II of the Code of Ordinances of the City; and

WHEREAS, the City Council has also established an ordinance providing for the compensation of the board of trustees, which ordinance has been codified as Chapter 130, Article II, Section 130-30, Code of Ordinances of the City; and

WHEREAS, Section 130-30 of the Code of Ordinances of the City does not currently allow members of the board of trustees to waive their annual compensation; and

WHEREAS, pursuant to a resolution adopted on May 25, 2021, the New Braunfels Utilities Board of Trustees recommends that the board compensation be modified to allow board members to waive their annual compensation; and

WHEREAS, in order to change the board member compensation, it is now necessary and advisable that Section 130-30, Chapter 130, Article II of the Code of Ordinances as heretofore established by ordinance, be amended; and

WHEREAS, the City Council retains the power to consider a modification to the board member compensation at any time.

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

SECTION 1.

THAT, the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

THAT, Section 130-30, Chapter 130, Article II of the Code of Ordinances, City of New Braunfels, Texas, as heretofore established by ordinance, be and hereby is amended to allow a member of the board of trustees of New Braunfels Utilities the right to (i) waive his or her annual compensation at any time by providing written notice of such waiver to the CEO and (ii) revoke such waiver and reinstate his or her annual compensation at any time by providing written notice of such reinstatement to the CEO.

SECTION 3.

THAT, Section 130-30, Chapter 130, Article II of the Code of Ordinances, City of New Braunfels, Texas, is hereby amended in the following section with new language signified by underlined font below:

Sec. 130-30. Compensation of members; exception.

The members of the board of trustees, excluding the mayor, shall receive an annual compensation of not less than \$1,200.00, and such compensation may be increased from time to time by the city council as it is deemed advisable, subject to the limitations set out in the Charter of the city. A member of the board of trustees may waive receipt of this compensation by providing written notice of such waiver to the CEO. If a member of the board of trustees chooses to waive his or her annual compensation, the member may revoke the waiver and reinstate the member's annual compensation at any time by providing written notice of such reinstatement to the CEO. After revocation of the waiver, a member is entitled to a prorated amount of the compensation for the remainder of the fiscal year.

SECTION 4.

THAT, this Ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to board member compensation, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 5.

THAT, if any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 6.

THAT, this ordinance shall be effective on _____, 2021.

SECTION 7.

PASSED AND APPROVED: First Reading this _____ day of _____, 2021.

PASSED AND APPROVED: Second Reading this _____ day of _____, 2021.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

CAITLIN KROBOT, City Secretary

APPROVED AS TO FORM:

VALERIA ACEVEDO, City Attorney

Sec. 130-30. Compensation of members; exception.

The members of the board of trustees, excluding the mayor, shall receive an annual compensation of not less than \$1,200.00, and such compensation may be increased from time to time by the city council as it is deemed advisable, subject to the limitations set out in the Charter of the city. A member of the board of trustees may waive receipt of this compensation by providing written notice of such waiver to the CEO. If a member of the board of trustees chooses to waive his or her annual compensation, the member may revoke the waiver and reinstate the member's annual compensation at any time by providing written notice of such reinstatement to the CEO. After revocation of the waiver, a member is entitled to a prorated amount of the compensation for the remainder of the fiscal year.

Sec. 130-30. Compensation of members; exception.

The members of the board of trustees, excluding the mayor, shall receive an annual compensation of not less than \$1,200.00, and such compensation may be increased from time to time by the city council as it is deemed advisable, subject to the limitations set out in the Charter of the city. A member of the board of trustees may waive receipt of this compensation by providing written notice of such waiver to the CEO. If a member of the board of trustees chooses to waive his or her annual compensation, the member may revoke the waiver and reinstate the member's annual compensation at any time by providing written notice of such reinstatement to the CEO. After revocation of the waiver, a member is entitled to a prorated amount of the compensation for the remainder of the fiscal year.

Board Agenda Item Report

May 25, 2021

ACTION ITEMS

Agenda Type: Action Item

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Adoption of Resolution #2021-147 Relating to the Issuance of the “City of New Braunfels, Texas, Utility System Revenue Refunding Bonds, Series 2021” and Resolving Other Matters Incident and Related Thereto

BACKGROUND

At the NBU Fiscal Year 2021 Budget Workshop on June 15, 2020, NBU staff had discussed with the Board, NBU's intent to issue debt of up to \$90.5 million to fund planned capital expenditures in fiscal year 2021 and the utilization of NBU's Commercial Paper Program, which would allow NBU to remain flexible and liquid with quick access to funds when needed. The Fiscal Year 2021 Budget and Five Year Financial and Operating Plan through Fiscal Year 2025, which contained the above planned bond issuance, was approved by the NBU Board at its June 25, 2020 Board Meeting. NBU staff has determined that refunding the outstanding commercial paper notes will provide the necessary capacity to fund the planned capital expenditures. In light of the fact that major projects are underway and that the current tax-exempt yields are favorable, NBU staff recommends that the Series 2021 bond issuance be initiated.

The Series 2021 bond issuance includes the refunding of up to \$74.75 million in commercial paper notes. The refunding of the outstanding commercial paper notes adheres to NBU's Financial Policy, which states that NBU will refund the outstanding commercial paper notes with long-term debt once the authorized commercial paper amount is fully utilized or if it is determined that market conditions are no longer favorable for the issuance and remarketing of commercial paper notes. The refunding of the commercial paper notes allows NBU to again utilize the \$75 million in commercial paper capacity and to continue to benefit from access to funds at the usually lower short-term interest repayment rates associated with a commercial paper program.

NBU staff recommends that the Board approve NBU staff, financial advisor, and bond counsel to begin the bond offering process and preparation of documents relating to the issuance of approximately \$74.75 million in revenue refunding bonds. The proposed timeline includes City Council authorization of the issuance of the bonds in June 2021, bond pricing in June 2021, and the closing of the bonds in July 2021.

NBU staff recommends that the Board authorize the “parameter” process for issuing the Series 2021 Bonds. The City is a qualified issuer under Government Code Chapter 1371, which allows the delegation of the authority by the City Council to finalize the bond transaction within certain parameters. Section 1207.007 of the Government Code allows for the parameter delegation of the refunding component of the bond issue. The approval to issue bonds under these authorities would set certain parameters, such as the maximum original principal amount of \$74,750,000, a maximum maturity date that would not exceed July 1, 2051, and a coupon interest rate that would not exceed 6%. If all of these parameters are met, then the ultimate final approval of pricing would be delegated to certain appointed officials, such as the City Manager and CEO of NBU. This process eliminates the strict deadline (timeline) of having to coordinate pricing to the date of a City Council meeting. This gives the City and NBU the flexibility to time its actions in the market by adjusting the pricing in response to potential positive market developments or to avoid adverse market developments. The City Manager would be fully advised once the financing is completed. This approach also has the advantage of not requiring an additional separate City Council meeting to approve the bond issue. This process has been successfully utilized in prior NBU bond offerings and provides flexibility and opportunity to achieve the best pricing of the bonds. A summary of the proposed parameters is attached.

FINANCIAL IMPACT

\$74.75 million plus interest of no more than 6%

LINK TO STRATEGIC PLAN

Maintain a Competitive Bond Rating

EXHIBITS

1. Parameters
2. Resolution

**City of New Braunfels, Texas,
Utility System Revenue Refunding Bonds, Series 2021
Parameters Included in the Proposed Ordinance
For the Issuance of Bonds**

<u>Item</u>	<u>Description</u>	<u>Parameter</u>
1	Issue Size	Not to Exceed \$74,750,000
2	Interest Rate	Not to Exceed 6%
3	Maturity Date	Not to Exceed July 1, 2051

A RESOLUTION relating to the issuance of "City of New Braunfels, Texas, Utility System Revenue Refunding Bonds, Series 2021," and resolving other matters incident and related thereto.

WHEREAS, pursuant to the authority contained in Texas Government Code, Section 1502.051 et seq. and by the Charter of the City of New Braunfels, Texas (the "City"), the complete management and control of the City's Waterworks, Sanitary Sewer and Electric Light and Power Systems (the "Systems"), during such time as the net revenues of the Systems may be encumbered pursuant to the ordinances authorizing the issuance of the City's outstanding revenue bonds, are vested in the Board of Trustees of the Systems (the "Board of Trustees"); and

WHEREAS, the Board of Trustees and the City intend that revenue bonds should be issued for the purposes of providing funds for refunding a portion of the "City of New Braunfels, Texas, Utility System Commercial Paper Notes, Series 2019A", in accordance with the provisions of Texas Government Code, Chapters 1502 and 1207, as amended; and

WHEREAS, the Board of Trustees hereby finds and determines the best interest of the City and the Systems would be served by proceeding with the issuance and sale of revenue refunding bonds as contemplated; now, therefore,

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES:

SECTION 1: The President of the Board of Trustees, Secretary to the Board of Trustees, the CEO, and the Chief Financial Officer, any one or more of said officials, together with the Board's financial advisor, SAMCO Capital Markets and bond counsel, Norton Rose Fulbright US LLP, are hereby authorized and directed to proceed on behalf of New Braunfels Utilities with the offering and sale of revenue refunding bonds hereinabove referenced, and the CEO and Chief Financial Officer and other appropriate officials of the Board are hereby authorized and directed to assist and furnish said consultants with information and data needed in connection with the issuance of such bonds.

SECTION 2: Any previous actions of such consultants related to the issuance of such bonds are hereby confirmed and approved in all respects.

SECTION 3: 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 said meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 4: This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND ADOPTED, this May 25, 2021.

NEW BRAUNFELS UTILITIES

President of the Board of Trustees

ATTEST:

Secretary to Board of Trustees

(Board Seal)



Meeting Date: May 25, 2021

Agenda Type: Action Item

From: John Warren
Finance Manager

Reviewed by: Dawn Schriewer
Chief Financial Officer

Submitted by: Dawn Schriewer
Chief Financial Officer

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Approval and Authorization to Select the Underwriting Team for the City of New Braunfels, Texas, Utility System Revenue Refunding Bonds, Series 2021

BACKGROUND

NBU's staff recommends that the NBU Board approve J.P. Morgan, Piper Sandler & Co., and Frost Bank as underwriters for the approximately \$74.75 million City of New Braunfels, Texas, Utility System Revenue Refunding Bonds, Series 2021. NBU's staff further recommends that J.P. Morgan serve as the lead underwriter and the remaining two firms serve as co-managers.

J.P. Morgan remains a major national and global financial institution that is well capitalized. Its underwriting desk is located in New York, and by par value, has been a top underwriter in Texas for several years. J.P. Morgan has participated in underwritings for several surrounding Texas entities, including CPS Energy, Austin Energy, the Texas Water Development Board, and the City of San Antonio. J.P. Morgan has relationships with most of the major and mid-tier investor accounts and works to maintain an investor outreach program.

Piper Sandler & Co. was founded in 1895 and is a client-focused, full-service investment banking firm. It is a super-regional firm, headquartered in Minneapolis, Minnesota, with over 60 offices across the United States including 40 public finance offices, 24 sales offices, and 11 trading desks. Piper Sandler is focused on providing bond underwriting services to communities across the state of Texas and has ten bankers in Texas, including a local office in San Antonio. Its public finance banking team is supported by one of the largest municipal institutional sales forces in the country. Piper Sandler consistently ranks as one of the top municipal bond underwriters in the State of Texas.

Frost Bank is a major regional firm and has continued to grow its municipal underwriting portfolio. Over the past 5 years, Frost Bank has been one of the top ten underwriters for negotiated Texas issues. It also maintains one of the largest municipal bond portfolios in the country. Frost Bank has been active in the New Braunfels and Comal County area, participating in underwritings for the City of New Braunfels, New Braunfels ISD and Comal County.

FINANCIAL IMPACT

\$74.75 million plus interest of no more than 6%

LINK TO STRATEGIC PLAN

Maintain a Competitive Bond Rating

EXHIBITS

None



Meeting Date: May 25, 2021

Agenda Type: Action Item

From: Nancy Pappas
Managing Director,
Headwaters at the Comal

Reviewed by: Melissa Krause
Chief Communications and
Strategy Officer

Submitted by: Melissa Krause
Chief Communications and
Strategy Officer

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Approval for the Headwaters at the Comal Board of Directors to Appoint Jordan Matney as a Class C Board Member of the Headwaters at the Comal

BACKGROUND

The Headwaters at the Comal (“Headwaters”), New Braunfels Utilities’ (“NBU”) conservation legacy project, was established as a 501(c)(3) organization in 2017. The bylaws of the Headwaters allow for seven executive board members (two NBU employees, appointed by the CEO of NBU, two members of NBU's Board of Trustees, appointed by the NBU Board of Trustees, and three community members, appointed by the NBU Board of Trustees). There is currently a Class C open position on the Headwaters board. Adding a community member to the Headwaters board is essential, especially as it moves forward with its master plan. On Tuesday, April 27, 2021, the Headwaters board unanimously agreed to nominate Jordan Matney as a Class C board member for the NBU Board of Trustees to consider for approval.

