



**NOTICE OF OPEN MEETING**  
**AUGUST BOARD OF TRUSTEES**  
NBU Board Room, 263 Main Plaza, New Braunfels, Texas 78130  
August 29, 2024, at 1:00 PM  
[www.nbutexas.com](http://www.nbutexas.com)

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## AGENDA

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE AND INVOCATION

Mayor Neal Linnartz

### PUBLIC COMMENT

### NBU EMPLOYEE RECOGNITIONS

1. Recognition of NBU Texas Lineman Rodeo Participants

### ITEMS FROM THE CHAIR

1. Report from the Investment Committee
2. Report from the Records and Information Management Committee
3. Report from the Governance Committee
4. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code

### ITEMS FROM STAFF

1. CEO's Update
  - a. Texas Public Power Association Annual Conference Update
  - b. CEO Roadshow Events: New Braunfels Conservative Group, New Braunfels Jaycees, and the Retirees are Progressive Group
  - c. NBU Interns Appreciation Luncheon
  - d. NBU Cashiering Team Visits New Braunfels Library to Participate in Utility Bill Assistance Training
  - e. NBU Hosts All-Employee Meeting
  - f. Community Outreach: NBU participation at the New Braunfels Independent School District Education Expo
  - g. Leadership Announcement of New Hires and Position Changes: Chief Communications and Strategy Officer Ragan Dickens, Chief Customer Officer Sheila Lavender; Director Positions to Include: Ashley Van Booven, Director of Energy Risk, John Warren, Director of Finance, and Reagan Pena, Director of Enterprise Communications

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

2. Financial Update and Report, Including an Update on the Filing of the NBU Transmission Cost of Service Application with the Public Utility Commission of Texas
3. Update from the Community Advisory Panel on Items Discussed at Meetings Held to Date, to Include a Summary of Integrated Resource Plan Building, Modeling, Assumptions, and Base Case Scenarios
4. Quarterly Capital Improvement Plan Update

#### **CONSENT ITEMS FOR ACTION**

1. Approve Minutes of the NBU Regular Board Meeting of June 27, 2024
2. Approve the Change Order Log from May 15, 2024, through July 15, 2024
3. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through July 15, 2024
4. Approve the Electric Line of Business Alternative Procurements from May 15, 2024, through July 15, 2024
5. Approval of the City Transfer Payable in Fiscal Year 2025, Based on Preliminary Financial Results for Fiscal Year 2024
6. Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with C.F. McDonald Electric, Inc. for the Construction of the Emergency Preparedness Plan Generators, Phase 1 Project
7. Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with Hydro Resources Mid–Continent, Inc. for the Construction of the Aquifer Storage and Recovery D1 Well Deepening Project
8. Authorize the CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the FM 1044 Elevated Storage Tank Project
9. Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the FM 1101 Discharge Line Project
10. Ratify the First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Conrads Elevated Storage Tank (Goodwin Lane) Project, and Authorize the CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Conrads Elevated Storage Tank Project

- [11.](#) Authorize the CEO or His Designee to Negotiate and Execute a Third Amendment to the Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Interstate Highway 35 24-inch Water Line Downtown Project
- [12.](#) Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Quiddity Engineering, LLC for the FM 1101 Pump Station and Ground Storage Tank Project
- [13.](#) Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with Guido Construction Company for the Construction of the Aquifer Storage and Recovery EAA Interlocal Agreement Monitoring Well Site Improvements Project
- [14.](#) Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Central Downtown to Morningside Pressure Zone Conversion Project
- [15.](#) Authorize the CEO or His Designee to Negotiate and Execute a Materials Agreement with Chemtrade Chemicals US, LLC for the Purchase of Water and Wastewater Chemicals
- [16.](#) Authorize the CEO or His Designee to Negotiate and Execute a Materials Agreement with Pencco Inc. for the Purchase of Water and Wastewater Chemicals

#### **PRESENTATION ITEMS**

- [1.](#) Presentation on the Gallup Employee Engagement Survey Results
- [2.](#) Presentation from the NBU Employee Experience Team on the Proposed NBU Employee Engagement Action Items, Based on the Results from the Gallup Employee Engagement Survey Results
- [3.](#) Presentation on the Guadalupe-Blanco River Authority's Wholesale Delivery of Gonzales Carrizo Water Supply and Its Impact on NBU
- [4.](#) Presentation on the New Braunfels Utilities Aquifer Storage and Recovery Project
- [5.](#) Presentation on the NBU Fiscal Year 2024 Strategic Plan Results

#### **ITEMS FOR FUTURE ACTION**

- [1.](#) Review and Discuss Proposed Revisions to the NBU Board Governance Policies

#### **ACTION ITEMS**

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

## EXECUTIVE SESSION

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

1. Power Supply Resources – Competitive Matters  
(Section 551.086 – Texas Government Code)
  - a. Discuss and Consider Edison Electric Institute (EEI) Resolution allowing NBU to enter into a Master Agreement related to power supply transactions
2. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney-Client Privilege  
(Section 551.071 – Texas Government Code)
  - a. Discuss the Effects of the San Antonio Water System's Application for Water Use Permit No. 13098 on NBU's Water Rights in the Guadalupe River Basin
  - b. Discuss Utility Construction Cost Sharing Agreement Letter Agreement Conditionally Approving Certain Subdivision Plans among NBU, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC
  - c. Discuss Proposed High-Density Multifamily Development Platted as Minor Plat
3. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney-Client Privilege (Section 551.071 – Texas Government Code); Real Property (Section 551.072 – Texas Government Code)
  - a. Discuss Legal Matters Relating to Potential Eminent Domain Actions to Secure the Following Easements Regarding the McKenzie Interceptor Upgrade Project (collectively hereinafter referenced as the "McKenzie Interceptor Upgrade Project Easements"):
    - i. a 0.296 Acre Permanent Utility Easement, a 0.044 Acre Temporary Construction Easement, and a 0.213 Acre Temporary Construction Easement, on, over, across, and/or under Lot 18, Block J, Avery Park Subdivision, Unit 2 (Amended), Guadalupe County, Texas, owned by N.B. Avery Park Homeowners Association, Inc.
    - ii. a 0.632 Acre Permanent Utility Easement, on, over, across, and/or under Lots 901 and 902, Block 4, Avery Park 13, Guadalupe County, Texas, owned by N.B. Avery Park Homeowners Association, Inc.
    - iii. a 0.312 Acre Temporary Construction Easement and a 0.022 Acre Temporary Construction Easement, on, over, and/or across Lot 902, Block 4, Avery Park 13, Guadalupe County, Texas, owned by N.B. Avery Park Homeowners Association, Inc.

- iv. a 2.088 Acre Permanent Utility Easement and a 1.395 Acre Temporary Construction Easement, on, over, across, and/or under a 52.50 acre tract described in a deed recorded in Document Number 202399002975, Official Public Records, Guadalupe County, Texas, owned by Rockspring Saur LLC
- v. a 1.879 Acre Permanent Utility Easement and a 1.253 Acre Temporary Construction Easement, on, over, across, and/or under the remainder of a 32 acre tract described in a deed recorded in Volume 2502, Page 699, Official Public Records, Guadalupe County, Texas and part of a 4.307 acre tract designated as Third Tract in a deed recorded in Volume 2659, Page 759, Official Public Records, Guadalupe County, Texas, owned by MSSC Investments, LP
- vi. a 1.937 Acre Permanent Utility Easement and a 1.127 Acre Temporary Construction Easement, on, over, across, and/or under Lot 2, Block 1 of Titan Industrial NB Park Unit 2, Comal County, Texas, and Lot 3, Block 1 of Titan Industrial NB Park Unit 3, Comal County, Texas, and the remainder of a 66.182 acre tract, designated Tract 1, in a deed recorded in Document Number 202106057346, Official Public Records, Comal County, Texas, owned by GCP III St. Croix Landco, LLC
- vii. a 1.846 Acre Permanent Utility Easement and a 0.847 Acre Temporary Construction Easement, on, over, across, and/or under a 40.37 acre tract described in a deed recorded in Document Number 202206025070, Official Public Records, Comal County, Texas, owned by MP New Braunfels, LLC

4. Personnel Matters – CEO Evaluation  
(Section 551.074 – Texas Government Code)

- a. Deliberate the appointment, employment, evaluation, and duties of the CEO

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**

**ACTION ITEMS**

- 1. Discuss and Consider Approving Utility Construction Cost Sharing Agreement Letter Agreement Conditionally Approving Certain Subdivision Plans among NBU, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC
- 2. Discuss and Consider Approving Resolution R-2024-186 of the New Braunfels Utilities Board of Trustees Recommending the Acquisition of the McKenzie Interceptor Upgrade Project Easements. The Acquisitions are Necessary to Advance and Achieve the Public Use of

Expanding the New Braunfels Utilities' Wastewater System to Increase Sewer Capacity to Meet Existing and Future Needs and Ensure Reliability

3. Discuss and Consider Approving Resolution R-2024-187 of the New Braunfels Utilities Board of Trustees Recommending Any Legal Action Necessary to Remove the Cemetery Dedication by MP New Braunfels, LLC Encumbering a 40.37 Acre Tract Described in A Deed from Mary Ann Scott, et. al. to MP New Braunfels, LLC, Recorded in Document Number 202206025070, Official Public Records, Comal County, Texas, and Situated in the A. M. Esnaurizar Survey, Abstract Number 1, Comal County, Texas

**ADJOURN**

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

**CERTIFICATE OF POSTING**

I, Ryan Kelso, Secretary to the Board of Trustees, do hereby certify that this Notice of Meeting was posted at the City of New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas, and New Braunfels Utilities Main Office, 263 Main Plaza, New Braunfels, Texas, on the **23rd day of August 2024**, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

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



**Meeting Date:** August 29, 2024      **Agenda Type:** Items from Staff

**From:** Kimberly Huffman      **Reviewed by:** Ashley Van Booven  
Accounting Manager      Director of Energy Risk

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

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

## BACKGROUND

NBU's service territory experienced higher temperatures and higher rainfall during the month of June than historically. The average temperature was 85.8 degrees, which was 4.3 degrees higher than the historical average temperature of 81.5 degrees. Rainfall totaled 3.98 inches for the month of June, which was 0.48 inches higher than the historical average rainfall of 3.5 inches.

For the month of June 2024, NBU recorded a change in net position after contributions ("CNPAC") of \$3,048,000 which represents an increase of \$295,000 compared to the budgeted monthly CNPAC of \$2,753,000. Operating service revenues of \$22,760,000 were less than budget by \$390,000, or 2%, for the month of June. A \$30,000 increase in electric revenue, \$82,000 decrease in water revenue, and a \$339,000 decrease in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$437,000 were greater than budget by \$17,000 for the month of June. Purchased power costs were \$1,532,000 less than budget for June 2024 and \$1,898,000 less for Year-to-Date ("YTD"). An increase in other operating expenses of \$128,000 resulted in total operating expenses to be \$1,404,000, or 7%, less than the budgeted amount of \$20,791,000. The net revenue and operating expense variances contributed to a favorable net operating income variance of \$1,032,000 from budget. Net non-operating items had a \$571,000 unfavorable variance compared to budget. Impact fees were less than budget by \$21,000, services income was less than budget by \$80,000, and capital participation fees was less than budget by \$66,000. June 2024 YTD CNPAC was \$50,725,000, which was \$32,081,000 greater than the budgeted amount of \$18,644,000.

## FINANCIAL IMPACT

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### Electric

The Electric Line of Business reported total operating revenues of \$16,215,000, a \$11,000 increase, from the June budgeted amount of \$16,204,000. The net rate realized per kWh was \$0.0912, which was 6% less than the budgeted rate of \$0.0970 for the month of June. June kWh sales were 174.2 million kWh, a 10.8 million kWh increase, or 7%, in comparison to the budgeted amount of 163.5 million kWh.

Purchased power costs totaled \$9,843,000, which was \$1,532,000 less than the budgeted amount of \$11,375,000. Electric gross margin, which is total operating revenues minus purchased power, resulted in the amount of \$6,372,000 for the month of June and \$58,693,000 YTD. These amounts were \$1,543,000 greater and \$9,325,000 greater than the budgeted amount of \$4,829,000 Month-to-Date (“MTD”) and \$49,368,000 YTD. Other operating expenses were greater than budget by \$45,000. These items resulted in the Electric Line of Business reporting net operating income of \$3,430,000, which was \$1,499,000 greater than the budgeted amount of \$1,931,000. Net non-operating items provided an unfavorable variance from budget of \$809,000. Services income was less than budget by \$168,000. The Electric Line of Business reported June 2024 CNPAC of \$1,897,000 and YTD CNPAC of \$26,228,000. These amounts were \$522,000 greater and \$15,918,000 greater than their respective June 2024 MTD and June 2024 YTD budget amounts.

### Water

The Water Line of Business reported total operating revenues of \$3,846,000, a \$57,000 decrease, or 1%, from the June budgeted amount of \$3,903,000. In June, water gallons sold of 410,205,000 was greater than the budgeted amount of 394,039,000 (a 16,166,000-gallon variance from budget, or 4%). NBU’s net realized price per 1,000 gallons sold in June was \$9.18, which was less than the budgeted amount of \$9.76. Operating expenses for June were \$3,851,000, which was \$2,000 greater than the budgeted amount of \$3,849,000. The net effect of less revenues and greater operating expenses than budgeted resulted in the Water’s net operating income of (\$5,000), which was less than budget. Net non-operating items provided a favorable variance of \$73,000 from budget. Impact fees of \$917,000 were less than budget by \$99,000, and services income was greater than budget by \$87,000. The Water Line of Business reported June 2024 CNPAC of \$649,000 and YTD CNPAC of \$13,814,000. These amounts were \$2,000 greater than and \$10,880,000 greater than their respective June 2024 MTD and June 2024 YTD budget amounts.

### Wastewater

The Wastewater Line of Business reported total operating revenues of \$3,135,000, a \$327,000 decrease, or 9%, from the June budgeted amount of \$3,462,000. Total operating expenses of \$2,750,000 were \$80,000 greater than the budgeted amount of \$2,670,000. As a result, the Wastewater Line of Business reported net operating income of \$385,000, which was \$407,000 less than the budgeted amount of \$792,000. Net non-operating items provided a favorable variance of \$166,000 from budget. Impact fees were greater than budget by \$78,000, and capital participation fees were less than budget by \$66,000. The Wastewater Line of Business reported June 2024 CNPAC of \$502,000 and YTD CNPAC of \$10,683,000. These amounts were \$229,000 less than and \$5,283,000 greater than their respective June 2024 MTD and June 2024 YTD budget amounts.



**LINK TO STRATEGIC PLAN**

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**Financial Excellence**

**EXHIBITS**

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

**NEW BRAUNFELS UTILITIES**  
**OVERVIEW COMPARISON TO BUDGET & PRIOR FISCAL YEAR**  
**YTD - Amounts for the Period Ending June 30, 2024**

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV	Variance Explanation +/-30%
<b>ELECTRIC</b>						
Sales Volume (MWh)	Actual	1,581.2				
	Budget	1,732.5	(151.2)	-9%		
	Prior Year	1,562.4	18.9	1%		
Revenues (\$M)	Actual	\$ 182.7				
	Budget	\$ 175.2	\$ 7.4	4%		
	Prior Year	178.1	\$ 4.6	3%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Pwr)</i>	Actual	\$ 58.7				
	Budget	\$ 49.4	\$ 9.3	19%		
	Prior Year	52.2	\$ 6.5	12%		
Operating Income (\$M)	Actual	\$ 31.1				
	Budget	\$ 16.4	\$ 14.7	89%		Higher YTD operating revenues, primarily from residential. Lower operating expenses to-date.
	Prior Year	26.2	\$ 4.9	19%		
<b>WATER</b>						
Sales Volume (Million Gallons)	Actual	4.0				
	Budget	4.1	(0.0)	-1%		
	Prior Year	3.7	0.3	8%		
Revenues (\$M)	Actual	\$ 37.5				
	Budget	\$ 39.6	(2.2)	-5%		
	Prior Year	31.1	\$ 6.4	20%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Water)</i>	Actual	\$ 26.4				
	Budget	\$ 28.3	(1.8)	-7%		
	Prior Year	24.0	\$ 2.4	10%		
Operating Income (\$M)	Actual	\$ (1.0)				
	Budget	\$ (3.6)	\$ 2.6	-73%		Lower YTD operating expenses. Higher YTD operating expenses compared to Prior Year. Primarily from Purchased Water costs and Support Service Allocation.
	Prior Year	1.5	(2.4)	*		
<b>WASTEWATER</b>						
Revenues (\$M)	Actual	\$ 32.5				
	Budget	\$ 36.1	(3.6)	-10%		
	Prior Year	29.4	\$ 3.2	11%		
Operating Income (\$M)	Actual	\$ 5.7				
	Budget	\$ 6.1	(0.4)	-7%		
	Prior Year	6.2	(0.5)	-8%		
<b>COMBINED</b>						
Operating Expenses (\$M)**	Actual	\$ 46.6				
	Budget	\$ 55.7	(9.2)	-16%		
	Prior Year	40.6	\$ 6.0	15%		
Operating Income (\$M)	Actual	\$ 35.8				
	Budget	\$ 18.9	\$ 16.9	89%		YTD Electric Service revenues are greater than budget, primarily from Residential. Electric expenses are lower than expected, primarily from Purchased Power.
	Prior Year	33.9	\$ 1.9	6%		
Change in Net Position Before Contributions (\$M)	Actual	\$ 22.6				
	Budget	\$ (0.4)	\$ 23.0	*		YTD Electric Service revenues are greater than budget, primarily from Residential. Electric expenses are lower than expected, primarily from Purchased Power. Interest Income is also higher than budget.
	Prior Year	19.7	\$ 2.9	14%		
Impact Fees (\$M)	Actual	\$ 24.1				
	Budget	\$ 15.4	\$ 8.7	57%		Several apartment complexes contributed to higher impact fees.
	Prior Year	23.5	\$ 0.5	2%		
Change in Net Position After Contributions (\$M)	Actual	\$ 50.7				
	Budget	\$ 18.6	\$ 32.1	*		
	Prior Year	47.7	\$ 3.0	6%		