Jordan Matney currently serves as the Assistant City Manager for the City of New Braunfels overseeing Public Works, Planning and Development Services, Economic and Community Development, Information Technology, the Airport, and the City Secretary's Office. She is actively involved in the New Braunfels community. Prior to her service to the City of New Braunfels, Jordan held positions and was instrumental in city government in Live Oak and the cities of Portland and Fort Worth.

Current members of Headwaters board include; NBU Chief Executive Officer Ian Taylor, NBU Chief Financial Officer Dawn Schriewer, NBU Board Trustee Vice President Dr. Judith Hoffmann, NBU Board Trustee Wayne Peters, and community members Leonard Dougal, an environmental lawyer and partner with Jackson Walker, LLP, and Richard McDonald, the Director of Environmental Affairs at HEB.

The Headwaters board exists to establish and accept donations and manage the project's research, education, outreach, and programming efforts. The Headwaters board is tasked with leading fundraising efforts for the capital campaign, currently focusing on Phase II funding.

FINANCIAL IMPACT

None.

LINK TO STRATEGIC PLAN

Be a Responsible Steward of Natural Resources

EXHIBITS

1. Bylaws for the Headwaters at the Comal
2. Brief Bio of Jordan Matney

JORDAN MATNEY

BRIEF BIO



Jordan Matney currently serves as the Assistant City Manager for the City of New Braunfels overseeing Public Works, Planning and Development Services, Economic and Community Development, Information Technology, the Airport, and the City Secretary's Office. Before her service with the City of New Braunfels, Jordan served as Assistant City Manager in Live Oak for seven years. She was instrumental in economic development projects, including the development of the Live Oak Town Center, and most notably, IKEA in early 2019. Jordan has previously held positions with the City of Portland and the City of Fort Worth.

Jordan earned her Bachelor's degree from the University of North Texas and her Master's degree in Public Administration from Texas A&M – Corpus Christi. She is a proud member of the Texas City Management Association, serving as past Region 8 president, International City/County Management Association, Texas Economic Development Council, American Planning Association, and Women Leading Government. Jordan is also a member of the Leadership New Braunfels class of 2021. In her short time in New Braunfels, Jordan has established herself as an active volunteer in the community, dedicating time to mentoring through the Big Brothers Big Sisters program. In her spare time, Jordan enjoys spending time in the beautiful outdoors of New Braunfels, the Hill Country, and the great state of Texas, as well as fitness, reading, and cooking.

BYLAWS FOR THE HEADWATERS AT THE COMAL

ARTICLE 1 – NAME, PURPOSES, POWERS, AND OFFICES

1.1 Name

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

1.2 Purposes

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

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

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

1.3 Powers

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

1.4 Offices

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

1.5 Registered Office

The Corporation shall comply with the requirements of the TBOC and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the

Corporation's principal office in Texas. The Board of Directors may change the registered office and the registered agent as provided in the TBOC.

ARTICLE 2 – NO MEMBERS

2.1 Membership

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

ARTICLE 3 – BOARD OF DIRECTORS

3.1 General Powers

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

3.2 Number and Qualifications

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

There shall be three classes of directors.

(a) Class A. Class A shall consist of two (2) members of the New Braunfels Utilities Board of Trustees, *selected by the New Braunfels Utilities Board of Trustees*.

(b) Class B. Class B shall consist of two (2) employees of New Braunfels Utilities, *selected by the CEO of New Braunfels Utilities*. The CEO of New Braunfels Utilities may serve as a Class B director.

(c) Class C. Class C shall consist of three (3) community members *appointed by the New Braunfels Utilities Board of Trustees*.

3.3 Term of Office

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

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

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

3.4 Selection of Directors

Class A directors shall be *selected by the New Braunfels Utilities Board of Trustees*.

Class B directors shall *be selected by the CEO of New Braunfels Utilities*.

Class C directors shall be *appointed by the New Braunfels Utilities Board of Trustees*.

3.5 Duties of Directors

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

3.6 Vacancies

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

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

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

3.7 Removal

Any Class C director may be removed, either for or without cause, by the affirmative vote of a majority of the directors present at any meeting of the directors at which a quorum is present, if notice of the intention to act upon such matter shall have been given in the notice of such meeting and if such notice is provided to the director proposed to be removed.

3.8 Resignation

Any director may resign at any time by delivering written notice to the Secretary or President of the Board of Directors of the Headwaters at the Comal and communicated immediately with the New Braunfels Utilities Board of Trustees. Such resignation shall take effect upon receipt or, if later, at the time specified in the notice.

3.9 Directors' Compensation

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

ARTICLE 4 – NOTICES

4.1 Notice

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

ARTICLE 5 – MEETINGS

5.1 Regular & Special Meetings

The Board will hold at least one meeting a year.

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

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

5.2 Quorum and Manner of Acting

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

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

5.3 Proxy Voting Prohibited

Proxy voting is not permitted.

5.4 Written Consent of Directors

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

5.5 Electronic Meetings

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

5.6 Minutes

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

ARTICLE 6 – COMMITTEES

6.1 Committees of Directors

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

6.2 Advisory Boards or Committees

Advisory boards or committees not having and exercising the authority, responsibility or duties of the Board in the management of the Corporation may be designated by a resolution adopted by the directors. Except as otherwise provided in such resolution, members of each such advisory board or committee need not be directors of the Corporation. The President shall appoint the members of such advisory boards or committees. Any committee member may be removed by the President whenever in the President's judgment the best interests of the Corporation shall be served by such removal.

ARTICLE 7 – OFFICERS

7.1 Elected Officers

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

7.2 Election

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

7.3 Appointed Officers

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

7.4 Term of Office; Removal; Filling of Vacancies

Officers shall hold a one-year term. An officer may be re-elected to serve consecutive terms of office. Each elected officer of the Corporation shall hold office until such officer's successor is chosen and qualified in such officer's stead or until such officer's earlier death, resignation, retirement, disqualification or removal from office. Any officer may be removed at any time by the affirmative vote of a majority of the Board. If any office becomes vacant for any reason, the vacancy shall be filled by the Board.

7.5 President

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

7.6 Secretary

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

7.7 Vice President

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

7.8 Treasurer

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

7.9 Additional Powers and Duties

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

ARTICLE 8 – STAFF

8.1 Staff

New Braunfels Utilities (NBU) shall, appoint a staff, including an Executive Director (currently named Managing Director), and/or a management company to serve at the Board's discretion and to carry out whatever tasks the Board from time to time resolves.

8.2 Executive Director and/or Management Company

The Executive Director and/or management company (“Management”) shall be paid a fee set by NBU. The Board may provide input as to performance metrics and evaluation of staff as requested by NBU. Subject to such supervisory powers as are vested in the Board, Management shall supervise, direct, and control the business of the Corporation and actively manage its business, and shall have such other powers and duties as may be prescribed by the Board of Directors or by these bylaws. Management may engage in negotiations involving commitments of the resources of the Corporation or the acceptance of money or resources by the Corporation in furtherance of the purposes of the Corporation as set out in the Certificate of Formation and these bylaws. Management shall generally be expected to attend all meetings of the Board, yet does not have a vote on the Board.

ARTICLE 9 – OPERATIONS

9.1 Contracts

The Board may authorize any officer or officers, or agent or agents, of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

9.2 Disbursement of Funds

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

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

Notwithstanding the above, all checks of more than \$5,000 disbursing funds from any of the Corporation’s accounts shall require the signatures of at least two of the following officers whom shall be two different individuals: President, Vice President, Secretary, or Treasurer.

9.3 Records

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

9.4 Conflicts of Interest

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

9.5 Dividends Prohibited

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

The Corporation may pay compensation in a reasonable amount to its officers for services rendered and may compensate and reimburse its directors as provided in Section 3.10.

9.6 Loans to Officers and Directors Prohibited

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

9.7 Fiscal Year

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

9.8 Invalid Provisions

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

ARTICLE 10 – INDEMNIFICATION

10.1 Right to Indemnification

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

such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

10.2 Reimbursement

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

10.3 Right to Indemnity

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

10.4 Insurance

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

ARTICLE 11 – AMENDMENTS TO BYLAWS

11.1 Powers to Amend

These Bylaws may be amended or repealed, or new bylaws may be adopted at any annual or special meeting of the Board at which a quorum is present by the affirmative vote of a majority of the directors present at the meeting, provided notice of the proposed amendment, repeal or

adoption be contained in the notice of such meeting; and provided further, that the foregoing notice requirement shall not prohibit the directors from adopting the proposed amendment, effecting the proposed repeal or adopting the proposed new bylaws, as the case may be, in a modified form which is not identical to that described or set forth in the notice of such meeting.

ARTICLE 12 –DISSOLUTION

12.1 Distribution of Assets

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

12.2 Decision Making Authority

The Corporation's Board shall have the sole and exclusive right to vote and make decisions regarding or in any way involving the dissolution, merger, and/or consolidation of the Corporation and decisions regarding the sale of substantially all of the Corporation's assets.

CERTIFICATION

I, the undersigned duly elected and acting Secretary of the Corporation hereby certify that the foregoing Bylaws were adopted as of the Corporation as of the 30th day of September, 2020, that the same constitute the Bylaws of said nonprofit corporation, and that the Bylaws have not been modified, amended or rescinded as of such date.

IN WITNESS WHEREOF, I have signed this certification effective as of September 30, 2020.



Leonard Dougal
Secretary of the Board of Directors

SCHEDULE A. CONFLICT OF INTEREST POLICY

ARTICLE 1 - PURPOSE

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

ARTICLE 2 - DEFINITIONS

2.1. Interested Person

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

2.2. Financial Interests

Financial interests include, but are not limited to:

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

2.3. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

2.4. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

ARTICLE 3 – PROCEDURES

3.1. Duty to Disclose

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

3.2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested party shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3.3. Procedures for Addressing the Conflict of Interest

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

3.4. Violations of the Conflict of Interest Policy

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

ARTICLE 4 – RECORDINGS AND PROCEEDINGS

4.1. The minutes of the board and committees with board-delegated powers shall contain:

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

ARTICLE 5 – COMPENSATION

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

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

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

ARTICLE 6 – ANNUAL STATEMENT

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

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

ARTICLE 7 – PERIODIC REVIEWS

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

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

Conflict of Interest Annual Disclosure Statement

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

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

NAME

TITLE

DATE

ACCEPTANCE OF NOTICE BY EMAIL

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

Director's Email Address, Date



Meeting Date: May 25, 2021

Agenda Type: Action Items

From: Connie Lock
General Counsel & Chief
Ethics Officer

Reviewed by: Connie Lock
General Counsel & Chief Ethics
Officer

Submitted by: Connie Lock
General Counsel & Chief
Ethics Officer

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Approval of Proposed Revisions to the NBU Board Governance Policies

BACKGROUND

On January 28, 2010, the New Braunfels Utilities (“NBU”) Board of Trustees approved Governance Policies to establish a framework of how the Board would operate. The Governance Policies were revised on March 31, 2016, to reflect organizational changes and the Board’s existing practices.

On September 24, 2020, the Board established a Governance and Personnel Subcommittee (the “Committee”) to review the Governance Policies and provide recommended revisions. The Committee met on multiple occasions to review the Governance Policies and provided the following recommended changes to the Board at its strategic retreat on March 31, 2021:

- Add a preface explaining the purpose of the Governance Policies and any related revision history
- Structure operational policies around NBU’s strategic goals
- Incorporate strategic goal measurements in lieu of maintaining separate operational and outcome policies
- Rename policies as follows:

Current Policy Name	Proposed Change to Policy Name
Operational Policies	Strategic Goals (SG)
Governance Process	Board Governance (BG)
Board-Management Delegation	No change (BMD)

- Update policies to reflect current or preferred Board and NBU practices
- Add new policies describing the Vice President's role and addressing Board member discipline, resignation, and removal
- Reorganize misplaced policies or language
- Revise vague, unclear, or outdated language

The Committee incorporated Board feedback received at and after the retreat into the Governance Policies and presented the proposed revisions to the Board at its regular meeting on April 29, 2021. These additional revisions included the following changes:

- Set minimum time periods for setting and reviewing NBU's strategic goals (SG #1)
- Move provision pertaining to operating capital from policy on Infrastructure & Technology (SG #4) to policy on Financial Excellence (SG #5)
- Clarify certain language in the policy for Financial Excellence (SG#5)
- Clarify timing of the annual planning process (BG #11)
- Add reference to additional training resources in the policy on Governance Investment (BG#12)
- Clarify communication requirements in the policy for Unity of Control (BMD #2)

The Committee requested and received additional feedback after its April Board meeting. The updated Governance Policies include the following proposed revisions:

- Revise Board committees (BG #10)
- Clarify emergency executive CEO succession planning (BMD #7)

The Committee is scheduled to present the final draft of the Governance Policies to the Board during its May 25, 2021 meeting.

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Recognized as a Trusted Community Partner Dedicated to Excellence in Service

EXHIBITS

1. Governance Policies (redline—changes since April 29, 2021 Board meeting)
2. Governance Policies (redline—cumulative)

New Braunfels Utilities

Governance Policies

PREFACE

In January 2010, the Board of Trustees (Board) for New Braunfels Utilities (NBU) established governance policies under which it would operate. Those policies were revised in March 2016 and May 2021. The May 2021 revisions, which became effective on August 1, 2021, were organizational and substantive in nature and were designed to incorporate the Board's existing practice and strategic goals. Any governance policies that existed prior to the May 2021 revisions are listed herein as "Formerly [Policy Type, Number, and Title]." Governance policies without any such notation were added in May 2021.

New Braunfels Utilities

Governance Policies

TABLE OF CONTENTS

<u>Policy Type</u>	<u>Policy #</u>	<u>Policy Title</u>
Strategic Goals	SG #1	Global Policy on Strategic Goals
	SG #2	Customers & Community
	SG #3	People & Culture
	SG #4	Infrastructure & Technology
	SG #5	Financial Excellence
	SG #6	Safety
	SG #7	Stewardship
Board Governance	BG #1	Global Policy on Governance Process
	BG #2	Governing Style
	BG #3	Board Job Description
	BG #4	Board Member Code of Conduct
	BG #5	Board Member Discipline, Resignation & Removal
	BG #6	President's Role
	BG #7	Vice President's Role
	BG #8	Board Secretary's Role
	BG #9	Board Committee Principles
	BG #10	Board Committees & NBU-Supported Boards
	BG #11	Annual Planning
	BG #12	Governance Investment
Board-Management Delegation	BMD #1	Global Policy on Board Delegation
	BMD #2	Unity of Control
	BMD #3	Accountability of the CEO
	BMD #4	Delegation to the CEO
	BMD #5	Evaluating CEO Performance
	BMD #6	Communication and Support to the Board
	BMD #7	Emergency Executive CEO Succession

New Braunfels Utilities

Governance Policies: Strategic Goals

POLICY TYPE: STRATEGIC GOALS

SG #1

POLICY TITLE: GLOBAL POLICY ON STRATEGIC GOALS

Date Approved by Board: May 25, 2021 (effective August 1, 2021)

At a minimum of every five years, the Board shall review and establish Strategic Goals for NBU and determine how achievement of or adherence to those Strategic Goals should be measured. The Board then shall review NBU's progress periodically throughout each fiscal year (August 1 to July 31), evaluate NBU's achievement of or adherence to those Strategic Goals at least annually each fiscal year, and confirm the continuing validity of each Strategic Goal. The Board at all times maintains discretion to add, remove, or change any Strategic Goal or any achievement or adherence measurement set.

POLICY TYPE: STRATEGIC GOALS

SG #2

POLICY TITLE: CUSTOMERS & COMMUNITY
(Formerly OP#2a Treatment of Customers)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to NBU being recognized as a trusted community partner dedicated to excellence in service.

With respect to interactions with current or potential customers or the community at large, the CEO shall not cause or allow conditions, procedures, or decisions that are unsafe, unsecure, untimely, unnecessarily intrusive, or in violation of any federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

The CEO shall not:

1. Elicit information for which there is no business necessity.
2. Use methods of collecting, reviewing, transmitting, or storing consumer information that fails to reasonably protect against improper access.
3. Operate facilities without reasonably appropriate customer accessibility and security.
4. Operate without established policies providing customers a clear understanding of what to expect from the services NBU offers.
5. Withhold information about this policy or deny any customers who are aggrieved a right to seek review under this policy.
6. Project an image to customers or the community at large that creates a negative perception of NBU or jeopardizes NBU's status in the community.

The Board will review and measure NBU's progress towards achieving or adhering to its Customers & Community Strategic Goal by examining annual customer satisfaction survey results, customer or community feedback received, and/or any other related information provided by its CEO, NBU customers, or the community at large. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #3

POLICY TITLE: PEOPLE & CULTURE
(Formerly OP#2b Treatment of Staff & OP#2c Compensation & Benefits)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to NBU developing and retaining an engaged and ethical workforce.

With respect to employment, compensation, and benefits of employees or contingent workers, the CEO shall not cause or allow jeopardy to NBU's fiscal integrity or public image or conditions that violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

With respect to the retention and engagement of consultants or volunteers, the CEO shall not cause or allow conditions that create an employment relationship or that violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

The CEO shall not:

1. Change the CEO's own compensation without the Board's express approval.
2. Change the CEO's benefits, except as would be consistent with any benefits provided to all other employees.
3. Promise or imply permanent or guaranteed employment or a contract for tenure.
4. Establish compensation and benefits that deviate materially from the geographic or professional market for the skills employed.
5. Create any employment or other compensation or benefit-related obligations over a longer term than revenues can be reasonably projected to satisfy.
6. Enter into any employment agreement without the Board's express approval.

The Board will review and measure NBU's progress towards achieving or adhering to its People & Culture Strategic Goal by examining annual employee engagement survey results, employee feedback received, and/or any other related information provided by its CEO or NBU employees. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #4

POLICY TITLE: INFRASTRUCTURE & TECHNOLOGY
(Formerly OP#2f Asset Protection)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to NBU maintaining organizational reliability and resiliency.

The CEO shall not allow NBU assets to be unprotected, inadequately maintained, or unnecessarily risked.

The CEO shall not:

1. Unnecessarily expose NBU, its Board, or staff to claims of liability.
2. Unreasonably fail to protect property, information, or data files from loss, significant damage, or unauthorized access.
3. Unreasonably fail to address aging infrastructure, plan for additional growth, or evaluate the availability and viability of innovative or technological improvements.

The Board will review and measure NBU's progress towards achieving or adhering to its Infrastructure & Technology Strategic Goal by examining NBU's SAIDI three-year rolling average, technological uptime, percentage of completion of capital improvement projects, and any other related information provided by its CEO. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #5

POLICY TITLE: FINANCIAL EXCELLENCE
(Formerly OP#2d Financial Condition & Activities & OP#2e Financial Planning & Budgeting)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to NBU maintaining a competitive bond rating.

With respect to the actual, ongoing financial condition and activities of NBU, the CEO shall not cause or allow the development of fiscal jeopardy or a material deviation of actual expenditures from Board priorities established through its Strategic Goals.

The CEO shall not:

1. Expend more funds than allocated by the Board for the current fiscal year without express Board approval.
2. Exceed the limits of NBU's Purchasing Policy.
3. Incur debt without appropriate authorization from the Board or City of New Braunfels.
4. Fail to settle liabilities in a timely manner.
5. Allow government-ordered or regulatory filings, fines, or payments to be overdue or inaccurately filed.
6. Acquire, encumber, or dispose of real estate other than for normal operating items, such as rights-of-way or easements, and in connection with approved Board projects
7. Invest or hold operating capital in insecure instruments, including uninsured checking accounts or noninterest-bearing accounts, except where necessary to facilitate operational transactions.

The CEO shall not cause or allow financial planning for any fiscal year or the remaining part of any fiscal year to risk financial jeopardy or deviate materially from the Board's approved annual budget or the Strategic Goals.

The CEO shall not allow budgeting to:

1. Fail to include:
 - (a) credible projection of revenues and expenses,
 - (b) separation of capital and operational items,
 - (c) cash flow analysis, and
 - (d) disclosure of planning assumptions
2. Provide less for Board development than is set forth in the Governance Investment policy (BG #12)

The Board will review and measure NBU's progress towards achieving or adhering to its Financial Excellence Strategic Goal by examining its annual cost per customer, its bond (or other recognized financial) rating, and/or any other related information provided by its CEO. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #6

POLICY TITLE: SAFETY & SECURITY

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to providing a safe and secure environment for employees, customers, and the community at large.

The CEO shall not cause or allow conditions that create an unsafe or unsecure environment for NBU or its employees, contingent workers, consultants, volunteers, vendors, or customers.

The CEO shall not unreasonably fail to address or create a plan for addressing:

1. Emergency situations;
2. At-fault or willful safety violations;
3. Old or outdated equipment or technology; and
4. Data- and cyber-security.

The Board will review and measure NBU's progress towards achieving or adhering to its Safety & Security Strategic Goal by examining emergency response procedures, data- and cyber-security efforts, workplace safety or security incidents, and/or any other related information provided by its CEO. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #7

POLICY TITLE: STEWARDSHIP

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to being a responsible steward of NBU's resources.

The CEO shall not cause or allow conditions that:

1. Jeopardize or irresponsibly use or deplete NBU's environmental assets or the community's natural resources; or
2. Unreasonably fail to consider environmental conservation and sustainability when creating NBU policies and plans.

The Board will review and measure NBU's progress towards achieving or adhering to its Stewardship Strategic Goal by examining the status and progress of any implemented strategies for sustainable resources and conservation initiatives (such as One Water) and/or any other related information provided by its CEO. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

New Braunfels Utilities

Governance Policies: Board Governance

POLICY TYPE: BOARD GOVERNANCE BG #1

POLICY TITLE: GLOBAL POLICY ON GOVERNANCE PROCESS
(Formerly GP#1 Governance Process)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The purpose of the Board is to:

1. Represent the interests of the City of New Braunfels and the community at large, keeping in mind the value of being a “Municipally Owned Utility.”
2. Determine the benefits that NBU will provide, keeping a long term, strategic perspective.
3. Set and reevaluate the Strategic Goals as provided for in the Global Policy on Strategic Goals (SG #1).
4. Monitor NBU operations to ensure achievement of or adherence to the Strategic Goals.

POLICY TYPE: BOARD GOVERNANCE

BG #2

POLICY TITLE: GOVERNING STYLE
(Formerly GP#2a Governing Style)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board will govern lawfully, observing the principles of its adopted governance model, with an emphasis on:

- outward vision rather than an internal preoccupation,
 - encouragement of diversity in viewpoints,
 - strategic leadership more than administrative detail,
 - clear distinction of Board and CEO roles,
 - collective rather than individual decisions,
 - future rather than past or present, and
 - proactivity rather than reactivity.
1. The Board will cultivate a sense of group responsibility. The Board, not the staff, will be responsible for excellence in governing. The Board will allow no officer, individual member, or Board committee to hinder or be an excuse for not fulfilling its group responsibility.
 2. The Board will not use the expertise or position of individual members, including the mayor, as a substitute for the judgment of the Board. Expertise of individual members may be used to enhance the understanding of the Board as a whole.
 3. The Board will direct, control, and inspire the organization through the careful establishment of overarching written policies reflecting the Board's values and perspectives on the strategic goals of the organization. The Board will be responsible for approving, retaining, and overseeing these overarching policies, with NBU staff assisting with development and implementation in compliance with any Board directives.
 4. The Board will monitor and discuss the Board's process and performance at least annually and more often if necessary. Self-monitoring will include comparison of Board activity and discipline to the Board Governance and Board-Management Delegation Policies.
 5. Although the Board can change its Governance Policies and any other Board policies at any time, it will scrupulously observe those currently in force.

POLICY TYPE: BOARD GOVERNANCE BG #3

POLICY TITLE: BOARD JOB DESCRIPTION
(Formerly GP#2b Board Job Description)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Specific job outputs of the Board, as the agent of the City of New Braunfels, are those that ensure appropriate NBU organizational performance.

Accordingly, the Board will provide:

1. Authoritative linkage between the NBU and the City of New Braunfels.
 - a. The Board will update the City of New Braunfels on the status of NBU when needed or requested.
 - b. The Board will inform the City of New Braunfels on Board member experience, diversity, and constitution when needed or requested.
 - c. The Board will respond to reasonable requests for information from the City of New Braunfels on a timely basis.
2. Written governing policies that realistically address the broadest level of all NBU decisions and situations, categorized as follows:
 - a. Strategic Goals: Establish the short- and long-term strategic direction of NBU, the method by which the Board will evaluate adherence to or achievement of its strategic direction, and any constraints on CEO authority in relation thereto.
 - b. Board Governance: Specifies how the Board conceives, implements, and monitors itself and its tasks.
 - c. Board-Management Delegation: Sets forth the authority delegated by the Board to the CEO, how the Board and CEO will communicate, and the means by which the CEO will be held accountable, monitored, and succeeded.
3. Assurance of successful organizational performance of NBU's Strategic Goals.