\*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			
<b>Favorable</b>		<b>Unfavorable</b>	
Within +10%		Within -10%	
Exceeds +10%		Exceeds -10%	

NEW BRAUNFELS UTILITIES  
Balance Sheet  
For the Period Ending June 30, 2024  
Amounts Shown in Thousands

	June 30 2024	May 31 2024	Variance	% Change
<b>ASSETS</b>				
<b>UTILITY PLANT</b>				
Utility Plant in Service	\$ 1,222,302	\$ 1,215,646	\$ 6,656	1%
Less: Accumulated Depreciation	(376,893)	(373,535)	(3,358)	1%
Construction in Progress	183,772	174,884	8,888	5%
<b>TOTAL UTILITY PLANT</b>	<b>\$ 1,029,181</b>	<b>\$ 1,016,995</b>	<b>\$ 12,186</b>	<b>1%</b>
<b>CURRENT &amp; ACCRUED ASSETS</b>				
Cash & Temporary Investments	\$ 22,338	\$ 38,532	\$ (16,194)	-42%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	20,049	13,702	6,347	46%
Accounts Receivable - Other	7,191	7,526	(335)	-4%
Accrued Unbilled Revenue	14,900	14,667	234	2%
Inventory	8,805	8,963	(158)	-2%
Prepaid Expenses	24,673	25,361	(688)	-3%
Accrued Interest Receivable	223	350	(127)	-36%
Rents Receivable	3	8	(5)	-61%
<b>TOTAL CURRENT &amp; ACCRUED ASSETS</b>	<b>\$ 98,183</b>	<b>\$ 109,109</b>	<b>\$ (10,926)</b>	<b>-10%</b>
<b>RESTRICTED ASSETS &amp; DEFERRED DEBITS</b>				
Restricted Funds	\$ 77,133	\$ 98,202	\$ (21,069)	-21%
Designated Funds	76,730	62,580	14,150	23%
Pension Deferred Outflows	16,755	16,755	-	0%
Mid-Basin Regulatory Asset	3,545	3,475	70	2%
Other Deferred Debits	3,574	3,574	-	0%
<b>TOTAL RESTRICTED ASSETS &amp; DEFERRED DEBITS</b>	<b>\$ 177,737</b>	<b>\$ 184,586</b>	<b>\$ (6,849)</b>	<b>-4%</b>
<b>TOTAL ASSETS</b>	<b>\$ 1,305,101</b>	<b>\$ 1,310,690</b>	<b>\$ (5,589)</b>	<b>0%</b>
<b>LIABILITIES &amp; NET POSITION</b>				
<b>BONDS PAYABLE</b>				
Bonds Payable	466,877	\$ 474,953	\$ (8,076)	-2%
Unamortized Bond Discount/Premium	26,254	26,524	(270)	-1%
<b>TOTAL BONDS PAYABLE</b>	<b>\$ 493,131</b>	<b>\$ 501,477</b>	<b>\$ (8,346)</b>	<b>-2%</b>
<b>CURRENT &amp; ACCRUED LIABILITIES</b>				
Accounts Payable	\$ 7,934	\$ 7,243	\$ 691	10%
Accrued Purchased Power	8,006	8,430	(424)	-5%
Commercial Paper Payable	-	-	-	0%
Customer Deposits	13,706	13,491	216	2%
Accrued Payroll & Benefits (Including Compensated Absences)	5,631	3,885	1,746	45%
Interest Accrued on Long Term Debt	-	8,022	(8,022)	-100%
Current Portion of Long Term Debt	8,045	8,045	-	0%
Other Payables	3,641	3,492	148	4%
<b>TOTAL CURRENT &amp; ACCRUED LIABILITIES</b>	<b>\$ 46,963</b>	<b>\$ 52,608</b>	<b>\$ (5,645)</b>	<b>-11%</b>
<b>NONCURRENT LIABILITIES &amp; DEFERRED CREDITS</b>				
Accumulated Provision for Pension	\$ 29,068	\$ 29,068	\$ -	0%
Power Cost Adjustments - Over-Recovered	13,148	8,300	4,848	58%
Other Deferred Credits	20,769	20,263	506	2%
<b>TOTAL NONCURRENT LIABILITIES &amp; DEFERRED CREDITS</b>	<b>\$ 62,985</b>	<b>\$ 57,630</b>	<b>\$ 5,354</b>	<b>9%</b>
<b>TOTAL LIABILITIES</b>	<b>\$ 603,079</b>	<b>\$ 611,716</b>	<b>\$ (8,637)</b>	<b>-1%</b>
<b>NET POSITION</b>				
Reserve for Restricted Assets	\$ 66,702	\$ 87,978	\$ (21,276)	-24%
Reserve for Intergovernmental	9,561	10,557	(995)	-9%
Unrestricted Assets	353,151	327,832	25,319	8%
Contributed Capital	272,607	272,607	-	0%
<b>TOTAL NET POSITION</b>	<b>\$ 702,022</b>	<b>\$ 698,975</b>	<b>\$ 3,048</b>	<b>0%</b>
<b>TOTAL LIABILITIES &amp; NET POSITION</b>	<b>\$ 1,305,101</b>	<b>\$ 1,310,690</b>	<b>\$ (5,589)</b>	<b>0%</b>

NEW BRAUNFELS UTILITIES  
Statement of Revenues & Expenses  
For the Period Ending June 30, 2024  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>VOLUME/RATES</b>								
Electric Sales kWh	174,223	163,465	10,757	7%	1,581,244	1,732,469	(151,224)	-9%
Electric Sales Rate Per kWh	\$ 0.0912	\$ 0.0970	\$ (0.0058)	-6%	\$ 0.1128	\$ 0.0990	\$ 0.0139	14%
Purchased kWh	174,223	180,742	(6,520)	-4%	1,752,936	1,791,648	(38,713)	-2%
Purchased Rate per kWh	\$ 0.0565	\$ 0.0629	\$ (0.0064)	-10%	\$ 0.0707	\$ 0.0703	\$ 0.0005	1%
Gallons Sold	410,205	394,039	16,166	4%	4,022,312	4,057,395	(35,084)	-1%
Rate per 1,000 Gallons Sold	\$ 9.18	\$ 9.76	\$ (0.58)	-6%	\$ 9.08	\$ 9.61	\$ (0.53)	-6%
<b>OPERATING REVENUES</b>								
<b>SERVICE REVENUE</b>								
Electric Service	\$ 15,888	\$ 15,858	\$ 30	0%	\$ 178,406	\$ 171,441	\$ 6,965	4%
Water Service	3,765	3,847	(82)	-2%	36,519	38,999	(2,480)	-6%
Wastewater Service	3,106	3,445	(339)	-10%	32,231	35,921	(3,690)	-10%
<b>TOTAL SERVICE REVENUE</b>	<b>\$ 22,760</b>	<b>\$ 23,150</b>	<b>\$ (390)</b>	<b>-2%</b>	<b>\$ 247,156</b>	<b>\$ 246,361</b>	<b>\$ 795</b>	<b>0%</b>
<b>OTHER OPERATING REVENUE</b>								
Electric Other	\$ 116	\$ 100	\$ 16	16%	\$ 1,257	\$ 1,100	\$ 157	14%
Water Other	61	42	19	45%	716	458	258	56%
Wastewater Other	29	18	11	61%	310	193	117	61%
Transmission System Revenue	173	217	(44)	-20%	2,606	2,386	220	9%
Electric Pole Attachments	38	29	9	31%	405	320	85	27%
Water Tower Antenna Lease	20	15	5	33%	231	160	71	44%
<b>TOTAL OTHER OPERATING REVENUE</b>	<b>\$ 437</b>	<b>\$ 420</b>	<b>\$ 17</b>	<b>4%</b>	<b>\$ 5,524</b>	<b>\$ 4,617</b>	<b>\$ 907</b>	<b>20%</b>
<b>TOTAL OPERATING REVENUE</b>	<b>\$ 23,197</b>	<b>\$ 23,570</b>	<b>\$ (373)</b>	<b>-2%</b>	<b>\$ 252,680</b>	<b>\$ 250,978</b>	<b>\$ 1,702</b>	<b>1%</b>
<b>OPERATING EXPENSES</b>								
<b>ELECTRIC</b>								
Purchased Power	\$ 9,843	\$ 11,375	\$ (1,532)	-13%	\$ 123,981	\$ 125,879	\$ (1,898)	-2%
Electric O&M Expenses	680	760	(80)	-11%	6,141	9,018	(2,877)	-32%
Electric Depreciation & Amortization	1,222	1,215	7	1%	12,231	13,366	(1,135)	-8%
Electric Support Services Allocated Operating Expenses	1,040	922	118	13%	9,229	10,550	(1,321)	-13%
<b>TOTAL ELECTRIC OPERATING EXPENSE</b>	<b>\$ 12,785</b>	<b>\$ 14,272</b>	<b>\$ (1,487)</b>	<b>-10%</b>	<b>\$ 151,583</b>	<b>\$ 158,813</b>	<b>\$ (7,230)</b>	<b>-5%</b>
<b>WATER</b>								
Purchased Water	\$ 997	\$ 1,032	\$ (35)	-3%	\$ 11,047	\$ 11,353	\$ (306)	-3%
Water O&M Expenses	789	822	(33)	-4%	7,240	9,329	(2,089)	-22%
Water Depreciation & Amortization	956	1,032	(76)	-7%	10,271	11,352	(1,081)	-10%
Water Support Services Allocated Operating Expenses	1,109	963	146	15%	9,866	11,172	(1,306)	-12%
<b>TOTAL WATER OPERATING EXPENSE</b>	<b>\$ 3,852</b>	<b>\$ 3,849</b>	<b>\$ 3</b>	<b>0%</b>	<b>\$ 38,424</b>	<b>\$ 43,206</b>	<b>\$ (4,782)</b>	<b>-11%</b>
<b>WASTEWATER</b>								
Wastewater O&M Expenses	\$ 811	\$ 698	\$ 113	16%	\$ 7,290	\$ 8,066	\$ (776)	-10%
Wastewater Depreciation & Amortization	1,180	1,306	(126)	-10%	12,774	14,370	(1,596)	-11%
Wastewater Support Services Allocated Operating Expenses	759	665	94	14%	6,812	7,610	(798)	-10%
<b>TOTAL WASTEWATER OPERATING EXPENSE</b>	<b>\$ 2,750</b>	<b>\$ 2,670</b>	<b>\$ 80</b>	<b>3%</b>	<b>\$ 26,876</b>	<b>\$ 30,046</b>	<b>\$ (3,170)</b>	<b>-11%</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 19,387</b>	<b>\$ 20,791</b>	<b>\$ (1,404)</b>	<b>-7%</b>	<b>\$ 216,883</b>	<b>\$ 232,065</b>	<b>\$ (15,182)</b>	<b>-7%</b>
<b>NET OPERATING INCOME</b>								
ELECTRIC	\$ 3,430	\$ 1,931	\$ 1,499	78%	\$ 31,091	\$ 16,433	\$ 14,658	89%
WATER	(5)	54	(59)	*	(958)	(3,589)	2,631	-73%
WASTEWATER	385	793	(408)	-51%	5,665	6,068	(403)	-7%
<b>TOTAL NET OPERATING INCOME</b>	<b>\$ 3,810</b>	<b>\$ 2,778</b>	<b>\$ 1,032</b>	<b>37%</b>	<b>\$ 35,798</b>	<b>\$ 18,912</b>	<b>\$ 16,886</b>	<b>89%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 786	\$ 431	\$ 355	82%	\$ 8,938	\$ 4,742	\$ 4,196	88%
Intergovernmental Expense	(1,889)	(989)	(900)	91%	(10,379)	(10,878)	499	-5%
Interest and Amortization Expense	(1,384)	(1,376)	(8)	1%	(16,157)	(15,138)	(1,019)	7%
Other	160	178	(18)	-10%	4,411	1,953	2,458	*
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (2,327)</b>	<b>\$ (1,756)</b>	<b>\$ (571)</b>	<b>33%</b>	<b>\$ (13,187)</b>	<b>\$ (19,321)</b>	<b>\$ 6,134</b>	<b>32%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 1,483</b>	<b>\$ 1,021</b>	<b>\$ 462</b>	<b>45%</b>	<b>\$ 22,611</b>	<b>\$ (409)</b>	<b>\$ 23,020</b>	<b>*</b>
<b>CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 1,378	\$ 1,399	\$ (21)	-2%	\$ 24,090	\$ 15,392	\$ 8,698	57%
Services	186	266	(80)	-30%	4,024	2,931	1,093	37%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	729	(729)	-100%
<b>TOTAL CAPITAL CONTRIBUTIONS</b>	<b>\$ 1,564</b>	<b>\$ 1,732</b>	<b>\$ (168)</b>	<b>-10%</b>	<b>\$ 28,114</b>	<b>\$ 19,052</b>	<b>\$ 9,062</b>	<b>48%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 3,048</b>	<b>\$ 2,753</b>	<b>\$ 295</b>	<b>11%</b>	<b>\$ 50,725</b>	<b>\$ 18,644</b>	<b>\$ 32,081</b>	<b>*</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
ELECTRIC LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending June 30, 2024  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>ELECTRIC OPERATING REVENUES</b>								
<b>ELECTRIC SERVICE REVENUE</b>								
Electric Service	\$ 15,888	\$ 15,858	\$ 30	0%	\$ 178,406	\$ 171,441	\$ 6,965	4%
<b>TOTAL ELECTRIC SERVICE REVENUE</b>	<b>\$ 15,888</b>	<b>\$ 15,858</b>	<b>\$ 30</b>	<b>0%</b>	<b>\$ 178,406</b>	<b>\$ 171,441</b>	<b>\$ 6,965</b>	<b>4%</b>
<b>OTHER ELECTRIC OPERATING REVENUE</b>								
Electric Other	\$ 116	\$ 100	\$ 16	16%	\$ 1,257	\$ 1,100	\$ 157	14%
Transmission System Revenue	173	217	(44)	-20%	2,606	2,386	220	9%
Electric Pole Attachments	38	29	9	31%	405	320	85	27%
<b>TOTAL OTHER ELECTRIC OPERATING REVENUE</b>	<b>\$ 327</b>	<b>\$ 346</b>	<b>\$ (19)</b>	<b>-5%</b>	<b>\$ 4,268</b>	<b>\$ 3,806</b>	<b>\$ 462</b>	<b>12%</b>
<b>TOTAL ELECTRIC OPERATING REVENUE</b>	<b>\$ 16,215</b>	<b>\$ 16,204</b>	<b>\$ 11</b>	<b>0%</b>	<b>\$ 182,674</b>	<b>\$ 175,247</b>	<b>\$ 7,427</b>	<b>4%</b>
<b>ELECTRIC OPERATING EXPENSES</b>								
Purchased Power & Other Power Supply	\$ 9,843	\$ 11,375	\$ (1,532)	-13%	\$ 123,981	\$ 125,879	\$ (1,898)	-2%
Transmission & Distribution	650	704	(54)	-8%	5,648	8,437	(2,789)	-33%
Customer Service	(3)	35	(38)	*	242	387	(145)	-37%
Administrative & General	33	21	12	57%	251	195	56	29%
Depreciation & Amortization	1,222	1,215	7	1%	12,231	13,366	(1,135)	-8%
Support Services Allocated Operating Expenses	1,040	922	118	13%	9,229	10,550	(1,321)	-13%
<b>TOTAL ELECTRIC OPERATING EXPENSE</b>	<b>\$ 12,785</b>	<b>\$ 14,273</b>	<b>\$ (1,488)</b>	<b>-10%</b>	<b>\$ 151,583</b>	<b>\$ 158,814</b>	<b>\$ (7,231)</b>	<b>-5%</b>
<b>ELECTRIC NET OPERATING INCOME</b>	<b>\$ 3,430</b>	<b>\$ 1,931</b>	<b>\$ 1,499</b>	<b>78%</b>	<b>\$ 31,091</b>	<b>\$ 16,433</b>	<b>\$ 14,658</b>	<b>89%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 380	\$ 183	\$ 197	*	\$ 4,178	\$ 2,015	\$ 2,163	*
Intergovernmental Expense	(1,505)	(799)	(706)	88%	(8,264)	(8,793)	529	-6%
Interest and Amortization Expense	(551)	(246)	(305)	*	(4,726)	(2,711)	(2,015)	74%
Other	94	90	4	4%	1,392	992	400	40%
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (1,581)</b>	<b>\$ (772)</b>	<b>\$ (809)</b>	<b>*</b>	<b>\$ (7,420)</b>	<b>\$ (8,496)</b>	<b>\$ 1,076</b>	<b>13%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 1,849</b>	<b>\$ 1,159</b>	<b>\$ 690</b>	<b>60%</b>	<b>\$ 23,671</b>	<b>\$ 7,937</b>	<b>\$ 15,734</b>	<b>*</b>
<b>ELECTRIC CAPITAL CONTRIBUTIONS</b>								
Services	\$ 48	\$ 216	\$ (168)	-78%	\$ 2,557	\$ 2,373	\$ 184	8%
<b>TOTAL ELECTRIC CAPITAL CONTRIBUTIONS</b>	<b>\$ 48</b>	<b>\$ 216</b>	<b>\$ (168)</b>	<b>-78%</b>	<b>\$ 2,557</b>	<b>\$ 2,373</b>	<b>\$ 184</b>	<b>8%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 1,897</b>	<b>\$ 1,375</b>	<b>\$ 522</b>	<b>38%</b>	<b>\$ 26,228</b>	<b>\$ 10,310</b>	<b>\$ 15,918</b>	<b>*</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
WATER LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending June 30, 2024  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>WATER OPERATING REVENUES</b>								
<b>WATER SERVICE REVENUE</b>								
Water Service	\$ 3,765	\$ 3,847	\$ (82)	-2%	\$ 36,519	\$ 38,999	\$ (2,480)	-6%
<b>TOTAL WATER SERVICE REVENUE</b>	<b>\$ 3,765</b>	<b>\$ 3,847</b>	<b>\$ (82)</b>	<b>-2%</b>	<b>\$ 36,519</b>	<b>\$ 38,999</b>	<b>\$ (2,480)</b>	<b>-6%</b>
<b>OTHER WATER OPERATING REVENUE</b>								
Water Other	\$ 61	\$ 42	\$ 19	45%	\$ 716	\$ 458	\$ 258	56%
Water Tower Antenna Lease	20	15	5	33%	231	160	71	44%
<b>TOTAL OTHER WATER OPERATING REVENUE</b>	<b>\$ 81</b>	<b>\$ 56</b>	<b>\$ 25</b>	<b>45%</b>	<b>\$ 946</b>	<b>\$ 618</b>	<b>\$ 328</b>	<b>53%</b>
<b>TOTAL WATER OPERATING REVENUE</b>	<b>\$ 3,846</b>	<b>\$ 3,903</b>	<b>\$ (57)</b>	<b>-1%</b>	<b>\$ 37,465</b>	<b>\$ 39,617</b>	<b>\$ (2,152)</b>	<b>-5%</b>
<b>WATER OPERATING EXPENSES</b>								
Purchased Water	\$ 997	\$ 1,032	\$ (35)	-3%	\$ 11,047	\$ 11,353	\$ (306)	-3%
Supply Source	5	9	(4)	-44%	83	104	(21)	-20%
Transmission & Distribution	309	287	22	8%	2,500	3,415	(915)	-27%
Pumping	206	235	(29)	-12%	2,107	2,643	(536)	-20%
Water Treatment	230	238	(8)	-3%	2,037	2,498	(461)	-18%
Customer Service	(1)	9	(10)	*	70	94	(24)	-26%
Administrative & General	40	44	(4)	-9%	441	575	(134)	-23%
Depreciation & Amortization	956	1,032	(76)	-7%	10,271	11,352	(1,081)	-10%
Support Services Allocated Operating Expenses	1,109	963	146	15%	9,866	11,172	(1,306)	-12%
<b>TOTAL WATER OPERATING EXPENSE</b>	<b>\$ 3,851</b>	<b>\$ 3,849</b>	<b>\$ 2</b>	<b>0%</b>	<b>\$ 38,423</b>	<b>\$ 43,206</b>	<b>\$ (4,783)</b>	<b>-11%</b>
<b>WATER NET OPERATING INCOME</b>	<b>\$ (5)</b>	<b>\$ 54</b>	<b>\$ (59)</b>	<b>*</b>	<b>\$ (958)</b>	<b>\$ (3,589)</b>	<b>\$ 2,631</b>	<b>-73%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 197	\$ 120	\$ 77	64%	\$ 2,308	\$ 1,322	\$ 986	75%
Intergovernmental Expense	(186)	(90)	(96)	*	(1,024)	(990)	(34)	3%
Interest and Amortization Expense	(473)	(578)	105	-18%	(6,232)	(6,353)	121	-2%
Other	61	73	(12)	-16%	1,948	808	1,140	*
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (401)</b>	<b>\$ (474)</b>	<b>\$ 73</b>	<b>-15%</b>	<b>\$ (3,000)</b>	<b>\$ (5,213)</b>	<b>\$ 2,213</b>	<b>-42%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ (406)</b>	<b>\$ (420)</b>	<b>\$ 14</b>	<b>-3%</b>	<b>\$ (3,958)</b>	<b>\$ (8,802)</b>	<b>\$ 4,844</b>	<b>-55%</b>
<b>WATER CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 917	\$ 1,016	\$ (99)	-10%	\$ 16,305	\$ 11,178	\$ 5,127	46%
Services	138	51	87	*	1,467	557	910	*
<b>TOTAL WATER CAPITAL CONTRIBUTIONS</b>	<b>\$ 1,055</b>	<b>\$ 1,067</b>	<b>\$ (12)</b>	<b>-1%</b>	<b>\$ 17,772</b>	<b>\$ 11,735</b>	<b>\$ 6,037</b>	<b>51%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 649</b>	<b>\$ 647</b>	<b>\$ 2</b>	<b>0%</b>	<b>\$ 13,814</b>	<b>\$ 2,934</b>	<b>\$ 10,880</b>	<b>*</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
WASTEWATER LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending June 30, 2024  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>WASTEWATER OPERATING REVENUES</b>								
<b>WASTEWATER SERVICE REVENUE</b>								
Wastewater Service	\$ 3,106	\$ 3,445	\$ (339)	-10%	\$ 32,231	\$ 35,921	\$ (3,690)	-10%
<b>TOTAL WASTEWATER SERVICE REVENUE</b>	<b>\$ 3,106</b>	<b>\$ 3,445</b>	<b>\$ (339)</b>	<b>-10%</b>	<b>\$ 32,231</b>	<b>\$ 35,921</b>	<b>\$ (3,690)</b>	<b>-10%</b>
<b>OTHER WASTEWATER OPERATING REVENUE</b>								
Wastewater Other	\$ 29	\$ 18	\$ 11	61%	\$ 310	\$ 193	\$ 117	61%
<b>TOTAL OTHER WASTEWATER OPERATING REVENUE</b>	<b>\$ 29</b>	<b>\$ 18</b>	<b>\$ 11</b>	<b>61%</b>	<b>\$ 310</b>	<b>\$ 193</b>	<b>\$ 117</b>	<b>61%</b>
<b>TOTAL WASTEWATER OPERATING REVENUE</b>	<b>\$ 3,135</b>	<b>\$ 3,462</b>	<b>\$ (327)</b>	<b>-9%</b>	<b>\$ 32,541</b>	<b>\$ 36,113</b>	<b>\$ (3,572)</b>	<b>-10%</b>
<b>WASTEWATER OPERATING EXPENSES</b>								
Transmission & Distribution	\$ 1	\$ -	\$ 1	100%	\$ 3	\$ -	\$ 3	100%
Wastewater Operations & Maintenance	798	660	138	21%	6,958	7,620	(662)	-9%
Customer Service	(1)	9	(10)	*	89	99	(10)	-10%
Administrative & General	12	29	(17)	-59%	239	346	(107)	-31%
Depreciation & Amortization	1,180	1,306	(126)	-10%	12,774	14,370	(1,596)	-11%
Support Services Allocated Operating Expenses	759	665	94	14%	6,812	7,610	(798)	-10%
<b>TOTAL WASTEWATER OPERATING EXPENSE</b>	<b>\$ 2,750</b>	<b>\$ 2,670</b>	<b>\$ 80</b>	<b>3%</b>	<b>\$ 26,876</b>	<b>\$ 30,045</b>	<b>\$ (3,169)</b>	<b>-11%</b>
<b>WASTEWATER NET OPERATING INCOME</b>	<b>\$ 385</b>	<b>\$ 792</b>	<b>\$ (407)</b>	<b>-51%</b>	<b>\$ 5,665</b>	<b>\$ 6,068</b>	<b>\$ (403)</b>	<b>-7%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 209	\$ 128	\$ 81	63%	\$ 2,452	\$ 1,404	\$ 1,048	75%
Intergovernmental Expense	(198)	(100)	(98)	98%	(1,091)	(1,095)	4	0%
Interest and Amortization Expense	(360)	(552)	192	-35%	(5,199)	(6,074)	875	-14%
Other	5	14	(9)	-64%	1,071	154	917	*
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (344)</b>	<b>\$ (510)</b>	<b>\$ 166</b>	<b>-33%</b>	<b>\$ (2,767)</b>	<b>\$ (5,611)</b>	<b>\$ 2,844</b>	<b>-51%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 41</b>	<b>\$ 282</b>	<b>\$ (241)</b>	<b>-85%</b>	<b>\$ 2,898</b>	<b>\$ 457</b>	<b>\$ 2,441</b>	<b>*</b>
<b>WASTEWATER CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 461	\$ 383	\$ 78	20%	\$ 7,785	\$ 4,214	\$ 3,571	85%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	729	(729)	-100%
<b>TOTAL WASTEWATER CAPITAL CONTRIBUTIONS</b>	<b>\$ 461</b>	<b>\$ 449</b>	<b>\$ 12</b>	<b>3%</b>	<b>\$ 7,785</b>	<b>\$ 4,943</b>	<b>\$ 2,842</b>	<b>57%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 502</b>	<b>\$ 731</b>	<b>\$ (229)</b>	<b>-31%</b>	<b>\$ 10,683</b>	<b>\$ 5,400</b>	<b>\$ 5,283</b>	<b>98%</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
Statement of Cash Flows  
For the Period Ending June 30, 2024  
Amounts Shown in Thousands

	MTD	YTD
<b>NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 1,483</b>	<b>\$ 22,611</b>
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 3,358	\$ 35,276
Decrease (increase) in accounts receivable	(6,246)	6,602
Decrease (increase) in inventories	158	(2,268)
Decrease (increase) in other assets	2,183	32,568
Increase (decrease) in current liabilities	(3,318)	(49,078)
Increase (decrease) in other liabilities	5,354	683
<b>Net Cash Flow from Operating Activities</b>	<b>\$ 2,972</b>	<b>\$ 46,393</b>
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (15,544)	\$ (153,587)
Investments	6,919	(13,777)
Rents/Interest Receivable	132	351
<b>Net Cash Flow from Investing Activities</b>	<b>\$ (8,493)</b>	<b>\$ (167,014)</b>
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (2,327)	\$ (13,187)
Increase (decrease) in long-term debt	(8,346)	95,655
<b>Net Cash Flow from Financing Activities</b>	<b>\$ (10,673)</b>	<b>\$ 82,468</b>
<b>Net Increase (Decrease) in Cash and Cash Equivalents</b>	<b>\$ (16,194)</b>	<b>\$ (38,152)</b>



**CAPITAL EQUIPMENT SUMMARY - FY 2024**  
**YTD for the Period Ending June 30, 2024**



Department	Capital Equipment Description	YTD Actual	FY 2024 Budget	Budget Remaining
<b>ELECTRIC</b>				
117	SEA Air Excavation Unit	-	650,000	650,000
117	Altec Pressure Digger	429,317	400,000	(29,317)
117	Altec AM 60E	-	300,000	300,000
117	Altec 55' Articulating Boom	-	300,000	300,000
117	Altec AM 60E	21,910	185,000	163,090
117	Arc Demo Trailer	-	120,000	120,000
117	Ford F-550	111,982	111,982	-
117	Ford F-550	-	111,982	111,982
117	Ford F-550	-	111,982	111,982
117	Ford F-550	-	111,982	111,982
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Locator Unit	-	45,000	45,000
117	Dump Trailer	12,733	15,000	2,267
119	Ford F-550 w/Crane	-	150,437	150,437
119	Ford F-550 Electric	-	61,393	61,393
<b>TOTAL ELECTRIC</b>		<b>\$ 575,942</b>	<b>\$ 2,894,758</b>	<b>\$ 2,318,816</b>
<b>WATER</b>				
216	Ford F-150	26,995	55,000	28,005
220	Ford F-550 w/Crane	151,567	150,437	(1,130)
220	Ford F-150	54,845	55,000	155
<b>TOTAL WATER</b>		<b>\$ 233,407</b>	<b>\$ 260,437</b>	<b>\$ 27,030</b>
<b>WASTEWATER</b>				
320	Ford F-550 w/Crane	-	150,437	150,437
320	Ford F-150	54,845	55,000	155
320	Small Utility Unit	10,580	15,000	4,420
<b>TOTAL WASTEWATER</b>		<b>\$ 65,425</b>	<b>\$ 220,437</b>	<b>\$ 155,012</b>
<b>SHARED WATER/WASTEWATER</b>				
217/317	CAT 313 Excavator	214,865	250,000	35,135
217/317	Ford F-550	388,120	244,534	(143,586)
217/317	International Dump Truck	-	230,000	230,000
217/317	International M37	165,749	175,000	9,251
217/317	SEA Truck Mounted Jetter	192,947	150,000	(42,947)
217/317	CAT Backhoe w/Ext	158,995	125,000	(33,995)
217/317	Ford F-550	123,417	122,267	(1,150)
217/317	Ford F-550	-	122,267	122,267
217/317	Ford F-550	-	122,267	122,267
217/317	International Dump Truck	-	115,000	115,000
217/317	CAT Backhoe	137,855	115,000	(22,855)
217/317	CAT Backhoe	137,855	115,000	(22,855)
217/317	CAT Backhoe	158,995	115,000	(43,995)
217/317	E.H. Wachs Large VE	83,732	86,000	2,268
217/317	E.H. Wachs Large VE	83,732	86,000	2,268
217/317	1500' of Bypass Hose	72,898	85,000	12,102
217/317	CAT Skid Steer	57,985	65,000	7,015
217/317	Ford F-150	54,845	55,000	155
217/317	Scorpion Towable Attenuator	37,232	35,000	(2,232)
217/317	Towable Air Compressor	23,444	25,000	1,556
217/317	Tools for F-550	-	15,000	15,000
217/317	DTS Trailer	6,637	10,000	3,363
<b>TOTAL SHARED WATER/WASTEWATER</b>		<b>\$ 2,099,303</b>	<b>\$ 2,463,335</b>	<b>\$ 364,032</b>
<b>BUSINESS PLANNING</b>				
425	Ford Escape	-	30,000	30,000
425	GPS Unit	-	30,000	30,000
<b>TOTAL BUSINESS PLANNING</b>		<b>\$ -</b>	<b>\$ 60,000</b>	<b>\$ 60,000</b>
<b>SAFETY</b>				
524	Ford Explorer	54,845	38,000	(16,845)
<b>TOTAL SAFETY</b>		<b>\$ 54,845</b>	<b>\$ 38,000</b>	<b>\$ (16,845)</b>
<b>PURCHASING</b>				
527	Ford F-350	-	75,500	75,500
<b>TOTAL PURCHASING</b>		<b>\$ -</b>	<b>\$ 75,500</b>	<b>\$ 75,500</b>

FLEET/FACILITIES				
528	Ford F-550 Fleet Service	-	185,000	185,000
528	Ford F-350	-	85,576	85,576
528	Ford F-150	54,845	55,000	155
528	Ford F-150	54,845	55,000	155
528	Ford F-150	54,845	55,000	155
528	Ford F-150	42,935	55,000	12,065
528	Ford F-150	-	55,000	55,000
528	Ford Escape	-	30,000	30,000
528	Lawn Mowing Equipment	-	25,000	25,000
528	Other	-	25,000	25,000
528	Pressure washing trailer	-	16,000	16,000
528	Janitorial Equipment	-	15,000	15,000
<b>TOTAL FLEET/FACILITIES</b>		<b>\$ 207,470</b>	<b>\$ 656,576</b>	<b>\$ 449,106</b>

CONSERVATION AND CUSTOMER SOLUTIONS				
529	Ford Escape Plug-in Hybrid	26,995	40,000	13,005
529	Ford Escape Plug-in Hybrid	26,995	40,000	13,005
<b>TOTAL CONSERVATION AND CUSTOMER SOLUTIONS</b>		<b>\$ 53,990</b>	<b>\$ 80,000</b>	<b>\$ 26,010</b>

TECHNOLOGY				
531	Server Replacements	646,595	600,000	(46,595)
531	PC Replacements	359,212	400,000	40,788
531	Dell Nodes	-	400,000	400,000
531	Network Equipment Replacements	95,650	200,000	104,350
531	IT to Purchase Unit	-	50,000	50,000
531	Copier and High-end Printer & Plotter Replacements	-	37,500	37,500
531	UPS Replacements	-	10,000	10,000
<b>TOTAL TECHNOLOGY</b>		<b>\$ 1,101,457</b>	<b>\$ 1,697,500</b>	<b>\$ 596,043</b>

SYSTEM CONTROL				
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	27,995	30,000	2,005
532	Ford Escape	27,955	30,000	2,045
<b>TOTAL SYSTEMS CONTROL</b>		<b>\$ 163,930</b>	<b>\$ 180,000</b>	<b>\$ 16,070</b>