POLICY TYPE: BOARD GOVERNANCE BG #4

POLICY TITLE: BOARD MEMBER CODE OF CONDUCT
(Formerly GP#2c Board Member Code of Conduct)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board commits itself and its members to ethical, businesslike, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

1. Members must abide by any legal obligations or requirements contained in the City of New Braunfels Charter or Code of Ordinances and have loyalty to the City of New Braunfels, unconflicted by loyalties to NBU staff, other organizations, and any personal interest as a customer.
2. Members must conduct business in accordance with the Public Information and Open Meetings Acts.
 - a. Members will only conduct business in a posted meeting open to the public.
 - b. Members will use proper protocol when using email and other digital or electronic forms of communication. Email communications, telephone calls, text messages, and any other verbal or written correspondence that ultimately involve a quorum may constitute a meeting, even if the quorum is not physically present in the same location and the discussion does not take place at the same moment in time.
 - c. Members should direct communication through the CEO and not use “reply all” when responding to communications sent to the Board on an informational basis.
3. Members must abide by the City of New Braunfels’ Code of Ethics and avoid any conflict of interest with respect to their fiduciary responsibility.
 - a. There must be no self-dealing or business by members with NBU. Members will annually disclose their involvements with other organizations, vendors, or associations that may be perceived as being a conflict in accordance with Texas state law.
 - b. When the Board is to decide upon an issue about which a member has an unavoidable conflict of interest, that member shall immediately disclose the conflict, withdraw without comment from the deliberations, and abstain from voting on that issue.

4. Members may not attempt to exercise individual authority over NBU or its staff.
 - a. Members' interaction with the CEO or NBU staff must recognize the lack of authority vested in individual Board members, except when expressly Board-authorized.
 - b. Members' interaction with public, press or other entities must recognize the same limitation and the inability of any individual member to speak for the Board, except on explicitly stated Board decisions.
 - c. Except for participation in Board deliberation about whether the CEO has achieved any reasonable interpretation of Board policy, members will not express individual judgments of performance of the CEO or any NBU staff.
 - d. In furtherance of this objective, members must abide by any constraints on communications or activities provided elsewhere in these policies, including in the Board-Management Delegation policies.
5. Members will maintain the confidentiality appropriate for sensitive issues, including with respect to all Executive Session discussions.
6. Members must attend Board meetings and be properly prepared for Board deliberation.
7. Members may recommend or request an item for Board discussion by submitting the item to the Board President generally 21 days before the Board meeting, but in no event no later than 7 days before the Board meeting. If the timing of the items submitted is problematic, the CEO may visit with the Board President and the requesting Board Member to determine if an alternative meeting would be sufficient or scheduled.

POLICY TYPE: BOARD GOVERNANCE BG #5

POLICY TITLE: BOARD MEMBER DISCIPLINE, RESIGNATION, & REMOVAL

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policy-making principles, respect of roles, adherence to Board policies, and ensuring continuance of governance capability.

1. Members who fail to abide by the Board's Code of Conduct may be subject to censure or a recommendation of removal to the City of New Braunfels.
2. Censure is a formal and public condemnation by the Board of a member whose actions run counter to the Board's Code of Conduct (BG#4). Censure of a Board member must be unanimous by the remaining Board members.
3. Only the City of New Braunfels can remove a Board member; however, the Board may recommend removal of a member with advance notice to the member and, when appropriate, an opportunity to correct the behavior or actions leading to the recommendation. Any recommendation of removal must be unanimous by the remaining Board members.

Members will be considered to have resigned from the Board if they are absent without excuse from all Board meetings for four consecutive months. Members who are absent without excuse from all Board meetings for three consecutive months will be subject to censure.

POLICY TYPE: BOARD GOVERNANCE

BG #6

POLICY TITLE: PRESIDENT’S ROLE
(Formerly GP#2d President’s Role)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The chief governance officer (Board President), a specifically empowered member of the Board, assures the integrity of the Board’s process, and secondarily represents the Board to outside parties.

1. The Board President shall assure that the Board’s actions consistently comply with its own policies and rules and those legitimately imposed upon it from outside the organization.
 - a. Meeting discussion content ordinarily will address only those issues that, according to Board policy, clearly belong to the Board to decide or to monitor.
 - b. Deliberation will be fair, open, and thorough, but also timely, orderly pertinent, and courteous.
 - c. Information that is unnecessary for monitoring NBU performance or Board decisions will be avoided or minimized and always noted as such.
2. The authority of the President consists of making decisions that fall within the topics covered by the Board Governance and Board-Management Delegation policies and any other Board policies established, with the exception of (a) personnel matters pertaining to the CEO or (b) where the Board specifically delegates portions of its authority to others. The President is authorized to use any reasonable interpretation of the provisions contained in those policies.
 - a. The President is empowered to conduct Board meetings with all the commonly accepted power of a presiding officer according to Roberts Rules of Order.
 - b. The President cannot enact policies or provide directives to the CEO without Board approval.
 - c. The President may represent the Board to outside parties in announcing Board-stated positions and in stating the President’s decisions and interpretations within the areas delegated.
 - d. The President may delegate authority to another Board member, but will remain accountable for its use.

- e. The President will ensure an annual evaluation of the Board's performance, processes, and policies is conducted as required under the Governance Investment policy (BG#12).
- f. For succession purposes, the President will maintain open dialogue and communication with the Board Vice President and will work with the Vice President to develop and implement any necessary officer transition plans.
- g. Throughout the year, the Board President will ensure the Board attends to consent agenda items as expeditiously as possible.

POLICY TYPE: BOARD GOVERNANCE

BG #7

POLICY TITLE: VICE PRESIDENT’S ROLE

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Vice President is an officer of the Board whose role is to assist the Board President and perform the Board President’s responsibilities when the Board President is unavailable.

1. The Board or the Board President may delegate special assignments to the Vice President from time to time.
2. The Vice President is responsible for implementing and overseeing the CEO annual evaluation process. In doing so, the Vice President will:
 - a. Develop the evaluation mechanism and procedure to be used during the process;
 - b. Solicit and maintain the confidentiality of completed evaluations from individual Board members;
 - c. Compile, combine, and present Board member evaluation results to the Board as a whole;
 - d. Obtain a self-evaluation from the CEO to be presented to the Board as a whole;
 - e. Ensure the Board advises the CEO of its final evaluation results during an Executive Session and the results are maintained by NBU’s General Counsel; and
 - f. Facilitate any CEO compensation discussions amongst the Board.
3. For succession purposes, the Vice President will maintain open dialogue and communication with the Board President and will work with the Board President to develop and implement any necessary officer transition plans.

POLICY TYPE: BOARD GOVERNANCE

BG #8

POLICY TITLE: BOARD SECRETARY’S ROLE
(Formerly GP#2e Board Secretary’s Role)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board Secretary is an officer of the Board but need not be a member of the Board. The Board Secretary’s role is to ensure the integrity of the Board’s documents.

1. The Board Secretary shall ensure all Board documents and filings are accurate and timely.
2. The Board Secretary shall ensure Board policies are current and accurately reflect Board decisions.
3. The Board Secretary shall ensure the Board minutes accurately reflect Board decisions and are maintained in accordance with state law, including the Public Information Act and any other record retention laws or requirements.

POLICY TYPE: BOARD GOVERNANCE

BG #9

POLICY TITLE: BOARD COMMITTEE PRINCIPLES
(Formerly GP#2f Board Committee Principles)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Board committees, when used, will be assigned to assist the entire Board but shall not interfere with the authority delegated by the Board to the CEO.

1. Committees will be used sparingly and created as needed.
2. Committees will be appointed by the Board President, unless specially created by Board action.
3. Board committees shall not advise or interfere with NBU staff. Committees will assist the Board by preparing policy alternatives and assuring organizational implications for Board deliberation. Typically, Board committees will not deal directly with current staff operations.
4. Board committees may not speak or act for the Board except when specifically authorized. Expectations and scope of authority will be expressly stated to avoid conflict with authority delegated to the CEO.
5. Board committees have no authority over NBU staff. The CEO works for the full Board and is not required to obtain approval of a Board committee before executive action.
6. Board committees shall avoid over-identification with organizational parts rather than the whole. Therefore, a Board committee that drafts and recommends a particular policy should not monitor achievement or adherence; rather the entire Board retains responsibility and authority to monitor achievement or adherence.
7. This policy applies to any group formed by Board action, whether or not it is called a committee and regardless of whether the group includes Board members. It does not apply to committees formed under the authority of the CEO.

POLICY TYPE: BOARD GOVERNANCE BG #10

POLICY TITLE: BOARD COMMITTEES & NBU-SUPPORTED BOARDS
(Formerly GP#2g Board Committee Structure)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

A committee is a Board committee only if its existence and charge come from the Board, regardless of whether Board members sit on the committee. The only Board approved committees are those set forth in this policy. Unless otherwise stated, a committee ceases to exist when its task is complete. Timely reporting to the Board shall be by submission of a verbal or written report, following each meeting, with appropriate comment by the Committee Chair.

An NBU-supported board is a board expressly created by the Board to represent a specified NBU-supported operation. An NBU-supported board is comprised of Board members appointed by the Board in compliance with its bylaws. Timely reporting to the Board shall be reported on the Board's agenda as Items from Staff.

Standing Committees & NBU-Supported Boards:

1. **Audit Committee** – The Audit Committee is responsible for the oversight of financial reporting, internal controls, as well as the internal and external auditors' activities.
2. **Budget Committee** – The Budget Committee is responsible for the oversight of development of the budget to ensure shared understanding of the Financial Excellence Strategic Goal and its incorporation into the NBU budget.
3. **Governance Committee** – The Governance Committee is responsible for reviewing and making recommendations to the Board on its governance policies, practices, and procedures.
4. **Headwaters at the Comal Board (Headwaters)** – Headwaters is an NBU-supported board responsible for site development and fundraising for NBU's conservation legacy located at 333 Klingemann.
5. **Investment Committee** – The Investment Committee is responsible for the oversight of NBU's investment assets, the review of the portfolio performance and investment policies of NBU, and to provide recommendations for the Board of Trustees' approval to ensure that investment activities are in compliance with the Texas Public Funds Investment Act and NBU's Investment Policy and in furtherance of NBU's guidelines and objectives.
6. **Legislative Committee** – The Legislative Committee is responsible for (a) the development of comprehensive legislative strategies for NBU including determining which state or national legislative initiatives NBU would like to endorse or oppose; (b)

working with the CEO and NBU staff on the effective and timely implementation of those strategies; and (c) developing NBU's positions on various legislative initiatives, including by undertaking such research as may be necessary to support such positions.

7. **Public Information Act Committee** – The Public Information Act Committee is responsible for identifying procedures and methods for maintaining compliance with the Texas Public Information Act and ensuring transparency.
8. **Records Management Committee** – The Records Management Committee is responsible for promoting sound records management practices through the development of a Records Management Policy for use by NBU staff, reviewing and proposing changes and improvements if needed to the Records Management Policy, and providing final approval for the destruction of records in accordance with approved records control schedules.
9. **Water Infrastructure Maintenance Committee** – The Water Infrastructure Maintenance Committee is responsible for evaluating water infrastructure and related maintenance obligations.

POLICY TYPE: BOARD GOVERNANCE BG #11

POLICY TITLE: ANNUAL PLANNING
(Formerly GP#2h Annual Planning)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

To accomplish its job with a governance style consistent with Board policies, the Board will follow an annual agenda that reviews and implements the Strategic Goals and continually improves Board performance through Board education and enriched input and deliberation.

1. Because NBU operates on a fiscal year that begins on August 1, the Board will conduct its annual planning process and annual budget meetings during the first and second calendar quarters of each year.
 - a. To prepare for its annual budget meetings, the Board will provide direction during the first calendar quarter on the gathering of data and information needed.
 - b. The Board's annual planning process for the following fiscal year will occur in connection with the Board's annual retreat and annual budgeting meetings and must occur no later than the end of June of each calendar year.
2. Education of Board members on governance and related to the Strategic Goals (e.g. presentations by futurists, demographers, advocacy groups, staff, and so on) will be included as part of the annual planning process and shall occur as needed and at a minimum at least once each fiscal year.

POLICY TYPE: BOARD GOVERNANCE BG #12

POLICY TITLE: GOVERNANCE INVESTMENT
(Formerly GP#2i Cost of Governance)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Because good governance benefits NBU and its customers, the Board will invest in its governance capacity and ability. The Board's investment shall be facilitated by the Board President, with assistance from NBU staff, and will include: (a) orientation of new members on these Governance Policies and other Board policies established; (b) an annual Board discussion and review of any necessary process or policy improvements; and (c) annual continuing education of the Board's legal and ethical obligations.

1. Board skills, methods, and support must be sufficient to ensure governing with excellence.
 - a. New Board members will receive at least quarterly training during their first year of service to assist in orienting them to NBU and their Board responsibilities and obligations.
 - b. Annual training and retraining will be used to maintain and increase existing Board member skills and understandings.
 - c. Outreach mechanisms may be used as needed to ensure the Board's ability to listen to diverse viewpoints and values.
 - d. A Board Member manual will be developed and maintained to assist Board members in their service to the Board.
 - e. New and existing Board members are strongly encouraged to attend ERCOT, American Public Power Association (APPA), American Water Works Association (AWWA), or other industry conferences, seminars, and workshops as part of their initial and continuing education.
2. Costs will be incurred prudently with due consideration for the value of development and maintenance of Board member qualifications.
 - a. Expenses for training, including attendance at industry conferences, seminars, and workshops, will be included in the annual budget.
 - b. Expenses for surveys, focus groups, opinion analyses, and meeting costs will be included in the annual budget.
3. The Board will establish its cost of governance budget for the next fiscal year during the annual budgeting process.