<b>TOTAL CAPITAL EQUIPMENT</b>	<b>\$ 4,555,768</b>	<b>\$ 8,626,543</b>	<b>\$ 4,070,775</b>
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**BUDGETED PRIOR YEAR ITEMS:**

ELECTRIC				
117	Magnum Pintle Trailer (FY23)	50,813	-	(50,813)
<b>TOTAL ELECTRIC</b>		<b>\$ 50,813</b>	<b>\$ -</b>	<b>\$ (50,813)</b>

WATER				
220	2023 Aluminum Dump Trailer (FY22)	21,080	-	(21,080)
220	2023 Ford F150 4X4 Super crew (FY22)	54,845	-	(54,845)
220	2023 Ford F150 4X4 Super crew (FY22)	54,845	-	(54,845)
220	2023 Ford Explorer (FY23)	38,994	-	(38,994)
220	E.H. Wachs Large VE (FY22)	83,732	-	(83,732)
<b>TOTAL WATER</b>		<b>\$ 253,496</b>	<b>\$ -</b>	<b>\$ (169,764)</b>

SHARED WATER/WASTEWATER				
217/317	2022 CUES Sewer Truck CCTV (FY22)	330,894	-	(330,894)
217/317	2023 Ford F150 4X4 Supercrew (FY22)	54,845	-	(54,845)
217/317	2024 Ford Explorer	42,935	-	(42,935)
217/317	2024 Holt Caterpillar	158,995	-	(158,995)
<b>TOTAL SHARED WATER/WASTEWATER</b>		<b>\$ 587,669</b>	<b>\$ -</b>	<b>\$ (587,669)</b>

<b>TOTAL BUDGETED PRIOR YEAR CAPITAL EQUIPMENT</b>	<b>\$ 891,978</b>	<b>\$ -</b>	<b>\$ (808,246)</b>
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**UNBUDGETED ITEMS:**

PURCHASING				
527	2024 Kawasaki Timberlin	9,853	-	(9,853)
<b>TOTAL PURCHASING</b>		<b>\$ 9,853</b>	<b>\$ -</b>	<b>\$ (9,853)</b>

FLEET/FACILITIES				
528	2023 Ford Explorer	38,994	-	(38,994)
528	2023 Ford Explorer	38,994	-	(38,994)
<b>TOTAL FLEET/FACILITIES</b>		<b>\$ 77,988</b>	<b>\$ -</b>	<b>\$ (77,988)</b>

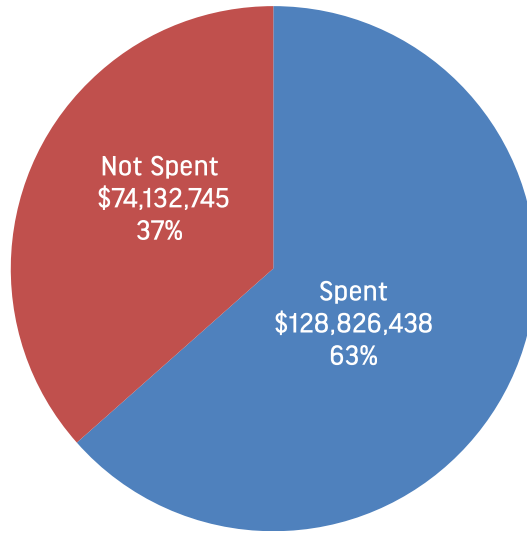
<b>TOTAL UNBUDGETED CAPITAL EQUIPMENT</b>	<b>\$ 87,841</b>	<b>\$ -</b>	<b>\$ (87,841)</b>
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<b>TOTAL</b>	<b>\$ 5,535,586</b>	<b>\$ 8,626,543</b>	<b>\$ 3,174,688</b>
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## FY 2024 Capital Expenditure Summary As of Jun 30, 2024

92% of Year Completed

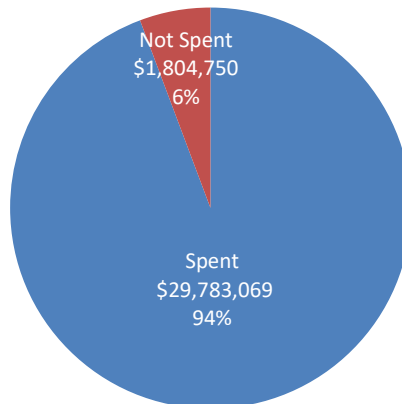
	<u>Spent</u>		<u>Not Spent</u>		<u>Total Budget</u>	<u>% of Total Budget</u> <u>Spent</u>
Electric	\$ 29,783,069	\$	1,804,750	\$	31,587,819	94%
Water	54,554,810		17,430,346		71,985,156	76%
Wastewater	23,903,136		28,427,419		52,330,555	46%
Support Services	20,585,423		26,470,230		47,055,653	44%
<b>TOTAL</b>	<b>\$ 128,826,438</b>	<b>\$</b>	<b>74,132,745</b>	<b>\$</b>	<b>202,959,183</b>	
	<i>63%</i>		<i>37%</i>		<i>100%</i>	



**Electric Line of Business  
FY 2024 Capital Expenditure Summary  
As of Jun 30, 2024**

92% of Year Completed

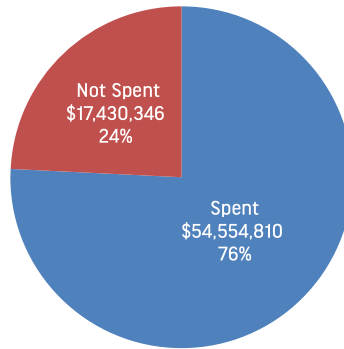
Project	<sup>1</sup> Total Spent YTD	<sup>2</sup> FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	<sup>(1)/(2)</sup> % Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
System Extensions	\$ 7,940,406	\$ 5,582,835	\$ (2,357,571)	\$ 5,582,835	142%	92%
Distribution Transformers	9,944,142	5,642,698	(4,301,444)	5,642,698	176%	92%
Electric Meters	2,304,847	3,514,000	1,209,153	3,514,000	66%	92%
Electric Aging Infrastructure	1,583,038	2,967,536	1,384,498	2,967,536	53%	92%
Electric Technology Upgrades	64,119	149,106	84,987	149,106	43%	30%
Three-Phase Extensions	1,227,672	1,806,177	578,505	9,313,421	68%	100%
Fiber Optic Extensions	18,916	102,624	83,708	1,101,889	18%	5%
Hueco Springs Substation	1,548,943	7,301,106	5,752,163	9,939,535	21%	44%
Electric Aging Infrastructure, Substation	248,164	115,672	(132,492)	4,666,606	215%	100%
Freiheit Breaker Additons & Control House	144,015	2,371,748	2,227,733	2,445,650	6%	15%
EC23 FM 482 Feeder	148,215	712,665	564,450	812,622	21%	50%
HE11 Conrads Rd Feeder	414,593	114,026	(300,567)	1,966,183	364%	50%
Transmission Access & Wildlife Protection	247,677	175,117	(72,560)	953,166	141%	100%
Comal T3 Replacement & Feeder C033	180,142	377,427	197,285	3,644,220	48%	52%
Distribution Feeder Breaker Addition & Replacements	-	159,067	159,067	3,113,453	0%	10%
FR24 Kowald Ln. Feeder	55,985	91,221	35,236	880,778	61%	10%
Henne Substation Breaker & Half	53,727	171,040	117,313	2,419,085	31%	27%
CONB Road Widening Adjustments	116,373	233,754	117,381	2,256,995	50%	40%
<b>Total Budgeted Projects</b>	<b>\$ 26,240,976</b>	<b>\$ 31,587,819</b>	<b>\$ 5,346,843</b>	<b>\$ 61,369,778</b>	<b>83%</b>	
<b>Unbudgeted Projects:</b>						
Sheriff's Posse T3 Addition	\$ 20,904	\$ -	\$ (20,904)	\$ 7,622,556	0%	99%
E.C. Mornhinweg T2 & Feeders	733,590	-	(733,590)	4,093,931	0%	90%
Residential OH to UG Conversion	459,019	-	(459,019)	3,776,463	0%	97%
Weltner Rd Feeder 13, Clear Springs	23,543	-	(23,543)	965,027	0%	100%
L023 Loop 337 FM 1863 Extension Phase 2	15,396	-	(15,396)	1,224,681	0%	100%
C014 Kentucky Rd Feeder	1,349,750	-	(1,349,750)	601,370	0%	75%
HE23 IH-35 Stolte Feeder	790,905	-	(790,905)	1,564,074	0%	45%
Freiheit Feeder 11, Alves Ln	41,874	-	(41,874)	1,951,344	0%	100%
Kohlenberg Rd Substation	102,106	-	(102,106)	44,780	0%	29%
Industrial Substation PWT Replacement (TXI T1)	5,005	-	(5,005)	1,155,967	0%	100%
<b>Total Unbudgeted Projects</b>	<b>\$ 3,542,093</b>	<b>\$ -</b>	<b>\$ (3,542,093)</b>	<b>\$ 23,000,192</b>		
<b>TOTAL</b>	<b>\$ 29,783,069</b>	<b>\$ 31,587,819</b>	<b>\$ 1,804,750</b>	<b>\$ 84,369,970</b>	<b>94%</b>	



**Water Line of Business  
FY 2024 Capital Expenditure Summary  
As of Jun 30, 2024**

92% of Year Completed

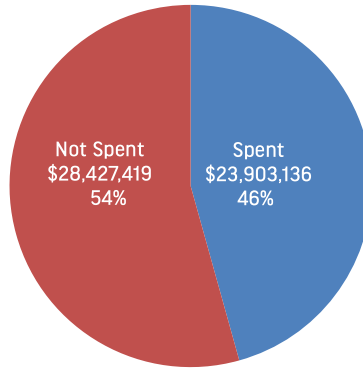
Project	<sup>1</sup> Total Spent YTD	<sup>2</sup> FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	<sup>(1)/(2)</sup> % Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
System Extensions	\$ 1,386,904	\$ 375,703	\$ (1,011,201)	\$ 375,703	369%	78%
Water Meters	2,880,476	1,844,670	(1,035,806)	1,844,670	156%	54%
Water Technology Upgrades	-	140,116	140,116	140,116	0%	100%
Aging System Replacements	1,837,307	2,092,123	254,817	2,092,123	88%	21%
ASR Feasibility Dev (IF)	123,512	2,069,462	1,945,950	38,120,155	6%	41%
Wood Meadows Water Line River Crossing	478,977	216,373	(262,604)	3,052,319	221%	28%
I-35 Water Line (Downtown)	9,670,746	7,963,912	(1,706,834)	11,468,136	121%	86%
1.00MG Solms Ground Storage Tank and Flow Control Valve	278	235,473	235,195	4,337,137	0%	1%
Western Downtown to Morningside PZ Conversion	110,564	308,393	197,829	8,525,525	36%	21%
FM 306 Pump Station & Discharge Pipeline	2,554,988	1,885,704	(669,284)	10,821,940	135%	75%
Conrads EST	4,879,118	5,488,218	609,100	6,852,776	89%	42%
Goodwin Lane Water Main	6,167,803	6,884,157	716,354	12,624,155	90%	93%
Klein Rd Reconstruction Phase 2	465,071	1,126,496	661,425	1,404,382	41%	92%
Landa Pump Station Phase 2/Well 5	4,768,061	6,242,981	1,474,920	15,931,146	76%	93%
Trinity Expansion- Treatment Plant	12,235,196	17,173,917	4,938,721	27,357,602	71%	75%
Trinity Expansion- Well Field	2,996,440	7,057,207	4,060,767	10,222,796	42%	45%
FM 1044 EST	249,922	1,373,451	1,123,529	13,187,743	18%	4%
GBRA Interconnect Metering Station	1,357,211	701,780	(655,431)	996,909	193%	93%
Garden Street Bridge Water Line	401,298	390,851	(10,447)	587,926	103%	100%
Goodwin/Conrads Water Adjustments	1,209	403,683	402,474	434,276	0%	4%
Misison/Westpointe Connection Waterlines	219,220	5,539,877	5,320,657	6,495,952	4%	11%
Senate Bill 3 EPP Generators	229,546	1,301,224	1,071,678	1,328,362	18%	8%
Tank Decommission	709,759	865,803	156,044	954,937	82%	100%
Water Tank Rehabilitations	383,714	303,582	(80,132)	303,582	126%	10%
<b>Total Budgeted Projects</b>	<b>\$ 54,107,320</b>	<b>\$ 71,985,156</b>	<b>\$ 17,877,836</b>	<b>\$ 179,460,368</b>	<b>75%</b>	
<b>Unbudgeted Projects:</b>						
Infrastructure Replacement Package 1-W	\$ 234	\$ -	\$ (234)	\$ 5,451		100%
30/24-inch SWTP Discharge Line (Downtown)	17,449	-	(17,449)	21,587,112		100%
Well 4 to Grandview Pump Station & Discharge Line Upgrades	193,402	-	(193,402)	9,460,061		100%
Weltner Rd Ground Strg Tank & Pump Station-Ph 1	160,313	-	(160,313)	24,173,897		100%
24-inch McQueeney Road Parallel Water Line (Downtown)	76,093	-	(76,093)	9,659,699		
<b>Total Unbudgeted Projects</b>	<b>\$ 447,490</b>	<b>\$ -</b>	<b>\$ (447,490)</b>	<b>\$ 64,886,220</b>		
<b>TOTAL</b>	<b>\$ 54,554,810</b>	<b>\$ 71,985,156</b>	<b>\$ 17,430,346</b>	<b>\$ 244,346,587</b>	<b>76%</b>	



**Wastewater Line of Business  
FY 2024 Capital Expenditure Summary  
As of Jun 30, 2024**

92% of Year Completed

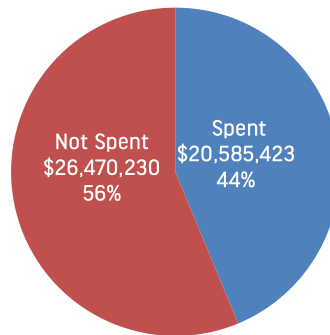
Project	<sup>1</sup> Total Spent YTD	<sup>2</sup> FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	<sup>(0)(2)</sup> % Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
System Extensions	\$ 675,149	\$ 249,038	\$ (426,111)	\$ 249,038	271%	70%
Aging System Replacements	1,057,019	2,046,224	989,205	2,046,224	52%	13%
Wastewater Technology Upgrades	-	145,563	145,563	145,563	0%	1%
Manhole Rehabilitation	230,005	789,673	559,668	789,673	29%	41%
South Kuehler Interceptor Phase 1	233,199	480,284	247,085	5,426,066	49%	19%
Gruene Rd Sewer Main Rehabilitation/Relocation	8,938	107,441	98,503	2,896,802	8%	6%
McKenzie WRF Expansion	18,713,503	20,026,694	1,313,191	72,312,120	93%	29%
Solms Lift Station Expansion	820,860	1,076,397	255,537	1,705,332	76%	55%
I-35 Interceptor Upgrade	329,000	4,090,487	3,761,487	14,155,678	8%	8%
Kuehler WRF Access Road-Courtyard Dr	131,757	3,265,043	3,133,286	3,739,824	4%	17%
McKenzie Interceptor Upgrade	899,113	2,291,295	1,392,182	50,706,156	39%	4%
Kuehler WRF Rehabilitation	50,420	12,890,556	12,840,136	44,788,333	0%	3%
Sewer Infrastructure Replacement Package 2	411,088	739,180	328,092	4,957,511	56%	13%
Saengerhalle North Interceptor	73,187	215,817	142,630	5,888,532	34%	14%
Goodwin/Conrads Adjustments (CNB)-WW	27,600	406,908	379,308	1,114,676	7%	6%
Gruene WRF Spoils & Materials Yard	80,163	447,632	367,469	1,061,999	18%	100%
North Kuehler Manhole Rehabilitation-Segment 3	-	494,109	494,109	1,016,271	0%	100%
Kuehler WRF Rehabilitation-Clarifier Replacement	234,576	2,568,214	2,333,638	2,758,806	9%	10%
<b>Total Budgeted Projects</b>	<b>\$ 23,975,578</b>	<b>\$ 52,330,555</b>	<b>\$ 28,354,977</b>	<b>\$ 215,758,603</b>	<b>46%</b>	
<b>Unbudgeted Projects:</b>						
North Kuehler 42" Interceptor Upgrade	\$ 2,217	\$ -	\$ (2,217)	\$ 15,524,017		100%
North Kuehler 30 and 33-inch Interceptor Upgrade	40	-	(40)	26,748,112		100%
Gruene Rd Sewer Main Odor Control	80,989	-	(80,989)	239,659		18%
Infrastructure Replacement Package 1-WW	9,617	-	(9,617)	123,819		20%
Rio Lift Station Expansion	55,136	-	(55,136)	3,576,417		100%
Schmidt I-35 N Sewer Main Replacement	(236,923)	-	236,923	376,069		97%
Saengerhalle Lift Station Expansion & Force Main	16,481	-	(16,481)	4,892,290		100%
<b>Total Unbudgeted Projects</b>	<b>\$ (72,442)</b>	<b>\$ -</b>	<b>\$ 72,442</b>	<b>\$ 51,480,383</b>		
<b>TOTAL</b>	<b>\$ 23,903,136</b>	<b>\$ 52,330,555</b>	<b>\$ 28,427,419</b>	<b>\$ 267,238,986</b>	<b>46%</b>	



**Support Services Line of Business  
FY 2024 Capital Expenditure Summary  
As of Jun 30, 2024**

92% of Year Completed

Project	<sup>1</sup> Total Spent YTD	<sup>2</sup> FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	<sup>(1)+(2)</sup> % Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
Headwaters at the Comal	\$ 4,854,805	\$ 4,500,000	\$ (354,805)	\$ 25,670,681	108%	60%
Cyber Security System	112,300	325,000	212,700	325,000	35%	15%
Software Replacement and Enhancements	-	130,000	130,000	130,000	0%	10%
NBU Headquarters, Maint & Support Facility	13,177,316	25,000,000	11,822,684	134,505,960	53%	10%
Laserfiche Development	-	300,000	300,000	570,867	0%	20%
Backup Operations Center	102,885	1,280,000	1,177,115	8,452,700	8%	20%
Upgrade or Replace all NBU Radios	-	200,000	200,000	200,000	0%	10%
Kerlick Tower Modifications	-	450,000	450,000	457,597	0%	20%
Data Strategy Upgrades - BDAP	789,292	1,185,653	396,361	1,185,653	67%	33%
System Technology Upgrades - Monitoring	126,154	400,000	273,846	400,000	32%	0%
Fiber Network Distribution Expansion	-	650,000	650,000	1,428,700	0%	10%
Fleet AVL	2,771	75,000	72,229	75,000	4%	0%
Data Strategy Upgrades - GIS Upgrades	-	200,000	200,000	1,900,000	0%	15%
Pioneer Upgrade	-	171,000	171,000	171,000	0%	5%
Smartsheet Control Center	-	73,000	73,000	73,000	0%	0%
Tele-Communications Enhancements	-	102,000	102,000	181,754	0%	40%
Water/Wastewater SCADA Aging Infrastructure	-	1,000,000	1,000,000	1,000,000	0%	0%
Water SCADA Replacement & Integration	346,008	2,000,000	1,653,992	3,413,098	17%	50%
OT Security	-	50,000	50,000	50,000	0%	0%
Customer Bill Pay Portal	40,542	160,000	119,458	230,044	25%	0%
ARCGIS Indoors	-	50,000	50,000	50,000	0%	0%
Loop 337 Substation Control House	-	42,000	42,000	42,000	0%	0%
Replace Control Center Console	196,525	100,000	(96,525)	100,000	197%	0%
Future Facilities Rehab Projects	15,600	150,000	134,400	1,229,990	10%	0%
Firewall and VPN Replacement	-	120,000	120,000	120,000	0%	0%
Gruene Rd Fence	21,250	32,000	10,750	32,000	66%	100%
CIS Functionality Upgrade	-	1,500,000	1,500,000	1,500,000	0%	0%
Ipads for Cityworks Mobile & mcare	6,500	125,000	118,500	125,000	5%	30%
Customer Service Kiosk	-	78,000	78,000	78,000	0%	0%
Level 2 EV Chargers	-	72,000	72,000	72,000	0%	0%
Meraki Wifi Replacement	77,304	125,000	47,696	125,000	62%	60%
RTU replacement 4.6,7 Main office	62,800	40,000	(22,800)	40,000	157%	100%
New Braunfels Police Department	517,962	3,585,000	3,067,038	3,645,000	14%	0%
RuggedCom Switch Replacement	-	200,000	200,000	600,000	0%	10%
Sheriff's Posse Control House Recondition	-	35,000	35,000	35,000	0%	0%
Solar Array and Battery Storage	-	50,000	50,000	50,000	0%	0%
Mass Meter Change Out	-	2,000,000	2,000,000	2,000,000	0%	0%
Water Meter Study	-	500,000	500,000	500,000	0%	0%
<b>Total Budgeted Projects</b>	<b>\$ 20,450,015</b>	<b>\$ 47,055,653</b>	<b>\$ 26,605,638</b>	<b>\$ 190,765,042</b>	<b>43%</b>	
<b>Unbudgeted Projects:</b>						
Physical Security Systems	\$ 135,409	\$ -	\$ (135,409)	\$ 135,409		90%
<b>Total</b>	<b>\$ 135,409</b>	<b>\$ -</b>	<b>\$ (135,409)</b>	<b>\$ 135,409</b>		
<b>Total</b>	<b>\$ 20,585,423</b>	<b>\$ 47,055,653</b>	<b>\$ 26,470,230</b>	<b>\$ 190,900,451</b>	<b>44%</b>	



Electric Statistics are provided separately due to competitive matters.

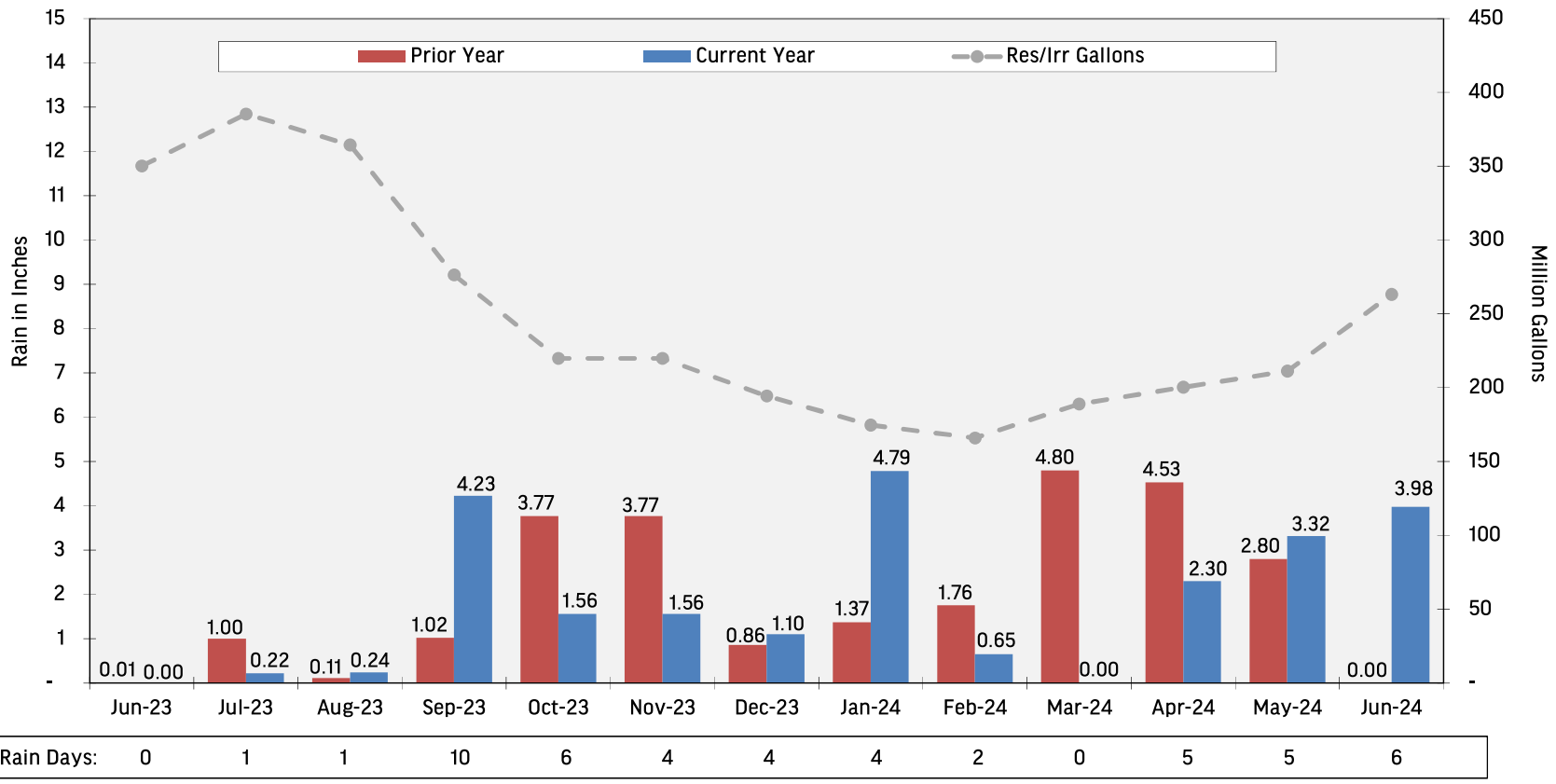


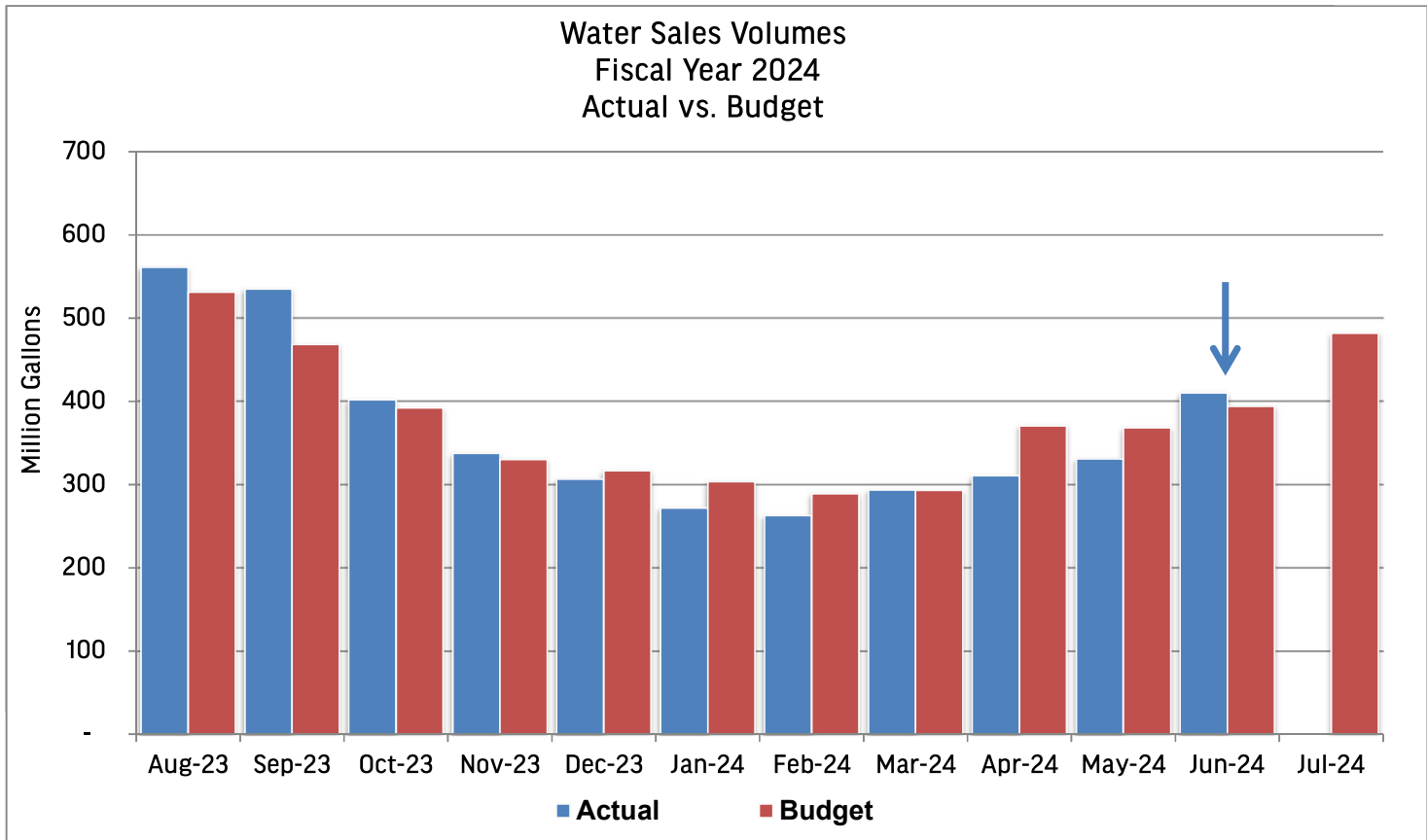
# WATER STATISTICS

**NEW BRAUNFELS UTILITIES  
WATER STATISTICS  
HIGHLIGHTS OVERVIEW**

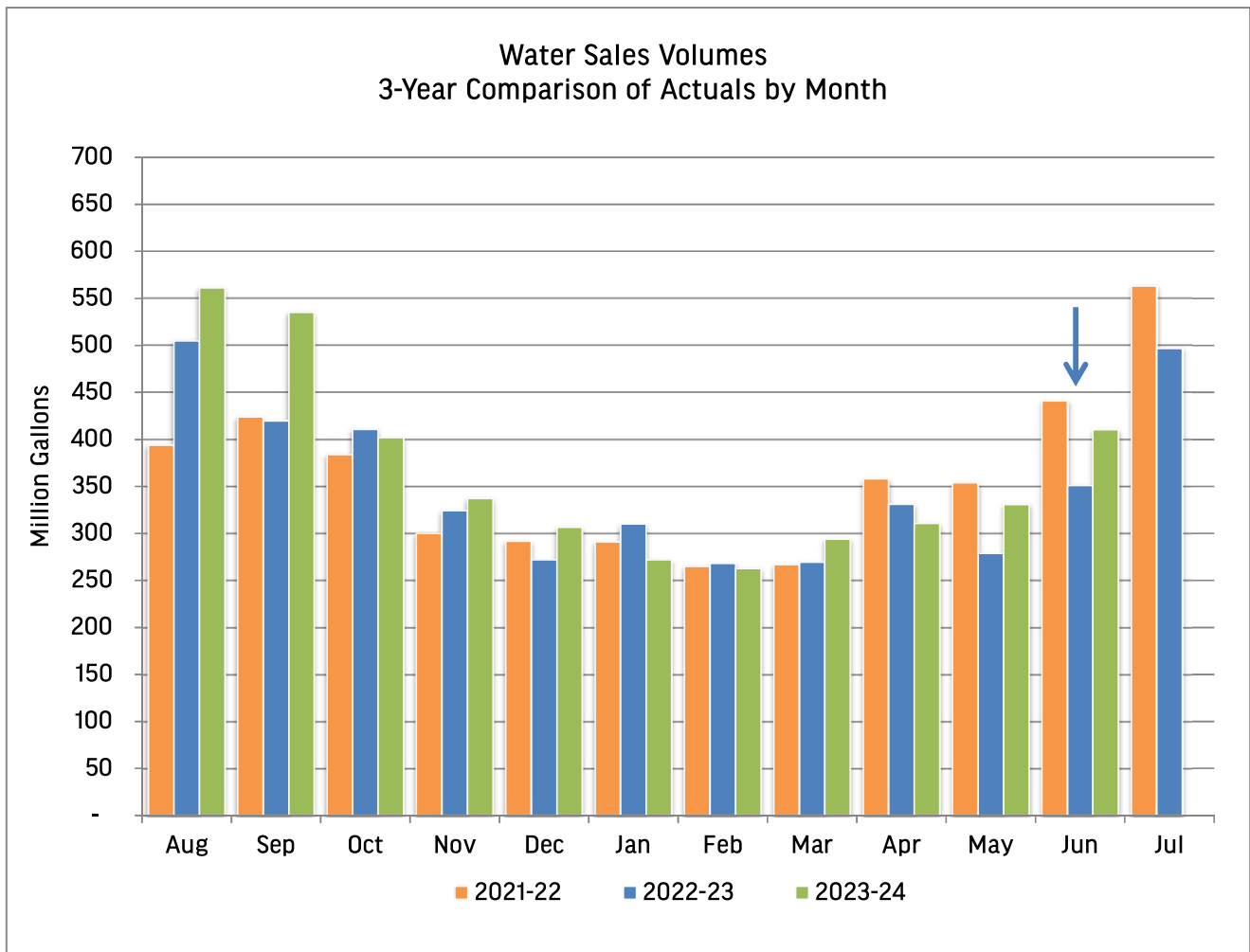
- June MTD rainfall was higher than the prior year rainfall, totaling 3.98 inches for the month. The June rainfall total of 3.98 inches was 0.48 inches higher than the historical average rainfall of 3.50 inches. For June 2024, there were six rain days during the month compared to zero rain days in June 2023.
- June YTD rainfall totaled 23.73 inches compared to the prior year total of 24.79 inches, which is a decrease of 1.06 inches compared to prior year YTD. For YTD, there have been 47 rain days compared to 46 rain days for prior year YTD.
- Average MTD consumption by residential water customer in June 2024 was 5,562 gallons compared to 5,023 gallons in June 2023, reflecting a 10.7% increase.
- Actual YTD consumption by residential water customer through June 2024 was 57,733 gallons compared to 56,558 for YTD through June 2023, reflecting an increase of 2.1%.
- Overall trend for fiscal year-to-date in total water sales volume is more than the sales volume over the same period for the previous year with the change being 282.2 million gallons, or 7.5% (4,022.3 million gallons for FY 2024 YTD vs. 3,740.1 million gallons for FY 2023 YTD).
- Actual total water sales volume for year-to-date FY 2024 is 4,022.3 million gallons, which is 35.1 million less than the budgeted amount of 4,057.4 million gallons for the same time period.
  - The following are major contributors, by rate classification, towards the 35.1 million gallons change from budget:
    - Residential – decrease of 65.2 million gallons (down 3.0% from budget)
    - Multi-Unit 5+ - increase of 24.0 million gallons (up 9.0% from budget)
    - Residential Irrigation – decrease of 74.7 million gallons (down 11.9% from budget)
    - Commercial Irrigation – increase of 20.5 million gallons (up 9.4% from budget)
    - Small General Services – increase of 86.0 million gallons (up 28.7% from budget)
    - Large General Services – decrease of 64.5 million gallons (down 14.9% from budget)
    - Other Sales – increase of 30.3 million gallons (up 81.1% from budget)
    - ReUse Water – increase of 8.1 million gallons (up 471.9% from budget)