New Braunfels Utilities

Governance Policies: Board Management Delegation

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #1

POLICY TITLE: GLOBAL POLICY ON BOARD DELEGATION
(Formerly BMD#1 Global Board-Management Delegation)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board's sole official connection to the operational organization, its achievements, and conduct will be through the chief executive officer (CEO).

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #2

POLICY TITLE: UNITY OF CONTROL
(Formerly BMD#2a Unity of Control)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Only officially passed motions of the Board are binding on the CEO.

1. Decisions or instructions of individual Board members, officers, or committees are not binding on the CEO except in rare instances when the Board has specifically authorized such exercise of authority.
2. Individual Board members may communicate with NBU executive management staff on routine administrative matters, provided the CEO is included on or in any written communication.
3. Board member communications regarding the CEO's evaluation or the evaluation process should include the Vice President and need not include the CEO.
4. Any written communication on material NBU matters to the CEO from:
 - a. An individual Board member must include the Board President, unless the communication concerns the Board President, in which case the Vice President must be included.
 - b. The Board President must include the Vice President, unless the communication concerns the Vice President.
5. Individual Board members should refrain from making requests that require a material amount of staff time or funds or are disruptive. Such requests should be Board-authorized requests. The CEO should notify the individual Board member making the request and the Board President or Vice President, as appropriate (but not both), when such requests require, in the CEO's opinion, a material amount of staff time or funds or are disruptive.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #3

POLICY TITLE: ACCOUNTABILITY OF THE CEO
(Formerly BMD#2b Accountability of the CEO & OP#1 Global Executive Constraint)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The CEO is the Board's only link to operational achievements and conduct. All authority and accountability of staff is considered the authority and accountability of the CEO. The CEO is therefore responsible for ensuring any NBU practice, activity, decision, or circumstance does not violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

1. The Board will never give instructions to staff who report directly or indirectly to the CEO.
2. The Board will not evaluate, either formally or informally, any staff other than the CEO.
3. The Board will consider the following when evaluating CEO job performance (Performance Factors):
 - a. Organizational performance in relation to the Strategic Goals;
 - b. Adherence to all applicable Governance Policies and other Board policies or directives;
 - c. Compliance with any written contractual agreement between the Board and the CEO;
 - d. Realization of operational emergent and annual specific goals and directives as set by the Board;
 - e. Maintenance of communication and transparency with the Board;
 - f. Satisfaction of any other specific requirements or expectations set by the Board; and
 - g. Feedback through a self-evaluation from the CEO.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #4

POLICY TITLE: DELEGATION TO CEO
(Formerly BMD#2c Delegation to CEO)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Through these Governance Policies and other Board policies and directives, the Board defines for the CEO the Strategic Goals to be achieved and describes certain organizational situations and actions to be avoided. The CEO may employ any reasonable interpretation of these Governance Policies and other Board policies and directives.

1. The Board will develop Strategic Goals and other Board policies directing the CEO to achieve specified results in accordance with NBU's annual approved budget.
2. As long as the CEO uses any reasonable interpretation of these Governance Policies and other Board policies or directives, the CEO is authorized to establish all further policies, make all decisions, take all actions, establish all practices and develop all activities. Such decisions of the CEO shall have full force and effect as if decided by the Board.
3. Any Governance Policy or other Board policy or directive limiting the CEO's authority will describe those practices, activities, decisions, and circumstances that would be unacceptable to the Board even if they were to be effective. The Board, however, will never prescribe organizational operational methods delegated to the CEO.
4. At any time, the Board may modify its Governance Policies and other Board policies and directives to redefine or realign the authority delegated to the CEO. The Board, however, may not make any retroactive modification and shall recognize and support the decisions of the CEO previously authorized.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #5

POLICY TITLE: EVALUATING CEO PERFORMANCE
(Formerly BMD#2d Monitoring CEO Performance)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The CEO's job performance will be evaluated based on the Performance Factors outlined in the Accountability Policy (BMD #3) and documented through an annual formal evaluation process facilitated by the Vice President (*see* Vice President's Role, BG #7).

1. The CEO's job performance may be monitored informally, in any frequency, and by any method chosen by the Board.
2. The Board will acquire information on the CEO's job performance through one or more of following three methods:
 - a. Internal Report: CEO provides data, interpretations, evaluations and compliance status solely to the Board, whether verbal or written.
 - b. External Report: The Board selects or retains a disinterested third party to assess the CEO's job performance.
 - c. Direct Board Assessment: Designated Board member(s) assess the CEO's job performance.
3. In every case, the Board will evaluate (a) the reasonableness of the CEO's interpretation of the Performance Factors and (b) the data demonstrating the CEO's accomplishment of the Performance Factors. The applicable standard for determining the reasonableness of a CEO interpretation shall be as a *reasonable and prudent CEO*, and the Board shall avoid subjective, ad-hoc or arbitrary assessment criteria.
4. An evaluation of the CEO's job performance and compensation will be conducted at least annually following the conclusion of the fiscal year (preferably in August). The Board, however, can review and discuss the CEO's job performance and compensation at any other time, as and if necessary.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #6

POLICY TITLE: COMMUNICATION & SUPPORT TO THE BOARD
(Formerly OP#2g Communication and Support to the Board)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board requires the CEO to maintain communication and transparency and to inform and support the Board's Strategic Goals, Governance Policies, and any other Board policy or directive.

The CEO will not:

1. Neglect to submit data or information required by the Board according to its Evaluating CEO Performance policy in a timely, accurate, and understandable fashion.
2. Let the Board be unaware of any significant incidental information it requires, including anticipated adverse media coverage, threatened or pending lawsuits, and material external and internal changes.
3. Allow the Board to be unaware that, in the CEO's opinion, the Board is not in compliance with its Governance Policies, particularly in the case of Board behavior that is detrimental to the working relationship between the Board and CEO.
4. Allow the Board to be without information needed to make informed decisions or to be unaware of relevant trends.
5. Allow the Board to be without a workable mechanism for official Board, officer, or committee communications.
6. Deal with the Board in a way that favors or privileges certain Board members over others, except when (a) fulfilling individual requests for information or (b) responding to officers or committees duly charged by the Board.
7. Allow the Board to be unaware of any actual or anticipated noncompliance with any other policy or directive of the Board.
8. Fail to submit to the Board a consent agenda containing items delegated to the CEO yet required by law or contract to be Board-approved, along with any applicable monitoring or supporting information.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #7

POLICY TITLE: EMERGENCY EXECUTIVE CEO SUCCESSION
(Formerly OP#2h Emergency Executive Succession)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

In order to protect the Board and NBU from the sudden loss of a CEO, the Board will require the CEO to provide some viable mechanism for the operations of NBU to continue in the event of sudden loss of the CEO.

The CEO will not:

1. Permit there to be fewer than two **executive** staff members sufficiently familiar with Board and CEO issues and procedures to enable either staff member to assume the role of interim CEO with reasonable proficiency.
2. Allow travel mechanisms or methodologies that put the organization at risk of the sudden loss of these multiple key individuals.

[FOR BOARD REVIEW - ALL CHANGES TO DATE \(May 25, 2021\)](#)

New Braunfels Utilities

Governance Policies

PREFACE

In January 2010, the Board of Trustees (Board) for New Braunfels Utilities (NBU) established governance policies under which it would operate. Those policies were revised in March 2016 and May 2021. The May 2021 revisions, which became effective on August 1, 2021, were organizational and substantive in nature and were designed to incorporate the Board's existing practice and strategic goals. Any governance policies that existed prior to the May 2021 revisions are listed herein as "Formerly [Policy Type, Number, and Title]." Governance policies without any such notation were added in May or June 2021.

[FOR BOARD REVIEW - ALL CHANGES TO DATE \(May 25, 2021\)](#)

New Braunfels Utilities

Governance Policies

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New Braunfels Utilities

Governance Policies: Strategic Goals

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POLICY TYPE: STRATEGIC GOALS SG #1

POLICY TITLE: GLOBAL POLICY ON STRATEGIC GOALS

Date Approved by Board: May 25, 2021 (effective August 1, 2021)

At a minimum of ~~Every~~ five years, the Board shall review and establish Strategic Goals for NBU and determine how achievement of or adherence to those Strategic Goals should be measured. The Board then shall review NBU's progress periodically throughout each fiscal year (August 1 to July 31), ~~and~~ evaluate NBU's achievement of or adherence to those Strategic Goals at least annually each fiscal year, and confirm the continuing validity of each Strategic Goal. The Board at all times maintains discretion to add, remove, or change any Strategic Goal or any achievement or adherence measurement set.

FOR BOARD REVIEW - ALL CHANGES TO DATE (May 25, 2021)

POLICY TYPE: STRATEGIC GOALS SG #2

POLICY TITLE: CUSTOMERS & COMMUNITY
(Formerly OP#2a Treatment of Customers)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to NBU being recognized as a trusted community partner dedicated to excellence in service.

With respect to interactions with current or potential customers or the community at large, the CEO shall not cause or allow conditions, procedures, or decisions that are unsafe, unsecure, untimely, undignified, or unnecessarily intrusive, or in violation of any federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

The CEO ~~will~~ shall not:

1. Elicit information for which there is no ~~clear~~ business necessity.
2. Use methods of collecting, reviewing, transmitting, or storing consumer information that fails to reasonably protect against improper access ~~to the material~~.
3. Operate facilities without reasonably appropriate customer accessibility and security.
4. Operate without ~~establishing~~ established with policies providing customers a clear understanding of what ~~may be expected and what may not be expected~~ to expect from the services ~~offered~~ NBU offers.
5. Withhold ~~from customers~~ information about this policy or deny any customers who are aggrieved a right to seek review under this policy.

~~5-6.~~ Project an image to customers or the community at large that creates a negative perception of NBU or jeopardizes NBU's status in the community.

The Board will review and measure NBU's progress towards achieving or adhering to its Customers & Community Strategic Goal by examining annual customer satisfaction survey results, customer or community feedback received, and/or any other related information provided by its CEO, NBU customers, or the community at large. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

FOR BOARD REVIEW - ALL CHANGES TO DATE (May 25, 2021)

POLICY TYPE: STRATEGIC GOALS SG #3

POLICY TITLE: PEOPLE & CULTURE
(Formerly OP#2b Treatment of Staff & OP#2c Compensation & Benefits)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to NBU developing and retaining an engaged and ethical workforce.

~~With respect to treatment of paid and volunteer staff, the CEO shall not cause or allow conditions which are illegal, unfair, undignified, disorganized or unclear.~~

With respect to employment, compensation, and benefits ~~to of employees, consultants, or contract-contingent workers and volunteers~~, the CEO ~~may shall~~ not cause or allow jeopardy to NBU's fiscal integrity or public image or conditions that violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

With respect to the retention and engagement of consultants or volunteers, the CEO shall not cause or allow conditions that create an employment relationship or that violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

The CEO ~~will shall~~ not:

1. Change the CEO's own compensation ~~without the Board's express approval.~~
- ~~2. Change the CEO's benefits, except as would be consistent with any benefits provided to all other employees. and benefits, except as those benefits are consistent with a package for all other employees.~~
- ~~2.3. Promise or imply permanent or guaranteed employment or a contract for tenure.~~
- ~~3.4. Establish current compensation and benefits that deviate materially from the geographic or professional market for the skills employed.~~
5. Create any employment or other compensation or benefit-related obligations over a longer term than revenues can be reasonably projected to satisfy.
- ~~4.6. Enter into any employment agreement without the Board's express approval.~~

The Board will review and measure NBU's progress towards achieving or adhering to its People & Culture Strategic Goal by examining annual employee engagement survey

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results, employee feedback received, and/or any other related information provided by its CEO or NBU employees. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

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POLICY TYPE: STRATEGIC GOALS SG #4

POLICY TITLE: INFRASTRUCTURE & TECHNOLOGY
(Formerly OP#2f Asset Protection)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to NBU maintaining organizational reliability and resiliency.

The CEO ~~may shall~~ not allow NBU assets to be unprotected, inadequately maintained, or unnecessarily risked.

The CEO ~~will shall~~ not:

1. Unnecessarily expose NBU, its Board, or staff to claims of liability.
2. Unreasonably fail to protect property, information, or data ~~and~~ files from loss, significant damage, or unauthorized access.

~~Invest or hold operating capital in insecure instruments, including uninsured checking accounts or non interest bearing accounts except where necessary to facilitate ease in operational transactions.~~

3. Unreasonably fail to address aging infrastructure, plan for additional growth, or evaluate the availability and viability of innovative or technological improvements.