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





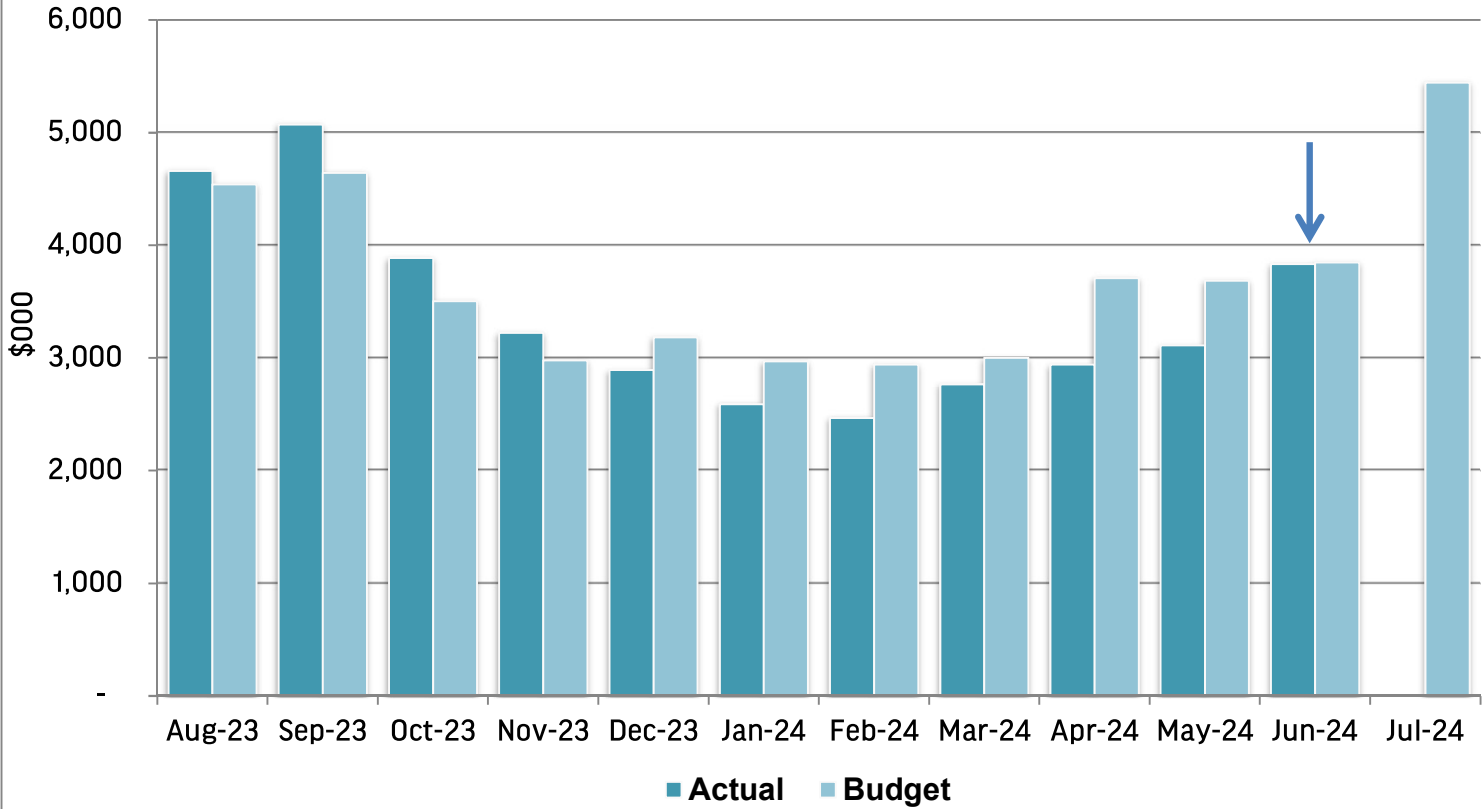
Month	Actual	Budget
Aug-23	561	531
Sep-23	535	468
Oct-23	402	392
Nov-23	337	330
Dec-23	306	317
Jan-24	272	304
Feb-24	263	289
Mar-24	294	293
Apr-24	311	371
May-24	331	368
Jun-24	410	394
Jul-24	-	482
<b>TOTAL</b>	<b>4,022</b>	<b>4,539</b>



Month	Water Sales Volumes (Million Gallons)		
	2021-22	2022-23	2023-24
Aug	394	505	561
Sep	424	420	535
Oct	384	411	402
Nov	300	324	337
Dec	292	272	306
Jan	291	310	272
Feb	265	268	263
Mar	267	269	294
Apr	358	331	311
May	354	279	331
Jun	441	351	410
Jul	563	497	-
<b>TOTAL</b>	<b>4,333</b>	<b>4,237</b>	<b>4,022</b>

Meter Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	34,582	2.56%	35,467	4.18%	36,951
Irrigation	13,172	5.86%	13,944	9.85%	15,318
Other	2,959	0.68%	2,979	12.72%	3,358
<b>TOTAL</b>	<b>50,713</b>	<b>3.31%</b>	<b>52,390</b>	<b>6.18%</b>	<b>55,627</b>

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



Month	Total Water Sales (\$000)	
	Actual	Budget
Aug-23	\$ 4,660	\$ 4,539
Sep-23	\$ 5,070	\$ 4,642
Oct-23	\$ 3,888	\$ 3,503
Nov-23	\$ 3,224	\$ 2,978
Dec-23	\$ 2,890	\$ 3,184
Jan-24	\$ 2,587	\$ 2,971
Feb-24	\$ 2,465	\$ 2,943
Mar-24	\$ 2,767	\$ 2,999
Apr-24	\$ 2,942	\$ 3,708
May-24	\$ 3,112	\$ 3,685
Jun-24	\$ 3,833	\$ 3,847
Jul-24	\$ -	\$ 5,445
<b>TOTAL</b>	<b>\$ 37,441</b>	<b>\$ 44,444</b>

# WATER SUPPLEMENTAL INFORMATION

**NEW BRAUNFELS UTILITIES**  
**Water Volume (Gallons)**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD		
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	ACT	AVG	
<b>Residential</b>														
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	152,601,010	153,302,646	157,174,649	161,205,629	169,357,747	205,533,519	2,095,135,084	190,466,826	
Budget	278,669,478	237,292,325	207,072,688	175,109,490	173,209,570	174,176,159	163,056,961	162,170,495	194,797,667	192,150,195	202,613,378	2,160,318,407	196,392,582	
Prior Year	264,945,370	214,133,721	210,921,150	168,052,918	147,195,572	177,670,848	150,738,797	147,502,230	178,229,197	149,505,620	178,158,403	1,987,053,826	180,641,257	
<b>Multi-Unit 2-4</b>														
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	1,409,153	1,552,115	1,324,190	1,401,093	1,600,113	1,856,569	18,499,856	1,681,805	
Budget	2,133,762	2,020,591	1,702,965	1,531,918	1,502,289	1,598,116	1,411,754	1,326,910	1,520,816	1,588,266	1,734,356	18,071,743	1,642,886	
Prior Year	2,255,895	1,811,283	1,706,631	1,468,178	1,558,732	1,991,094	1,731,278	1,499,746	1,772,742	1,328,557	1,540,991	18,665,127	1,696,830	
<b>Multi-Unit 5+</b>														
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	25,622,619	27,819,886	26,634,330	24,746,326	26,419,852	28,285,751	289,178,046	26,288,913	
Budget	25,326,666	25,620,852	24,285,693	22,896,149	23,054,060	23,641,597	23,603,566	22,619,338	23,808,093	24,208,591	26,153,310	265,217,915	24,110,720	
Prior Year	25,435,941	26,247,479	23,126,169	22,573,660	22,243,553	27,640,694	24,981,709	20,919,119	23,207,100	20,994,653	24,183,355	261,553,432	23,777,585	
<b>Residential Irrigation</b>														
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	22,127,445	12,702,243	31,763,383	39,166,067	41,938,674	57,762,049	550,274,481	50,024,953	
Budget	101,916,516	89,848,970	67,370,554	47,455,669	40,755,051	29,226,787	25,896,276	31,239,450	62,350,426	63,491,605	65,391,976	624,943,280	56,813,025	
Prior Year	75,502,265	57,908,800	60,546,492	42,139,788	25,242,936	22,372,220	18,434,179	28,352,401	37,104,469	30,094,914	39,530,931	437,229,395	39,748,127	
<b>Commercial Irrigation</b>														
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	10,744,133	5,317,364	9,807,255	14,536,190	18,360,454	25,178,307	237,843,860	21,622,169	
Budget	31,806,969	32,170,482	23,953,236	19,136,346	16,184,358	13,285,633	10,869,113	11,380,673	18,210,497	20,136,263	20,256,740	217,390,311	19,762,756	
Prior Year	33,744,774	30,535,334	28,118,852	21,721,253	14,886,687	8,439,663	8,440,206	9,447,251	15,636,975	14,154,511	17,559,378	202,684,884	18,425,899	
<b>SGS</b>														
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	26,281,878	27,100,968	27,988,408	28,101,017	28,286,413	31,968,927	386,247,008	35,113,364	
Budget	31,764,131	29,773,888	26,212,617	27,978,022	28,661,024	23,437,606	27,384,033	28,582,232	24,726,924	31,605,916	20,071,874	300,198,267	27,290,752	
Prior Year	78,178,199	78,468,416	69,448,844	58,815,374	57,772,260	67,638,990	59,416,751	55,376,946	68,417,902	58,582,716	81,486,691	733,603,090	66,691,190	
<b>LGS</b>														
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	36,014,141	40,978,466	52,401,985	367,752,382	33,432,035	
Budget	51,137,660	44,700,916	38,954,200	34,714,127	32,435,703	36,602,561	33,955,022	31,959,274	40,994,427	34,737,590	52,026,852	432,218,333	39,292,576	
Prior Year	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Other Sales</b>														
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	2,123,877	2,696,819	5,633,216	4,339,353	3,893,510	7,217,944	67,592,159	6,144,742	
Budget	7,964,649	7,211,502	2,237,575	1,361,680	320,031	1,497,983	2,870,647	3,420,026	4,305,181	389,289	5,747,079	37,325,640	3,393,240	
Prior Year	19,291,639	10,429,974	11,829,866	6,504,861	2,722,722	4,009,008	2,940,187	5,494,272	5,654,538	3,998,169	8,597,405	81,472,641	7,406,604	
<b>ReUse Water</b>														
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	1,232,407	-	-	9,788,656	889,878	
Budget	613,050	(292,400)	117,738	177,998	442,163	235,575	84,025	219,800	70,149	-	43,400	1,711,497	155,591	
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	762,700	1,138,300	-	100	17,839,000	1,621,727	
<b>Total Sales</b>														
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	272,090,315	262,824,137	293,796,498	310,742,223	330,835,228	410,205,051	4,022,311,532	365,664,685	
Budget	531,332,881	468,347,126	391,907,266	330,361,397	316,564,249	303,702,017	289,131,396	292,918,198	370,784,181	368,307,716	394,038,966	4,057,395,393	368,854,127	
Prior Year	504,840,083	419,802,207	410,811,004	324,222,832	271,907,662	310,232,817	268,052,507	269,354,665	331,161,223	278,659,140	351,057,254	3,740,101,395	340,009,218	



**NEW BRAUNFELS UTILITIES**  
**Water Volume (Gallons) Variance**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	ACT	AVG
<b>Residential</b>													
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	152,601,010	153,302,646	157,174,649	161,205,629	169,357,747	205,533,519	2,095,135,084	190,466,826
Actual vs Budget	7,708,959	32,678,690	(1,565,002)	(2,607,610)	(1,608,704)	(21,575,149)	(9,754,315)	(4,995,846)	(33,592,038)	(22,792,448)	2,920,141	(65,183,323)	(5,925,757)
Actual vs Prior Year	21,433,067	55,837,294	(5,413,464)	4,448,962	14,405,294	(25,069,838)	2,563,849	9,672,419	(17,023,568)	19,852,127	27,375,116	108,081,258	9,825,569
<b>Multi-Unit 2-4</b>													
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	1,409,153	1,552,115	1,324,190	1,401,093	1,600,113	1,856,569	18,499,856	1,681,805
Actual vs Budget	108,101	293,754	196,958	(9,706)	(124,009)	(188,963)	140,361	(2,720)	(119,723)	11,847	122,213	428,113	38,919
Actual vs Prior Year	(14,032)	503,062	193,292	54,034	(180,452)	(581,941)	(179,163)	(175,556)	(371,649)	271,556	315,578	(165,271)	(15,025)
<b>Multi-Unit 5+</b>													
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	25,622,619	27,819,886	26,634,330	24,746,326	26,419,852	28,285,751	289,178,046	26,288,913
Actual vs Budget	1,808,652	1,787,130	(1,812,216)	1,642,741	5,039,555	1,981,022	4,216,320	4,014,992	938,233	2,211,261	2,132,441	23,960,131	2,178,194
Actual vs Prior Year	1,699,377	1,160,503	(652,692)	1,965,230	5,850,062	(2,018,075)	2,838,177	5,715,211	1,539,226	5,425,199	4,102,396	27,624,614	2,511,329
<b>Residential Irrigation</b>													
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	22,127,445	12,702,243	31,763,383	39,166,067	41,938,674	57,762,049	550,274,481	50,024,953
Actual vs Budget	(2,850,427)	4,616,876	3,593,888	(26,770)	(7,865,707)	(7,099,342)	(13,194,033)	523,933	(23,184,359)	(21,552,931)	(7,629,927)	(74,668,799)	(6,788,073)
Actual vs Prior Year	23,563,824	36,557,046	10,417,950	5,289,111	7,646,408	(244,775)	(5,731,936)	3,410,982	2,061,598	11,843,760	18,231,118	113,045,086	10,276,826
<b>Commercial Irrigation</b>													
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	10,744,133	5,317,364	9,807,255	14,536,190	18,360,454	25,178,307	237,843,860	21,622,169
Actual vs Budget	7,389,631	9,778,635	8,960,510	3,620,110	899,880	(2,541,500)	(5,551,749)	(1,573,418)	(3,674,307)	(1,775,809)	4,921,567	20,453,549	1,859,414
Actual vs Prior Year	5,451,826	11,413,783	4,794,894	1,035,203	2,197,551	2,304,470	(3,122,842)	360,004	(1,100,785)	4,205,943	7,618,929	35,158,976	3,196,271
<b>SGS</b>													
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	26,281,878	27,100,968	27,988,408	28,101,017	28,286,413	31,968,927	386,247,008	35,113,364
Actual vs Budget	56,380,749	6,311,243	5,635,380	3,163,393	638,951	2,844,272	(283,065)	(593,824)	3,374,093	(3,319,503)	11,897,053	86,048,741	7,822,613
Actual vs Prior Year	9,966,681	(42,383,285)	(37,600,847)	(27,673,959)	(28,472,285)	(41,357,112)	(32,315,783)	(27,388,539)	(40,316,885)	(30,296,304)	(49,517,764)	(347,356,082)	(31,577,826)
<b>LGS</b>													
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	36,014,141	40,978,466	52,401,985	367,752,382	33,432,035
Actual vs Budget	(51,137,660)	3,666,488	(11,924,886)	(141,756)	(564,317)	(5,422,361)	(1,622,926)	1,045,745	(4,980,286)	6,240,876	375,133	(64,465,951)	(5,860,541)
Actual vs Prior Year	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	36,014,141	40,978,466	52,401,985	367,752,382	33,432,035
<b>Other Sales</b>													
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	2,123,877	2,696,819	5,633,216	4,339,353	3,893,510	7,217,944	67,592,159	6,144,742
Actual vs Budget	6,808,615	5,358,460	5,130,264	1,454,650	3,840,014	625,894	(173,828)	2,213,190	34,172	3,504,221	1,470,865	30,266,519	2,751,502
Actual vs Prior Year	(4,518,375)	2,139,988	(4,462,027)	(3,688,531)	1,437,323	(1,885,131)	(243,368)	138,944	(1,315,185)	(104,659)	(1,379,461)	(13,880,482)	(1,261,862)
<b>ReUse Water</b>													
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	1,232,407	-	-	9,788,656	889,878
Actual vs Budget	3,699,850	2,248,300	1,703,662	(177,998)	(442,163)	(235,575)	(84,025)	246,249	1,162,259	-	(43,400)	8,077,159	734,287
Actual vs Prior Year	(1,173,100)	1,688,700	(3,291,600)	(2,946,800)	(285,200)	(470,300)	(1,369,400)	(296,651)	94,107	-	(100)	(8,050,344)	(731,849)
<b>Total Sales</b>													
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	272,090,315	262,824,137	293,796,498	310,742,223	330,835,228	410,205,051	4,022,311,532	365,664,685
Actual vs Budget	29,916,470	66,739,576	9,918,558	6,917,056	(10,186,500)	(31,611,702)	(26,307,259)	878,301	(60,041,958)	(37,472,487)	16,166,085	(35,083,861)	(3,189,442)
Actual vs Prior Year	56,409,268	115,284,495	(8,985,180)	13,055,621	34,470,087	(38,142,502)	(5,228,370)	24,441,833	(20,419,000)	52,176,088	59,147,797	282,210,137	25,655,467

**NEW BRAUNFELS UTILITIES**  
**Water Revenue**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	ACT	AVG
<b>Residential</b>													
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 1,224,701	\$ 1,225,157	\$ 1,264,360	\$ 1,311,569	\$ 1,380,713	\$ 1,698,681	\$ 16,791,083	\$ 1,526,462
Budget	\$ 1,675,906	\$ 1,751,798	\$ 1,399,790	\$ 1,266,297	\$ 1,417,615	\$ 1,371,746	\$ 1,309,178	\$ 1,327,852	\$ 1,556,587	\$ 1,555,006	\$ 1,524,293	\$ 16,156,066	\$ 1,468,733
Prior Year	\$ 1,435,468	\$ 1,424,172	\$ 1,284,509	\$ 1,094,836	\$ 976,144	\$ 1,109,772	\$ 972,939	\$ 975,688	\$ 1,119,548	\$ 994,105	\$ 1,081,313	\$ 12,468,494	\$ 1,133,499
<b>Multi-Unit 2-4</b>													
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 15,725	\$ 16,542	\$ 15,215	\$ 15,642	\$ 16,683	\$ 17,997	\$ 189,035	\$ 17,185
Budget	\$ 20,133	\$ 22,197	\$ 18,479	\$ 17,431	\$ 18,354	\$ 19,284	\$ 18,172	\$ 17,245	\$ 18,850	\$ 18,850	\$ 18,771	\$ 207,764	\$ 18,888
Prior Year	\$ 19,176	\$ 17,926	\$ 16,683	\$ 15,050	\$ 16,630	\$ 17,942	\$ 16,479	\$ 15,143	\$ 16,741	\$ 14,251	\$ 15,697	\$ 181,717	\$ 16,520
<b>Multi-Unit 5+</b>													
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 255,463	\$ 270,981	\$ 260,191	\$ 253,681	\$ 264,100	\$ 282,857	\$ 2,840,169	\$ 258,197
Budget	\$ 266,804	\$ 279,964	\$ 279,474	\$ 255,175	\$ 286,678	\$ 288,535	\$ 286,395	\$ 284,064	\$ 303,441	\$ 307,495	\$ 324,390	\$ 3,162,415	\$ 287,492
Prior Year	\$ 241,401	\$ 258,388	\$ 239,757	\$ 226,649	\$ 220,174	\$ 253,389	\$ 237,675	\$ 217,571	\$ 228,301	\$ 219,562	\$ 238,015	\$ 2,580,883	\$ 234,626
<b>Residential Irrigation</b>													
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 421,127	\$ 336,040	\$ 510,115	\$ 579,763	\$ 607,603	\$ 759,352	\$ 7,472,213	\$ 679,292
Budget	\$ 1,313,660	\$ 1,294,138	\$ 883,179	\$ 648,549	\$ 645,400	\$ 503,243	\$ 523,810	\$ 556,623	\$ 880,800	\$ 887,423	\$ 893,619	\$ 9,030,443	\$ 820,949
Prior Year	\$ 876,750	\$ 751,431	\$ 715,064	\$ 518,829	\$ 371,346	\$ 345,040	\$ 310,796	\$ 396,258	\$ 477,192	\$ 414,872	\$ 509,250	\$ 5,686,827	\$ 516,984
<b>Commercial Irrigation</b>													
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 136,872	\$ 75,668	\$ 126,890	\$ 181,555	\$ 227,164	\$ 308,632	\$ 2,925,527	\$ 265,957
Budget	\$ 424,000	\$ 469,064	\$ 310,403	\$ 234,897	\$ 222,201	\$ 184,303	\$ 153,156	\$ 159,906	\$ 254,611	\$ 278,386	\$ 289,375	\$ 2,980,301	\$ 270,936
Prior Year	\$ 405,253	\$ 401,101	\$ 328,274	\$ 240,204	\$ 164,788	\$ 94,550	\$ 97,630	\$ 109,278	\$ 175,133	\$ 159,224	\$ 199,913	\$ 2,375,348	\$ 215,941
<b>SGS</b>													
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 267,962	\$ 267,142	\$ 280,827	\$ 278,162	\$ 278,855	\$ 306,124	\$ 3,692,829	\$ 335,712
Budget	\$ 434,693	\$ 388,629	\$ 291,965	\$ 281,162	\$ 354,123	\$ 315,931	\$ 346,915	\$ 358,489	\$ 321,559	\$ 380,198	\$ 303,624	\$ 3,777,290	\$ 343,390
Prior Year	\$ 616,047	\$ 678,287	\$ 558,030	\$ 450,987	\$ 450,757	\$ 516,134	\$ 461,766	\$ 434,665	\$ 524,879	\$ 456,551	\$ 640,254	\$ 5,788,359	\$ 526,214
<b>LGS</b>													
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 242,619	\$ 269,394	\$ 329,525	\$ 2,443,117	\$ 222,102
Budget	\$ 290,436	\$ 325,951	\$ 289,257	\$ 252,430	\$ 233,412	\$ 259,549	\$ 243,598	\$ 229,544	\$ 295,520	\$ 250,856	\$ 393,263	\$ 3,063,816	\$ 278,529
Prior Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Other Sales</b>													
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 50,717	\$ 55,637	\$ 84,058	\$ 72,005	\$ 67,633	\$ 129,903	\$ 1,031,186	\$ 93,744
Budget	\$ 110,730	\$ 111,853	\$ 30,081	\$ 20,845	\$ 5,798	\$ 28,566	\$ 61,475	\$ 65,352	\$ 76,585	\$ 6,437	\$ 99,497	\$ 617,220	\$ 56,111
Prior Year	\$ 241,628	\$ 145,742	\$ 143,275	\$ 89,711	\$ 50,358	\$ 62,775	\$ 51,200	\$ 76,503	\$ 77,511	\$ 61,662	\$ 113,431	\$ 1,113,794	\$ 101,254
<b>ReUse Water</b>													
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 7,330	\$ 56	\$ 56	\$ 55,608	\$ 5,055
Budget	\$ 3,125	\$ (1,309)	\$ 634	\$ 952	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,402	\$ 309
Prior Year	\$ 25,191	\$ 1,078	\$ 24,810	\$ 14,201	\$ 1,166	\$ 2,072	\$ 6,476	\$ 3,504	\$ 5,344	\$ 56	\$ 57	\$ 83,954	\$ 7,632
<b>Total Sales</b>													
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 2,587,060	\$ 2,465,474	\$ 2,767,131	\$ 2,942,326	\$ 3,112,201	\$ 3,833,126	\$ 37,440,766	\$ 3,403,706
Budget	\$ 4,539,486	\$ 4,642,285	\$ 3,503,262	\$ 2,977,737	\$ 3,183,581	\$ 2,971,156	\$ 2,942,699	\$ 2,999,075	\$ 3,707,953	\$ 3,684,651	\$ 3,846,830	\$ 38,998,716	\$ 3,545,338
Prior Year	\$ 3,860,913	\$ 3,678,125	\$ 3,310,402	\$ 2,650,466	\$ 2,251,363	\$ 2,401,673	\$ 2,154,961	\$ 2,228,611	\$ 2,624,648	\$ 2,320,282	\$ 2,797,930	\$ 30,279,376	\$ 2,752,671

**NEW BRAUNFELS UTILITIES**  
**Water Revenue Variance**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	ACT	AVG
<b>Residential</b>													
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 1,224,701	\$ 1,225,157	\$ 1,264,360	\$ 1,311,569	\$ 1,380,713	\$ 1,698,681	\$ 16,791,083	\$ 1,526,462
Actual vs Budget	\$ 151,366	\$ 640,842	\$ 347,460	\$ 146,062	\$ (111,232)	\$ (147,045)	\$ (84,021)	\$ (63,492)	\$ (245,018)	\$ (174,293)	\$ 174,388	\$ 635,017	\$ 57,729
Actual vs Prior Year	\$ 391,804	\$ 968,468	\$ 462,741	\$ 317,523	\$ 330,238	\$ 114,929	\$ 252,218	\$ 288,671	\$ 192,020	\$ 386,609	\$ 617,368	\$ 4,322,589	\$ 392,963
<b>Multi-Unit 2-4</b>													
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 15,725	\$ 16,542	\$ 15,215	\$ 15,642	\$ 16,683	\$ 17,997	\$ 189,035	\$ 17,185
Actual vs Budget	\$ (176)	\$ (1,410)	\$ 10	\$ (1,060)	\$ (2,726)	\$ (3,559)	\$ (1,630)	\$ (2,030)	\$ (3,208)	\$ (2,167)	\$ (774)	\$ (18,729)	\$ (1,703)
Actual vs Prior Year	\$ 781	\$ 2,861	\$ 1,806	\$ 1,321	\$ (1,001)	\$ (2,216)	\$ 62	\$ 73	\$ (1,099)	\$ 2,432	\$ 2,299	\$ 7,318	\$ 665
<b>Multi-Unit 5+</b>													
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 255,463	\$ 270,981	\$ 260,191	\$ 253,681	\$ 264,100	\$ 282,857	\$ 2,840,169	\$ 258,197
Actual vs Budget	\$ (6,575)	\$ (22,694)	\$ (48,714)	\$ (13,849)	\$ (23,366)	\$ (33,072)	\$ (15,414)	\$ (23,873)	\$ (49,760)	\$ (43,395)	\$ (41,533)	\$ (322,246)	\$ (29,295)
Actual vs Prior Year	\$ 18,828	\$ (1,119)	\$ (8,997)	\$ 14,676	\$ 43,138	\$ 2,074	\$ 33,305	\$ 42,620	\$ 25,380	\$ 44,539	\$ 44,842	\$ 259,286	\$ 23,571
<b>Residential Irrigation</b>													
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 421,127	\$ 336,040	\$ 510,115	\$ 579,763	\$ 607,603	\$ 759,352	\$ 7,472,213	\$ 679,292
Actual vs Budget	\$ (195,872)	\$ (188,188)	\$ (13,200)	\$ (1,062)	\$ (128,393)	\$ (82,116)	\$ (187,769)	\$ (46,507)	\$ (301,037)	\$ (279,820)	\$ (134,267)	\$ (1,558,230)	\$ (141,657)
Actual vs Prior Year	\$ 241,039	\$ 354,519	\$ 154,916	\$ 128,659	\$ 145,660	\$ 76,086	\$ 25,245	\$ 113,857	\$ 102,571	\$ 192,731	\$ 250,102	\$ 1,785,385	\$ 162,308
<b>Commercial Irrigation</b>													
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 136,872	\$ 75,668	\$ 126,890	\$ 181,555	\$ 227,164	\$ 308,632	\$ 2,925,527	\$ 265,957
Actual vs Budget	\$ 53,522	\$ 35,845	\$ 88,505	\$ 41,894	\$ (11,584)	\$ (47,431)	\$ (77,488)	\$ (33,016)	\$ (73,056)	\$ (51,223)	\$ 19,257	\$ (54,774)	\$ (4,979)
Actual vs Prior Year	\$ 72,269	\$ 103,808	\$ 70,634	\$ 36,587	\$ 45,828	\$ 42,322	\$ (21,962)	\$ 17,612	\$ 6,423	\$ 67,940	\$ 108,719	\$ 550,179	\$ 50,016
<b>SGS</b>													
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 267,962	\$ 267,142	\$ 280,827	\$ 278,162	\$ 278,855	\$ 306,124	\$ 3,692,829	\$ 335,712
Actual vs Budget	\$ 330,538	\$ (44,787)	\$ 17,063	\$ 22,896	\$ (62,525)	\$ (47,969)	\$ (79,774)	\$ (77,663)	\$ (43,397)	\$ (101,343)	\$ 2,500	\$ (84,461)	\$ (7,678)
Actual vs Prior Year	\$ 149,184	\$ (334,445)	\$ (249,002)	\$ (146,929)	\$ (159,159)	\$ (248,172)	\$ (194,625)	\$ (153,839)	\$ (246,717)	\$ (177,696)	\$ (334,131)	\$ (2,095,530)	\$ (190,503)
<b>LGS</b>													
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 242,619	\$ 269,394	\$ 329,525	\$ 2,443,117	\$ 222,102
Actual vs Budget	\$ (290,436)	\$ (37,006)	\$ (80,664)	\$ (17,421)	\$ (19,812)	\$ (45,112)	\$ (25,346)	\$ (6,801)	\$ (52,900)	\$ 18,538	\$ (63,738)	\$ (620,699)	\$ (56,427)
Actual vs Prior Year	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 242,619	\$ 269,394	\$ 329,525	\$ 2,443,117	\$ 222,102
<b>Other Sales</b>													
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 50,717	\$ 55,637	\$ 84,058	\$ 72,005	\$ 67,633	\$ 129,903	\$ 1,031,186	\$ 93,744
Actual vs Budget	\$ 68,689	\$ 43,939	\$ 75,222	\$ 37,625	\$ 66,451	\$ 22,151	\$ (5,838)	\$ 18,706	\$ (4,580)	\$ 61,196	\$ 30,406	\$ 413,966	\$ 37,633
Actual vs Prior Year	\$ (62,209)	\$ 10,051	\$ (37,972)	\$ (31,240)	\$ 21,891	\$ (12,059)	\$ 4,437	\$ 7,554	\$ (5,505)	\$ 5,971	\$ 16,472	\$ (82,609)	\$ (7,510)
<b>ReUse Water</b>													
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 7,330	\$ 56	\$ 56	\$ 55,608	\$ 5,055
Actual vs Budget	\$ 9,420	\$ 1,482	\$ (470)	\$ 31,430	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 7,330	\$ 56	\$ 56	\$ 52,206	\$ 4,746
Actual vs Prior Year	\$ (12,646)	\$ (905)	\$ (24,645)	\$ 18,181	\$ (1,109)	\$ (2,016)	\$ (6,419)	\$ (772)	\$ 1,986	\$ -	\$ (0)	\$ (28,346)	\$ (2,577)
<b>Total Sales</b>													
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 2,587,060	\$ 2,465,474	\$ 2,767,131	\$ 2,942,326	\$ 3,112,201	\$ 3,833,126	\$ 37,440,766	\$ 3,403,706
Actual vs Budget	\$ 120,477	\$ 428,022	\$ 385,214	\$ 246,514	\$ (293,131)	\$ (384,096)	\$ (477,225)	\$ (231,944)	\$ (765,628)	\$ (572,450)	\$ (13,704)	\$ (1,557,950)	\$ (141,632)
Actual vs Prior Year	\$ 799,050	\$ 1,392,183	\$ 578,074	\$ 573,785	\$ 639,087	\$ 185,387	\$ 310,513	\$ 538,520	\$ 317,677	\$ 791,919	\$ 1,035,196	\$ 7,161,390	\$ 651,035

**NEW BRAUNFELS UTILITIES**  
**Water Meters**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	AVG
<b>Residential</b>												
Actuals	35,651	35,942	36,027	36,016	36,162	36,355	36,419	36,593	36,820	36,952	36,951	36,353
Budget	35,570	35,716	35,862	36,008	36,154	36,301	36,447	36,593	36,739	36,885	37,031	36,301
Prior Year	34,863	35,017	35,058	35,080	35,155	35,219	35,235	35,253	35,155	35,186	35,467	35,153
<b>Multi-Unit 2-4</b>												
Actuals	208	221	225	223	223	222	222	220	221	220	217	220
Budget	208	208	208	208	208	208	208	208	208	208	208	208
Prior Year	208	209	207	208	209	209	208	206	207	207	208	208
<b>Multi-Unit 5+</b>												
Actuals	262	269	270	270	273	274	275	275	275	283	296	275
Budget	260	262	263	265	267	269	270	272	274	276	277	269
Prior Year	257	257	259	258	258	259	259	259	257	259	258	258
<b>Residential Irrigation</b>												
Actuals	13,351	13,533	13,592	13,610	13,749	13,895	13,938	14,102	14,262	14,391	14,454	13,898
Budget	13,187	13,347	13,507	13,668	13,828	13,989	14,149	14,310	14,470	14,630	14,791	13,989
Prior Year	12,525	12,620	12,669	12,722	12,769	12,831	12,901	12,915	12,893	12,940	13,069	12,805
<b>Commercial Irrigation</b>												
Actuals	884	830	831	832	839	841	845	847	852	856	864	847
Budget	860	862	865	868	870	873	876	878	881	884	886	873
Prior Year	845	835	849	849	850	851	855	858	859	866	875	854
<b>SGS</b>												
Actuals	2,412	2,282	2,276	2,270	2,290	2,293	2,290	2,293	2,297	2,297	2,410	2,310
Budget	2,268	2,271	2,275	2,277	2,280	2,284	2,288	2,292	2,296	2,300	2,304	2,285
Prior Year	2,380	2,383	2,383	2,386	2,389	2,384	2,383	2,382	2,381	2,389	2,401	2,386
<b>LGS</b>												
Actuals	-	198	213	214	219	218	219	221	225	228	229	199
Budget	133	134	134	136	137	137	137	137	137	137	137	136
Prior Year	-	-	-	-	-	-	-	-	-	-	-	-
<b>Other Sales</b>												
Actuals	109	111	116	108	107	102	101	100	104	102	205	115
Budget	151	153	154	156	158	160	161	163	165	166	168	160
Prior Year	124	124	130	132	124	120	115	118	114	115	111	121
<b>ReUse Water</b>												
Actuals	1	1	1	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1	1	1	1
<b>Total Meters</b>												
Actuals	52,878	53,387	53,551	53,544	53,863	54,201	54,310	54,652	55,057	55,330	55,627	54,218
Budget	52,638	52,954	53,271	53,588	53,904	54,221	54,537	54,854	55,171	55,487	55,804	54,221
Prior Year	51,203	51,446	51,556	51,636	51,755	51,874	51,957	51,992	51,867	51,963	52,390	51,785