Commented [CR1]: Moved to Financial Excellence

The Board will review and measure NBU's progress towards achieving or adhering to its Infrastructure & Technology Strategic Goal by examining NBU's SAIDI three-year rolling average, technological uptime, percentage of completion of capital improvement projects, and any other related information provided by its CEO. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

FOR BOARD REVIEW - ALL CHANGES TO DATE (May 25, 2021)

POLICY TYPE: STRATEGIC GOALS SG #5

POLICY TITLE: FINANCIAL EXCELLENCE
(Formerly OP#2d Financial Condition & Activities & OP#2e
Financial Planning & Budgeting)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to NBU maintaining a competitive bond rating.

With respect to the actual, ongoing financial condition and activities of NBU, the CEO ~~may shall~~ not cause or allow the development of fiscal jeopardy or a material deviation of actual expenditures from Board priorities established through its Strategic Goals and Outcomes policies.

The CEO ~~will shall~~ not:

1. Expend more funds than allocated by the Board for the current fiscal year without express Board approval.
2. Exceed the limits of NBU's the Ppurchasing Ppolicy.
3. Incur debt without appropriate authorization from the Board or City of New Braunfels.
4. Fail to settle liabilities in a timely manner.
5. Allow government-ordered or regulatory filings, fines, or payments~~payments or filings~~ to be overdue or inaccurately filed.
6. Acquire, encumber, or dispose of real estate other than for normal operating items, such as rights ~~of way or easements, and including in connection with~~ approved Board projects
7. Invest or hold operating capital in insecure instruments, including uninsured checking accounts or noninterest-bearing accounts, except where necessary to facilitate operational transactions.

The CEO shall not cause or allow financial planning for any fiscal year or the remaining part of any fiscal year to risk financial jeopardy or deviate materially from the Board's approved annual budget or the Strategic Goals~~Board Outcomes priorities or risk financial jeopardy~~.

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The CEO ~~will~~shall not allow budgeting to:

~~1. Risk incurring those situations or conditions described as unacceptable in the Operational policy entitled "Financial Condition & Activities."~~

~~2.1~~ Fail to include:

- (a) credible projection of revenues and expenses,
- (b) separation of capital and operational items,
- (c) cash flow analysis, and
- (d) disclosure of planning assumptions

~~3.2~~ Provide less for Board development ~~during the year~~ than is set forth in the ~~Cost of~~ Governance ~~Investment~~ policy (~~GP 24~~BG #12)

The Board will review and measure NBU's progress towards achieving or adhering to its Financial Excellence Strategic Goal by examining its annual cost per customer, its bond (or other recognized financial) rating, and/or any other related information provided by its CEO. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

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POLICY TYPE: STRATEGIC GOALS SG #6

POLICY TITLE: SAFETY & SECURITY

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to providing a safe and secure environment for employees, customers, and the community at large.

The CEO shall not cause or allow conditions that create an unsafe or unsecure environment for NBU or its employees, contingent workers, consultants, volunteers, vendors, or customers.

The CEO shall not unreasonably fail to address or create a plan for addressing:

1. Emergency situations;
2. At-fault or willful safety violations;
3. Old or outdated equipment or technology; and
4. Data- and cyber-security.

The Board will review and measure NBU's progress towards achieving or adhering to its Safety & Security Strategic Goal by examining emergency response procedures, data- and cyber-security efforts, workplace safety or security incidents, and/or any other related information provided by its CEO. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

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POLICY TYPE: STRATEGIC GOALS SG #7

POLICY TITLE: STEWARDSHIP

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board is committed to being a responsible steward of NBU's resources.

The CEO shall not cause or allow conditions that:

1. Jeopardize or irresponsibly use or deplete NBU's environmental assets or the community's natural resources; or
2. Unreasonably fail to consider environmental conservation and sustainability when creating NBU policies and plans.

The Board will review and measure NBU's progress towards achieving or adhering to its Stewardship Strategic Goal by examining the status and progress of any implemented strategies for sustainable resources and conservation initiatives (such as One Water) and/or any other related information provided by its CEO. The Board at all times retains discretion to consider any other information deemed applicable to this Strategic Goal.

[FOR BOARD REVIEW - ALL CHANGES TO DATE \(May 25, 2021\)](#)

New Braunfels Utilities

Governance Policies: Board Governance

FOR BOARD REVIEW - ALL CHANGES TO DATE (May 25, 2021)

POLICY TYPE: BOARD GOVERNANCE BG #1

POLICY TITLE: GLOBAL POLICY ON GOVERNANCE PROCESS
(Formerly GP#1 Governance Process)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The purpose of the Board is to:

1. Represent the interests of the ~~ownership~~ City of New Braunfels and the ~~broader~~ community at large, keeping in mind the value of being a “Municipally Owned Utility.”
2. Determine the benefits that ~~the organization~~ NBU will provide, keeping a long term, strategic perspective, ~~(the Outcomes policies), and,~~
- ~~2.3~~ Set and reevaluate the Strategic Goals as provided for in the Global Policy on Strategic Goals (SG #1).
- ~~3.4~~ Monitor the NBU operations to ensure compliance-achievement of or adherence to with Operational Policies the Strategic Goals and accomplishment of Outcomes policies.

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POLICY TYPE: BOARD GOVERNANCE

BG #2

POLICY TITLE: GOVERNING STYLE
(Formerly GP#2a Governing Style)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board will govern lawfully, observing the principles of its adopted gGovernance model, with an emphasis on:

- outward vision rather than an internal preoccupation,
- encouragement of diversity in viewpoints,
- strategic leadership more than administrative detail,
- clear distinction of Board and CEO roles,
- collective rather than individual decisions,
- future rather than past or present, and
- proactivity rather than reactivity.

1. The Board will cultivate a sense of group responsibility. -The Board, not the staff, will be responsible for excellence in governing. The Board will allow no officer, individual member, or Board committee to hinder or be an excuse for not fulfilling its group responsibility.

Commented [CR2]: Moved up from below.

1.2. The Board will normally be the initiator of policy, not merely a reactor to staff initiatives. The Board will not use the expertise or position of individual members, including the mayor, to as a substitute for the judgment of the Board. although the eExpertise of individual members may be used to enhance the understanding of the Board as a bodywhole.

Commented [CR3]: This language is addressed through revisions in No. 3 below.

2.3. The Board will direct, control, and inspire the organization through the careful establishment of broad-overarching written policies reflecting the Board's values and perspectives. The Board's major policy focus will be on the intended long-term strategic goals of the organization effects outside the staff organization, not on the administrative or programmatic means of attaining those effects. The Board will be responsible for approving, retaining, and overseeing these overarching policies, with NBU staff assisting with development and implementation in compliance with any Board directives.

3. The Board will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policy-making principles, respect of roles, and ensuring continuance of governance capability. Although the Board can change its governance process policies at any time, it will scrupulously observe those currently in force.

Commented [CR4]: Moved to new Board Discipline, Resignation & Removal policy

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4. ~~Continual Board development will include orientation of new members in the Board's governance process and periodic Board discussion of process improvement.~~
4. The Board will monitor and discuss the Board's process and performance ~~periodically~~ at least annually and more often if necessary. Self-monitoring will include comparison of Board activity and discipline to ~~policies in the Board Governance Process and Board-Management Delegation categories~~ Policies.
5. Although the Board can change its Governance Policies and any other Board policies at any time, it will scrupulously observe those currently in force.
5. ~~The Board will allow no officer, individual or committee of the Board to hinder or be an excuse for not fulfilling group obligations.~~

Commented [CR5]: Moved to new Governance Investment policy

Commented [CR6]: Moved to No. 1 above

FOR BOARD REVIEW - ALL CHANGES TO DATE (May 25, 2021)

POLICY TYPE: BOARD GOVERNANCE BG #3

POLICY TITLE: BOARD JOB DESCRIPTION
(Formerly GP#2b Board Job Description)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Specific job outputs of the Board, as the agent of the City of New Braunfels, are those that ensure appropriate NBU organizational performance.

Accordingly, the Board will provide:

1. Authoritative linkage between the ~~operational—organization~~NBU and ~~the ownership~~the City of New Braunfels.
 - ~~a. As part of its responsibility, the Board will seek opportunities to provide input regarding Board member selection by the City Council. The Board will identify update the City of New Braunfels on the status of NBU when needed or requested and update key areas of experience and knowledge in order to seek and recommend qualified candidates to maintain diversity of experience and talent to serve the utility.~~
 - b. The Board will inform the City of New Braunfels on Board member experience, diversity, and constitution when needed or requested.
 - ~~a-c.~~ The Board will respond to reasonable requests for information from the City of New Braunfels on a timely basis.
2. Written governing policies that realistically address the broadest level of all ~~organizational~~NBU decisions and situations, categorized as follows:
 - ~~a. Outcomes: Organizational impacts, products, effects, benefits, recipients, beneficiaries, impacted groups, and their relative worth in cost or priority.~~
 - ~~b-a.~~ Operational Policies Strategic Goals: Establish the short- and long-term strategic direction of NBU, the method by which the Board will evaluate adherence to or achievement of its strategic direction, and any ~~C~~constraints on CEO executive authority in relation thereto which establish the prudent and ethical boundaries within which all executive activity and decisions must take place.
 - ~~e-b.~~ Board Governance Process: Specifies ~~Specification of~~ —how the Board conceives, implements, and monitors its ~~itself and its own~~ tasks.

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~~d.c.~~ Board-Management Delegation: Sets forth the authority delegated by the Board to the CEO, how the Board and CEO will communicate, and the means by which the CEO will be held accountable, monitored, and succeeded ~~How authority is delegated and its proper use monitored; Board committee members, the CEO role, authority and accountability.~~

3. Assurance of successful organizational performance ~~on of NBU's Outcomes and Operational Policies~~ Strategic Goals.

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POLICY TYPE: BOARD GOVERNANCE BG #4

POLICY TITLE: BOARD MEMBER CODE OF CONDUCT
(Formerly GP#2c Board Member Code of Conduct)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board commits itself and its members to ethical, businesslike, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

1. Members must abide by any legal obligations or requirements contained in the City of New Braunfels Charter or Code of Ordinances and have loyalty to the ~~ownership~~ City of New Braunfels, unconflicted by loyalties to NBU staff, other organizations, and any personal interest as a customer.
2. Members must conduct business in accordance with the Public Information and Open Meetings Acts guidelines and laws.
 - a. Members will only conduct business in a posted meeting open to the public.
 - b. Members will use proper protocol when using email and other digital or electronic forms of communication. ~~Email~~ communications, telephone calls, text messages, and any other verbal or written correspondence that ultimately involve a quorum may constitute a meeting, even if the quorum is not physically present in the same location and the discussion does not take place at the same moment in time.
 - c. Members should direct communication ~~and email~~ through the CEO and ~~should not use "reply to all"~~ when responding to emails-communications sent to the Board on an informational basis.
3. Members must abide by the City of New Braunfels' Code of Ethics and avoid any conflict of interest with respect to their fiduciary responsibility.
 - a. There must be no self-dealing or business by ~~a~~ members with NBU. Members will annually disclose their involvements with other organizations, ~~with~~ vendors, or ~~any~~ associations that may be perceived as being a conflict in accordance with STexas state Law.
 - b. When the Board is to decide upon an issue about which a member has an unavoidable conflict of interest, that member shall immediately disclose ~~a~~

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the conflict, ~~shall~~ withdraw without comment from the deliberations, and ~~shall~~ abstain from voting on that issue.

4. ~~Board members~~ Members may not attempt to exercise individual authority over ~~the organization~~ NBU or its staff.

a. Members' interaction with the CEO or NBU ~~with~~ staff must recognize the lack of authority vested in individual Board members, except when ~~explicitly~~ expressly Board-authorized.

a. —

b. Members' interaction with public, press or other entities must recognize the same limitation and the inability of any individual ~~Board~~ member to speak for the Board, except on explicitly stated Board decisions.

c. Except for participation in Board deliberation about whether the CEO has achieved any reasonable interpretation of Board policy, members will not express individual judgments of performance of ~~employees or~~ the CEO or any NBU staff.

d. In furtherance of this objective, members must abide by any constraints on communications or activities provided elsewhere in these policies, including in the Board-Management Delegation policies.

5. Members will maintain the confidentiality appropriate for sensitive issues, including with respect to all Executive Session discussions.

6. Members must attend Board meetings and ~~will~~ be properly prepared for Board deliberation.

- ~~7. A member is considered to have resigned if he/she is absent without excuse from 4 consecutive meetings.~~

Commented [CR7]: Moved to new Board Discipline, Resignation & Removal policy

7. Members may recommend or request an item for Board discussion by submitting the item to the Board President generally 21 days before the Board meeting, but in no event no later than 7 days before the Board meeting. If the timing of the items submitted is problematic, the CEO may visit with the Board President and the requesting Board Member to determine if an alternative meeting would be sufficient or scheduled.

Commented [CR8]: Moved from prior Annual Planning policy

FOR BOARD REVIEW - ALL CHANGES TO DATE (May 25, 2021)

POLICY TYPE: BOARD GOVERNANCE BG #5

POLICY TITLE: BOARD MEMBER DISCIPLINE, RESIGNATION, & REMOVAL

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policy-making principles, respect of roles, adherence to Board policies, and ensuring continuance of governance capability.

Commented [CR9]: Portions of this first paragraph were drawn from prior Governing Style policy.

1. Members who fail to abide by the Board's Code of Conduct may be subject to censure or a recommendation of removal to the City of New Braunfels.

1.

2. Censure is a formal and public condemnation by the Board of a member whose actions run counter to the Board's Code of Conduct (BG#4). Censure of a Board member must be unanimous by the remaining Board members.

3. Only the City of New Braunfels can remove a Board member; however, the Board may recommend removal of a member with advance notice to the member and, when appropriate, an opportunity to correct the behavior or actions leading to the recommendation. Any recommendation of removal must be unanimous by the remaining Board members.

Members will be considered to have resigned from the Board if they are absent without excuse from all Board meetings for four consecutive months. Members who are absent without excuse from all Board meetings for three consecutive months will be subject to censure.

Commented [CR10]: Moved from prior Code of Conduct policy and revised to mirror Code of Ordinances language.

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POLICY TYPE: BOARD GOVERNANCE BG #6

POLICY TITLE: PRESIDENT'S ROLE
(Formerly GP#2d President's Role)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The chief governance officer (Board President), a specifically empowered member of the Board, assures the integrity of the Board's process, and secondarily represents the Board to outside parties.

1. The Board President shall assure that the Board's actions consistently comply with its own policies and rules and those legitimately imposed upon it from outside the organization.
 - a. Meeting discussion content ordinarily will address only those issues ~~which that~~, according to Board policy, clearly belong to the Board to decide or to monitor.
 - b. Deliberation will be fair, open, and thorough, but also timely, orderly pertinent, and courteous.
 - c. Information that is unnecessary for monitoring NBU performance or Board decisions will be avoided or minimized and always noted as such.
2. The authority of the President consists of making decisions that fall within the topics covered by ~~Board policies on Governance Process~~ the Board Governance and Board-Management Delegation policies and any other Board policies established, with the exception of (a) personnel matters pertaining to the CEO or (b) where the Board specifically delegates portions of ~~this its~~ authority to others. The President is authorized to use any reasonable interpretation of the provisions contained in ~~the~~ ose policies.
 - a. The President is empowered to conduct Board meetings with all the commonly accepted power of a presiding officer according to Roberts Rules of Order.
 - b. The President ~~has no authority to make decisions about policies created by the Board within Outcomes and Operational policy areas. Therefore, the President has no authority to supervise or direct the CEO cannot enact policies or provide directives to the CEO without Board approval.~~

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- c. The President may represent the Board to outside parties in announcing Board-stated positions and in stating the President's decisions and interpretations within the areas delegated ~~to him or her~~.
- d. The President may delegate ~~his or her~~ authority to another Board member, but will remain accountable for its use.
- e. The President will ensure an annual evaluation of the Board's performance, processes, and policies is conducted as required under the Governance Investment policy (BG#12).
- f. For succession purposes, the President will maintain open dialogue and communication with the Board Vice President and will work with the Vice President to develop and implement any necessary officer transition plans.
- g. Throughout the year, the Board President will ensure the Board attends to consent agenda items as expeditiously as possible.

Commented [CR11]: Moved from prior Annual Planning policy.

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POLICY TYPE: BOARD GOVERNANCE

BG #7

POLICY TITLE: VICE PRESIDENT'S ROLE

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Vice President is an officer of the Board whose role is to assist the Board President and perform the Board President's responsibilities when the Board President is unavailable.

1. The Board or the Board President may delegate special assignments to the Vice President from time to time.
2. The Vice President is responsible for implementing and overseeing the CEO annual evaluation process. In doing so, the Vice President will:
 - a. Develop the evaluation mechanism and procedure to be used during the process;
 - b. Solicit and maintain the confidentiality of completed evaluations from individual Board members;
 - c. Compile, combine, and present Board member evaluation results to the Board as a whole;
 - d. Obtain a self-evaluation from the CEO to be presented to the Board as a whole;
 - e. Ensure the Board advises the CEO of its final evaluation results during an Executive Session and the results are maintained by NBU's General Counsel; and
 - f. Facilitate any CEO compensation discussions amongst the Board.
3. For succession purposes, the Vice President will maintain open dialogue and communication with the Board President and will work with the Board President to develop and implement any necessary officer transition plans.

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POLICY TYPE: BOARD GOVERNANCE BG #8

POLICY TITLE: BOARD SECRETARY'S ROLE
(Formerly GP#2e Board Secretary's Role)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board Secretary is an officer of the Board but need not be a member of the Board. The Board Secretary's role is to ensure the integrity of the Board's documents.

1. The Board Secretary shall ensure ~~that~~ all Board documents and filings are accurate and timely.

~~2. The Board Secretary shall ensure Board Policies will be current and accurately reflect Board decisions. Routine matters, such as, consent agenda decisions, motions to adjourn, and staff or Board member recognitions are not policy. Policies will rigorously follow NBU's adopted governance principles.~~

~~3.2.~~

~~4.3. The Board Secretary shall ensure the Board minutes accurately reflect Board decisions and are maintained in accordance with state law, including the Public Information Act and any other record retention laws or requirements. Requirements for format, brevity and accuracy of Board minutes will be known to the CEO.~~

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POLICY TYPE: BOARD GOVERNANCE BG #9

POLICY TITLE: BOARD COMMITTEE PRINCIPLES
(Formerly GP#2f Board Committee Principles)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Board committees, when used, will be assigned to assist the entire Board but shall not interfere with the authority delegated by the Board to the CEO.

1. Committees will be used sparingly and created as needed.
2. Committees will be appointed by the Board President, unless specially created by Board action.
3. Board committees shall not advise or interfere with ~~the NBU~~ staff. Committees will assist the Board by preparing policy alternatives and assuring organizational implications for Board deliberation. Typically, Board committees will not deal directly with current staff operations.
4. Board committees may not speak or act for the Board except when specifically authorized. Expectations and scope of authority will be expressly stated to avoid conflict with authority delegated to the CEO.
5. Board committees have no authority over NBU staff. The CEO works for the full Board, ~~and will therefore~~ and is not ~~be~~ required to obtain approval of a Board committee before ~~an~~ executive action.
6. Board committees shall avoid over-identification with organizational parts rather than the whole. Therefore, a Board committee that drafts and recommends a particular policy should not monitor ~~its achievement or adherence; rather the entire Board performance. The Board~~ retains responsibility and authority to monitor ~~performance~~ achievement or adherence.
7. This policy applies to any group ~~that is~~ formed by Board action, whether or not it is called a committee and regardless of whether the group includes Board members. It does not apply to committees formed under the authority of the CEO.

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POLICY TYPE: BOARD GOVERNANCE BG #10

POLICY TITLE: BOARD COMMITTEES & NBU-SUPPORTED BOARDS
STRUCTURE
 (Formerly GP#2g Board Committee Structure)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

A committee is a Board committee only if its existence and charge come from the Board, regardless of whether Board members sit on the committee. -The only Board approved committees are those set forth in this policy. -Unless otherwise stated, a committee ceases to exist when its task is complete. -Timely reporting to the Board shall be by submission of a verbal or written report, following each meeting, with appropriate ~~verbal~~ comment by the Committee Chair.

An NBU-supported board is a board expressly created by the Board to represent a specified NBU-supported operation. An NBU-supported board is comprised of Board members appointed by the Board in compliance with its bylaws. Timely reporting to the Board shall be reported on the Board's agenda as Items from Staff.

Standing Committees & NBU-Supported Boards:

1. **Audit Committee** – The Audit Committee is responsible for the oversight of financial reporting, internal controls, as well as the internal and external auditors' activities.
2. **Budget Committee** – The Budget Committee is responsible for the oversight of development of the budget to ensure shared understanding in-of the Outcomes Financial Excellence Strategic Goalgoals and their-its incorporation into the NBU budget.
- ~~3. **GBRA Technical Committee** – The GBRA Technical Committee is a joint committee between NBU and GBRA which is responsible for the oversight of the operation and operating expenditures associated with the Canyon Hydroelectric Plant.~~
3. **Governance Committee** – The Governance Committee is responsible for reviewing and making recommendations to the Board on its governance policies, practices, and procedures.
4. **Headwaters at the Comal Board (Headwaters)** – Headwaters is an NBU-supported board responsible for site development and fundraising for NBU's conservation legacy located at 333 Klingemann.

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4.5. Investment Committee – The Investment Committee is responsible for the oversight of NBU's investment assets, the review of the portfolio performance and investment policies of NBU, and to provide recommendations for the Board of Trustees' approval to ensure that investment activities are in compliance with the Texas Public Funds Investment Act and NBU's Investment Policy and in furtherance of NBU's ~~the company~~ guidelines and objectives.

6. Legislative Committee – The Legislative Committee is responsible for ~~the (a) the~~ development of comprehensive legislative strategies for NBU including determining which state or national legislative initiatives NBU would like to endorse or oppose; (b) working with the CEO and NBU staff on the effective and timely implementation of those strategies; and (c) developing NBU's positions on various legislative initiatives, including by ~~and~~ undertaking such research as may be necessary to support such positions.

7. Public Information Act Committee – The Public Information Act Committee is responsible for identifying procedures and methods for maintaining compliance with the Public Information Act and ensuing transparency.

8. Records Management Committee – The Records Management Committee is responsible for promoting sound records management practices through the development of a Records Management Policy for use by ~~the~~ NBU staff, reviewing and the performance of the program on a regular basis and proposing changes and improvements if needed to the Records Management Policy, and providing final approval for the destruction of records in accordance with approved records control schedules.

9. Water Infrastructure Maintenance Committee – The Water Infrastructure Maintenance Committee is responsible for evaluating water infrastructure and related maintenance obligations.

5.

~~➤ Klingemann Redevelopment Adhoc Committee – The Klingemann Redevelopment Adhoc Committee shall be responsible for the coordination and oversight of the development of NBU's former sarehouse yard located at 333 Klingemann. The Committee is tasked with identifying the vision for redevelopment as a conservation environmental center for the community NBU serves and implementation of that vision.~~

~~➤ Comal Conservation Center Advisory Committee – The CCC Advisory Committee shall be responsible for overseeing the fundraising and marketing plans for the development and funding of the future Comal Conservation Center to be located at 333 Klingemann.~~

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POLICY TYPE: BOARD GOVERNANCE BG #11

POLICY TITLE: ANNUAL PLANNING
(Formerly GP#2h Annual Planning)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

To accomplish its job with a governance style consistent with Board policies, the Board will follow an annual agenda that reviews and implements Outcomes policies the Strategic Goals and continually improves Board performance through Board education and enriched input and deliberation.

1. Because NBU operates on a fiscal year that begins on August 1, the Board will conduct its annual planning process and annual budget meetings during the first and second calendar quarters of each year.

a. To prepare for its annual budget meetings, the Board will provide direction during the first calendar quarter on the gathering of data and information needed.

a.b. The Board's annual planning process for the following fiscal year will occur in connection with the Board's annual retreat and annual budgeting meetings and must occur no later than the end of June of each calendar year. ~~year. cycle will conclude each year on July 31st so that administrative planning and budgeting can be based on accomplishing a one year segment of the most recent statement of long term Outcomes.~~

2. The cycle will start with the Board's development of its agenda for the next year.

3. —

4. Data gathering from customers and others for gaining input will be determined and arranged in the first calendar quarter to be held during the balance of the year.

5. —

6.2. Education of Board members on governance and ~~Governance education and education related to Outcomes determination~~ the Strategic Goals (e.g. presentations by futurists, demographers, advocacy groups, staff, and so on) will be included as part of the annual planning process and shall occur as needed and at a minimum at least once each ~~calendar~~ fiscal year be arranged in the first quarter, to be held during the balance of the year.

1. Any Board member may recommend or request an item for Board discussion by submitting the item to the Chief Governance Office (President) no later than 21 days before the Board meeting. If the timing is problematic the CEO will visit with the requesting Board Member to determine if an alternative meeting would be sufficient.

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Revisions approved May 25, 2021; effective August 1, 2021

Commented [CR12]: Moved to new Board Member Code of Conduct policy

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7. ~~Throughout the year, the Board will attend to consent agenda items as expeditiously as possible.~~
8. ~~CEO remuneration will be decided during the month of June after a review of monitoring reports received during the previous year.~~
9. ~~CEO monitoring will be on the agenda if reports have been received since the previous meeting, if plans must be made for direct inspection monitoring, or if arrangement for third party monitoring must be prepared.~~

Commented [CR13]: Moved to new President's Role policy

Commented [CR14]: Moved to CEO Monitoring policy

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POLICY TYPE: BOARD GOVERNANCE BG #12

POLICY TITLE: COST-OF-GOVERNANCE INVESTMENT
(Formerly GP#2i Cost of Governance)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Because good governance benefits NBU and its customers, the Board will invest in its governance capacity and ability. The Board's investment shall be facilitated by the Board President, with assistance from NBU staff, and will include: (a) orientation of new members on these Governance Policies and other Board policies established; (b) an annual Board discussion and review of any necessary process or policy improvements; and (c) annual continuing education of the Board's legal and ethical obligations.

Commented [CR15]: Part of these revisions were derived from the prior Governing Style policy

1. Board skills, methods, and support will-must be sufficient to ensure governing with excellence.-

a. New Board members will receive at least quarterly training during their first year of service to assist in orienting them to NBU and their Board responsibilities and obligations.

b. Annual training and retraining will be used to orient new Board members and candidates for Board membership, as well as to maintain and increase existing Board member skills and understandings.

c. Outreach mechanisms will-may be used as needed to ensure the Board's ability to listen to owner-diverse viewpoints and values.

d. A Board Member manual will be developed and maintained to assist Board members in their service to the Board.

a-e. New and existing Board members are strongly encouraged to attend ERCOT, American Public Power Association (APPA), American Water Works Association (AWWA), or other industry conferences, seminars, and workshops as part of their initial and continuing education.

2. Costs will be prudently-incurred prudently with due consideration for the value of development and maintenance of Board member qualifications.

a. Expenses for training, including attendance at industry conferences, seminars, and workshops, will be included in the annual budget.

b.—

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e.b. Expenses for surveys, focus groups, opinion analyses, and meeting costs will be included in the annual budget.

3. The Board will establish its cost of governance budget for the next fiscal year during the annual budgeting process.

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New Braunfels Utilities

Governance Policies: Board Management Delegation

FOR BOARD REVIEW - ALL CHANGES TO DATE (May 25, 2021)

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #1

POLICY TITLE: GLOBAL POLICY ON BOARD DELEGATION
(Formerly BMD#1 Global Board-Management Delegation)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board's sole official connection to the operational organization, its achievements, and conduct will be through ~~a~~the chief executive officer; ~~(CEO)~~.

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POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #2

POLICY TITLE: UNITY OF CONTROL
(Formerly BMD#2a Unity of Control)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Only officially passed motions of the Board are binding on the CEO.

1. Decisions or instructions of individual Board members, officers, or committees are not binding on the CEO except in rare instances when the Board has specifically authorized such exercise of authority.
2. Individual Board members may communicate with NBU executive management staff on routine administrative matters, provided the CEO is included in any written communication.
3. Board member communications regarding the CEO's evaluation or the evaluation process should include the Vice President and need not include the CEO.
4. Any written communication on material NBU matters to the CEO from:
 - a. An individual Board member must include the Board President, unless the communication concerns the Board President, in which case the Vice President must be included.
 - b. The Board President must include the Vice President, unless the communication concerns the Vice President.
- 2.5. Individual Board members should refrain from making requests that require a material amount of staff time or funds or are disruptive. Such requests should be Board--authorized requests. --The CEO should notify the individual Board member making the request and the Board President or Vice President, as appropriate (but not both), when such requests require, in the CEO's opinion, a material amount of staff time or funds, or are disruptive.

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POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #3

POLICY TITLE: ACCOUNTABILITY OF THE CEO
(Formerly BMD#2b Accountability of the CEO & OP#1 Global Executive Constraint)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The CEO is the Board's only link to operational achievements and conduct. -All authority and accountability of staff; is considered the authority and accountability of the CEO. The CEO is therefore responsible for ensuring any NBU practice, activity, decision, or circumstance does not violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

Commented [CR16]: Moved from prior Global Executive Constraint policy and re-worded to match format.

1. The Board will never give instructions to persons-staff who report directly or indirectly to the CEO.
2. The Board will not evaluate, either formally or informally, any staff other than the CEO.
3. The Board will view-consider the following when evaluating CEO job performance (Performance Factors):
 - a. -Organizational performance in relation to the Strategic Goals;
 - b. Adherence to all applicable Governance Policies and other Board policies or directives;
 - c. Compliance with any written contractual agreement between the Board and the CEO;
 - d. Realization of operational emergent and annual specific goals and directives as set by the Board;
 - e. Maintenance of communication and transparency with the Board;
 - f. Satisfaction of any other specific requirements or expectations set by the Board; and
 - ~~a-g. Feedback through a self-evaluation from the CEO. as identical to organizational performance, so that organizational accomplishment of Board-stated Outcomes and compliance with Board policies will be viewed as successful CEO performance.~~

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~~The CEO shall not cause or allow within NBU any organizational practice, activity, decision or circumstance, which is unlawful, in violation of city charter or commonly accepted business and professional ethics.~~

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POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #4

POLICY TITLE: DELEGATION TO CEO
(Formerly BMD#2c Delegation to CEO)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

Through these Governance Policies and other Board policies and directives, the Board will define for the CEO through written policies that prescribe the Strategic Goals organizational Outcomes to be achieved and describes certain organizational situations and actions to be avoided. The CEO may employ allowing the CEO to use any reasonable interpretation of these Governance Policies and other Board policies and directives.

1. The Board will develop policies Strategic Goals and other Board policies directing the CEO to achieve specified results in accordance with NBU's annual approved budget, for specified recipients, at a specified cost. These policies will be developed systematically from the broadest, most general level to more defined levels, and will be called Outcomes policies. All issues that are not Outcomes issues as defined here are operational issues.

2. The Board will develop policies that limit the latitude that the CEO may exercise in choosing the organizational operational methods. These limiting policies will describe those practices, activities, decisions and circumstances that would be unacceptable to the Board even if they were to be effective. Policies will be developed systematically from the broadest, most general level to more defined levels, and they will be called Operational policies. The Board will never prescribe organizational operational methods delegated to the CEO.

Commented [CR17]: Reworded and moved to No. 3 below.

3.2. As long as the CEO uses any reasonable interpretation of the Board's Outcomes and Operations these Governance Policies and other Board policies or directives, the CEO is authorized to establish all further policies, make all decisions, take all actions, establish all practices and develop all activities. Such decisions of the CEO shall have full force and effect as if decided by the Board.

3. Any Governance Policy or other Board policy or directive limiting the CEO's authority will describe those practices, activities, decisions, and circumstances that would be unacceptable to the Board even if they were to be effective. The Board, however, will never prescribe organizational operational methods delegated to the CEO.

Commented [CR18]: From the prior No. 2 above.

4. At any time, the Board may modify its Outcomes and Operations Governance Policies and other Board policies and directives to redefine or realign the authority delegated to the CEO. The Board, however, may not make any

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retroactive modification ~~of this policy~~ and shall recognize and support the decisions of the CEO previously authorized ~~by this policy~~.

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POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #5

POLICY TITLE: MONITORING-EVALUATING CEO PERFORMANCE
(Formerly BMD#2d Monitoring CEO Performance)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The CEO's job performance will be ~~determined by regular monitoring and evaluated based on the Performance Factors outlined in the Accountability Policy (BMD #3) and documented through an annual formal evaluation process facilitated by the Vice President (see Vice President's Role, BG #7) review of expected CEO job products: organizational accomplishment of Board policies on Outcomes and organizational operation within the boundaries established in Board policies on Operational Policy.~~

1. ~~Monitoring may be informal. The CEO's job performance may be monitored informally, in any frequency, and by any method chosen by the Board to assess the degree to which Board policies are being met. Extraneous information will not be considered.~~

Commented [CR19]: Reworded to combine the prior No. 1 and No. 5 below.

2. The Board will acquire information on the CEO's job monitoring-performance ~~information by through~~ one or more of following three methods:

- a. Internal Report: CEO provides data, interpretations, evaluations and compliance status solely to the Board, whether verbal or written.

- b. External Report: The Board selects ~~or~~ retains a disinterested third party to assess the CEO's job performance-interpretation of and compliance with Board ~~_____ policies.~~

- c. Direct Board Assessment: ~~Designated Board member(s) assess the CEO's interpretation of and compliance with Board policy job performance.~~

3. ~~In every case, the Board will evaluate (a) the reasonableness of the CEO's interpretation, of the Performance Factors and (b) the data demonstrating the CEO's accomplishment of the Board's Performance Factors objectives.~~

4. ~~The applicable standard for determining the reasonableness of a CEO interpretation of a Board policy shall be as a the reasonable and prudent CEO, and the Board shall avoid subjective, ad-hoc or arbitrary assessment criteria.~~

4. An evaluation of the CEO's job performance and compensation will be conducted at least annually following the conclusion of the fiscal year (preferably in August).

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The Board, however, can review and discuss the CEO's job performance and compensation at any other time, as and if necessary.

All policies that instruct the CEO will be monitored at a frequency and by a method chosen by the Board. The Board can monitor any policy at any time by any method, but will ordinarily depend on a routine schedule, as follows:

6—

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POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #6

POLICY TITLE: COMMUNICATION & SUPPORT TO THE BOARD
(Formerly OP#2g Communication and Support to the Board)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

The Board requires the CEO to maintain communication and transparency and to inform and support the Board's Strategic Goals, Governance Policies, and any other Board policy or directive. The CEO may not permit the Board to be uninformed or unsupported in its work.

The CEO will not:

1. Neglect to submit ~~monitoring data~~ or information required by the Board ~~according to~~ according to its Evaluating CEO Performance policy ~~"Monitoring CEO Performance"~~ in a timely, accurate, and understandable fashion ~~that directly addresses provisions of the Board policies being monitored and includes the CEO's interpretations consistent with the "Delegation to the CEO" policy, as well as relevant data.~~
2. Let the Board be unaware of any significant incidental information it requires, including anticipated adverse media coverage, threatened or pending lawsuits, and material external and internal changes.
3. Allow the Board to be unaware that, in the CEO's opinion, the Board is not in compliance with its ~~Governance own policies on Governance Process and Board Management-Delegation Policies~~, particularly in the case of Board behavior ~~which that~~ is detrimental to the working relationship between the Board and CEO.
4. Allow the Board to be without ~~decision~~ information ~~required periodically~~ needed to make informed decisions by the Board or ~~let the Board to~~ be unaware of relevant trends.
5. Allow the Board to be without a workable mechanism for official Board, officer, or committee communications.
6. Deal with the Board in a way that favors or privileges certain Board members over others, except when (a) fulfilling individual requests for information or (b) responding to officers or committees duly charged by the Board.
7. Allow the Board to be unaware of any actual or anticipated noncompliance with any ~~Outcomes or Operational policy~~ other policy or directive of the Board ~~regardless of the Board's monitoring schedule.~~

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8. Fail to submit to the Board a consent agenda containing items delegated to the CEO yet required by law or contract to be Board-approved, along with [any](#) applicable monitoring [or supporting](#) information.

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POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #7

POLICY TITLE: EMERGENCY EXECUTIVE CEO SUCCESSION
(Formerly OP#2h Emergency Executive Succession)

Date Adopted by Board: May 25, 2021 (effective August 1, 2021)

In order to protect the Board and ~~the organization~~NBU from the sudden loss of ~~a CEO Services, the CEO shall not allow~~ Board will require the CEO to provide ~~the President or Board to be unaware of~~ some viable mechanism for the operations of NBU to continue in the event of sudden loss of the CEO.

The CEO will not:

1. Permit there to be fewer than ~~2-two executive~~ staff ~~members~~ sufficiently familiar with Board and CEO issues and procedures to enable either ~~staff member~~ to assume the role of interim CEO with reasonable proficiency.
2. Allow travel mechanisms or methodologies that put the organization at risk of the sudden loss of these multiple key individuals.

Board Agenda Item Report

May 25, 2021

PRESENTATION ITEMS

**NBU[®] NEW BRAUNFELS
UTILITIES**



Meeting Date: May 25, 2021 **Agenda Type:** Presentation Items

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

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

RECOMMENDED ACTION: Presentation and Update on the 100% NBU HQ Schematic Design
from Marmon Mok



Meeting Date: May 25, 2021 **Agenda Type:** Presentation Items

From: Nancy Pappas **Reviewed by:** Melissa Krause
Managing Director Chief Communications and
Headwaters at the Comal Strategy Officer

Submitted by: Melissa Krause **Approved by:** Ian Taylor
Chief Communications and Chief Executive Officer
Strategy Officer

RECOMMENDED ACTION: Presentation and Quarterly Update on the Headwaters at the Comal



Meeting Date: May 25, 2021

Agenda Type: Presentation Items

From: Melissa Krause
Chief Communications and
Strategy Officer

Reviewed by: Melissa Krause
Chief Communications and
Strategy Officer

Submitted by: Melissa Krause
Chief Communications and
Strategy Officer

Approved by: Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION: Presentation and Update of the Strategic Plan - Third Quarter, FY 2021



Meeting Date: May 25, 2021 **Agenda Type:** Presentation Items

From: Carlos Salas **Reviewed by:** Dawn Schriewer
Customer Service Manager Chief Financial Officer

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

RECOMMENDED ACTION: Presentation on the New Braunfels Utilities (NBU) Customer Satisfaction Survey Results for Fiscal Year 2021 from GreatBlue Research