New Meters	241	509	164	(7)	319	338	109	342	405	273	297	272
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New Meter Growth	0.5%	1.0%	0.3%	0.0%	0.6%	0.6%	0.2%	0.6%	0.7%	0.5%	0.5%	0.5%
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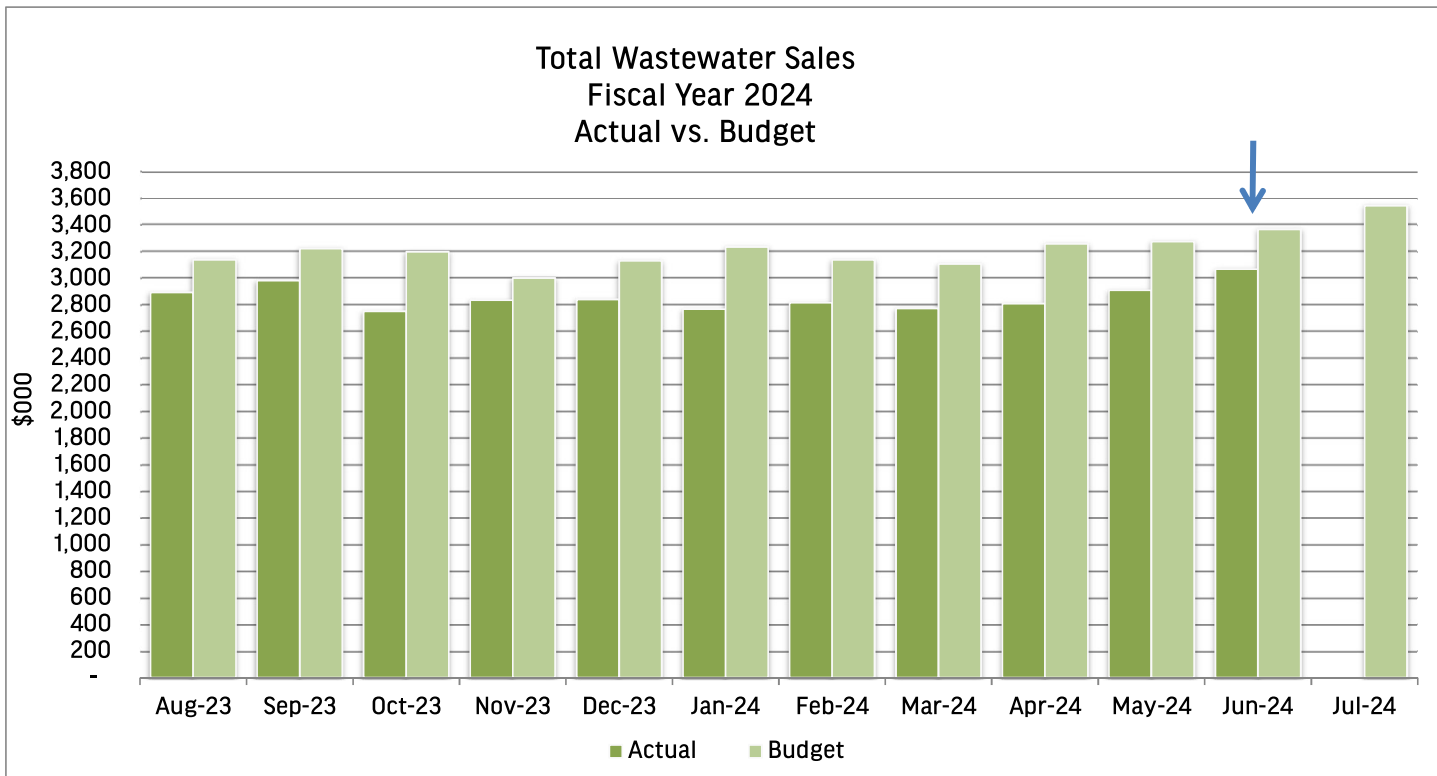
**NEW BRAUNFELS UTILITIES**  
**Water Volume per Meter (Gallons)**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD		
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	ACT	AVG	
<b>Residential</b>														
Actuals	8,033	7,511	5,704	4,790	4,469	4,198	4,209	4,295	4,378	4,583	5,562	57,733	5,248	
Budget	7,834	6,644	5,774	4,863	4,791	4,798	4,474	4,432	5,302	5,209	5,471	59,593	5,418	
Prior Year	7,600	6,115	6,016	4,791	4,187	5,045	4,278	4,184	5,070	4,249	5,023	56,558	5,142	
<b>Multi-Unit 2-4</b>														
Actuals	10,778	10,472	8,444	6,826	6,181	6,348	6,992	6,019	6,340	7,273	8,556	84,228	7,657	
Budget	10,258	9,714	8,187	7,365	7,223	7,683	6,787	6,379	7,312	7,636	8,338	86,883	7,898	
Prior Year	10,846	8,666	8,245	7,059	7,458	9,527	8,323	7,280	8,564	6,418	7,409	89,795	8,163	
<b>Multi-Unit 5+</b>														
Actuals	103,570	101,888	83,235	90,885	102,907	93,513	101,163	96,852	89,987	93,356	95,560	1,052,917	95,720	
Budget	97,504	97,976	92,253	86,400	86,426	88,050	87,340	83,159	86,970	87,871	94,331	988,281	89,844	
Prior Year	98,973	102,130	89,290	87,495	86,215	106,721	96,454	80,769	90,300	81,060	93,734	1,013,142	92,104	
<b>Residential Irrigation</b>														
Actuals	7,420	6,980	5,221	3,485	2,392	1,592	911	2,252	2,746	2,914	3,996	39,911	3,628	
Budget	7,729	6,732	4,988	3,472	2,947	2,089	1,830	2,183	4,309	4,340	4,421	45,040	4,095	
Prior Year	6,028	4,589	4,779	3,312	1,977	1,744	1,429	2,195	2,878	2,326	3,025	34,281	3,116	
<b>Commercial Irrigation</b>														
Actuals	44,340	50,541	39,607	27,352	20,363	12,775	6,293	11,579	17,061	21,449	29,142	280,502	25,500	
Budget	36,995	37,302	27,689	22,053	18,594	15,217	12,411	12,956	20,668	22,785	22,853	249,523	22,684	
Prior Year	39,935	36,569	33,120	25,585	17,514	9,917	9,872	11,011	18,204	16,345	20,068	238,138	21,649	
<b>SGS</b>														
Actuals	36,544	15,813	13,993	13,719	12,795	11,462	11,834	12,206	12,234	12,315	13,265	166,179	15,107	
Budget	14,002	13,108	11,520	12,285	12,568	10,260	11,966	12,468	10,767	13,739	8,710	131,392	11,945	
Prior Year	32,848	32,928	29,143	24,650	24,183	28,372	24,934	23,248	28,735	24,522	33,939	307,502	27,955	
<b>LGS</b>														
Actuals	-	244,280	126,898	161,553	145,531	143,028	147,635	149,344	160,063	179,730	228,830	1,686,893	153,354	
Budget	384,494	333,589	290,703	255,251	236,757	267,172	247,847	233,279	299,229	253,559	379,758	3,181,638	289,240	
Prior Year	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Other Sales</b>														
Actuals	135,535	113,243	63,516	26,077	38,879	20,822	26,701	56,332	41,725	38,172	35,209	596,211	54,201	
Budget	52,714	47,203	14,487	8,721	2,028	9,391	17,809	20,998	26,162	2,342	34,224	236,077	21,462	
Prior Year	155,578	84,113	90,999	49,279	21,957	33,408	25,567	46,562	49,601	34,767	77,454	669,285	60,844	
<b>ReUse Water</b>														
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	1,232,407	-	-	9,788,656	889,878	
Budget	613,050	(292,400)	117,738	177,998	442,163	235,575	84,025	219,800	70,149	-	43,400	1,711,497	155,591	
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	762,700	1,138,300	-	100	17,839,000	1,621,727	

**NEW BRAUNFELS UTILITIES**  
**Water Rates (per Gallon)**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	AVG
<b>Residential</b>												
Actuals	\$ 0.0064	\$ 0.0089	\$ 0.0085	\$ 0.0082	\$ 0.0081	\$ 0.0080	\$ 0.0080	\$ 0.0080	\$ 0.0081	\$ 0.0082	\$ 0.0083	\$ 0.0081
Budget	\$ 0.0060	\$ 0.0074	\$ 0.0068	\$ 0.0072	\$ 0.0082	\$ 0.0079	\$ 0.0080	\$ 0.0082	\$ 0.0080	\$ 0.0081	\$ 0.0075	\$ 0.0076
Prior Year	\$ 0.0054	\$ 0.0067	\$ 0.0061	\$ 0.0065	\$ 0.0066	\$ 0.0062	\$ 0.0065	\$ 0.0066	\$ 0.0063	\$ 0.0066	\$ 0.0061	\$ 0.0063
<b>Multi-Unit 2-4</b>												
Actuals	\$ 0.0089	\$ 0.0090	\$ 0.0097	\$ 0.0108	\$ 0.0113	\$ 0.0112	\$ 0.0107	\$ 0.0115	\$ 0.0112	\$ 0.0104	\$ 0.0097	\$ 0.0104
Budget	\$ 0.0094	\$ 0.0110	\$ 0.0109	\$ 0.0114	\$ 0.0122	\$ 0.0121	\$ 0.0129	\$ 0.0130	\$ 0.0124	\$ 0.0119	\$ 0.0108	\$ 0.0116
Prior Year	\$ 0.0085	\$ 0.0099	\$ 0.0098	\$ 0.0103	\$ 0.0107	\$ 0.0090	\$ 0.0095	\$ 0.0101	\$ 0.0094	\$ 0.0107	\$ 0.0102	\$ 0.0098
<b>Multi-Unit 5+</b>												
Actuals	\$ 0.0096	\$ 0.0094	\$ 0.0103	\$ 0.0098	\$ 0.0094	\$ 0.0100	\$ 0.0097	\$ 0.0098	\$ 0.0103	\$ 0.0100	\$ 0.0100	\$ 0.0098
Budget	\$ 0.0105	\$ 0.0109	\$ 0.0115	\$ 0.0111	\$ 0.0124	\$ 0.0122	\$ 0.0121	\$ 0.0126	\$ 0.0127	\$ 0.0127	\$ 0.0124	\$ 0.0119
Prior Year	\$ 0.0095	\$ 0.0098	\$ 0.0104	\$ 0.0100	\$ 0.0099	\$ 0.0092	\$ 0.0095	\$ 0.0104	\$ 0.0098	\$ 0.0105	\$ 0.0098	\$ 0.0099
<b>Residential Irrigation</b>												
Actuals	\$ 0.0113	\$ 0.0117	\$ 0.0123	\$ 0.0137	\$ 0.0157	\$ 0.0190	\$ 0.0265	\$ 0.0161	\$ 0.0148	\$ 0.0145	\$ 0.0131	\$ 0.0153
Budget	\$ 0.0129	\$ 0.0144	\$ 0.0131	\$ 0.0137	\$ 0.0158	\$ 0.0172	\$ 0.0202	\$ 0.0178	\$ 0.0141	\$ 0.0140	\$ 0.0137	\$ 0.0152
Prior Year	\$ 0.0116	\$ 0.0130	\$ 0.0118	\$ 0.0123	\$ 0.0147	\$ 0.0154	\$ 0.0169	\$ 0.0140	\$ 0.0129	\$ 0.0138	\$ 0.0129	\$ 0.0136
<b>Commercial Irrigation</b>												
Actuals	\$ 0.0122	\$ 0.0120	\$ 0.0121	\$ 0.0122	\$ 0.0123	\$ 0.0127	\$ 0.0142	\$ 0.0129	\$ 0.0125	\$ 0.0124	\$ 0.0123	\$ 0.0125
Budget	\$ 0.0133	\$ 0.0146	\$ 0.0130	\$ 0.0123	\$ 0.0137	\$ 0.0139	\$ 0.0141	\$ 0.0141	\$ 0.0140	\$ 0.0138	\$ 0.0143	\$ 0.0137
Prior Year	\$ 0.0120	\$ 0.0131	\$ 0.0117	\$ 0.0111	\$ 0.0111	\$ 0.0112	\$ 0.0116	\$ 0.0116	\$ 0.0112	\$ 0.0112	\$ 0.0114	\$ 0.0116
<b>SGS</b>												
Actuals	\$ 0.0087	\$ 0.0095	\$ 0.0097	\$ 0.0098	\$ 0.0100	\$ 0.0102	\$ 0.0099	\$ 0.0100	\$ 0.0099	\$ 0.0099	\$ 0.0096	\$ 0.0097
Budget	\$ 0.0137	\$ 0.0131	\$ 0.0111	\$ 0.0100	\$ 0.0124	\$ 0.0135	\$ 0.0127	\$ 0.0125	\$ 0.0130	\$ 0.0120	\$ 0.0151	\$ 0.0126
Prior Year	\$ 0.0079	\$ 0.0086	\$ 0.0080	\$ 0.0077	\$ 0.0078	\$ 0.0076	\$ 0.0078	\$ 0.0078	\$ 0.0077	\$ 0.0078	\$ 0.0079	\$ 0.0079
<b>LGS</b>												
Actuals	\$ -	\$ 0.0060	\$ 0.0077	\$ 0.0068	\$ 0.0067	\$ 0.0069	\$ 0.0068	\$ 0.0067	\$ 0.0067	\$ 0.0066	\$ 0.0063	\$ 0.0061
Budget	\$ 0.0057	\$ 0.0073	\$ 0.0074	\$ 0.0073	\$ 0.0072	\$ 0.0071	\$ 0.0072	\$ 0.0072	\$ 0.0072	\$ 0.0072	\$ 0.0076	\$ 0.0071
Prior Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Other Sales</b>												
Actuals	\$ 0.0121	\$ 0.0124	\$ 0.0143	\$ 0.0208	\$ 0.0174	\$ 0.0239	\$ 0.0206	\$ 0.0149	\$ 0.0166	\$ 0.0174	\$ 0.0180	\$ 0.0171
Budget	\$ 0.0139	\$ 0.0155	\$ 0.0134	\$ 0.0153	\$ 0.0181	\$ 0.0191	\$ 0.0214	\$ 0.0191	\$ 0.0178	\$ 0.0165	\$ 0.0173	\$ 0.0170
Prior Year	\$ 0.0125	\$ 0.0140	\$ 0.0121	\$ 0.0138	\$ 0.0185	\$ 0.0157	\$ 0.0174	\$ 0.0139	\$ 0.0137	\$ 0.0154	\$ 0.0132	\$ 0.0146
<b>ReUse Water</b>												
Actuals	\$ 0.0029	\$ 0.0001	\$ 0.0001	\$ -	\$ -	\$ -	\$ -	\$ 0.0059	\$ 0.0059	\$ -	\$ -	\$ 0.0014
Budget	\$ 0.0051	\$ 0.0045	\$ 0.0054	\$ 0.0053	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.0018
Prior Year	\$ 0.0046	\$ 0.0040	\$ 0.0049	\$ 0.0048	\$ 0.0041	\$ 0.0044	\$ 0.0047	\$ 0.0046	\$ 0.0047	\$ -	\$ 0.5671	\$ 0.0553

# WASTEWATER STATISTICS



Month	Total Wastewater Sales (\$000)	
	Actual	Budget
Aug-23	\$ 2,896	\$ 3,143
Sep-23	\$ 2,985	\$ 3,224
Oct-23	\$ 2,755	\$ 3,201
Nov-23	\$ 2,838	\$ 3,005
Dec-23	\$ 2,845	\$ 3,134
Jan-24	\$ 2,770	\$ 3,238
Feb-24	\$ 2,818	\$ 3,140
Mar-24	\$ 2,775	\$ 3,111
Apr-24	\$ 2,811	\$ 3,260
May-24	\$ 2,911	\$ 3,279
Jun-24	\$ 3,069	\$ 3,370
Jul-24	\$ -	\$ 3,549
<b>TOTAL</b>	<b>\$ 31,476</b>	<b>\$ 38,653</b>

Customer Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	31,146	2.74%	32,000	4.62%	33,477
Other	2,559	0.82%	2,580	3.26%	2,664
<b>TOTAL</b>	<b>33,705</b>	<b>2.60%</b>	<b>34,580</b>	<b>4.51%</b>	<b>36,141</b>



# WASTEWATER SUPPLEMENTAL INFORMATION

**NEW BRAUNFELS UTILITIES**  
**Wastewater Revenue**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD		
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	ACT	AVG	
<b>Residential</b>														
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 1,732,442	\$ 1,739,432	\$ 1,718,326	\$ 1,726,642	\$ 1,768,497	\$ 1,821,523	\$ 19,094,403	\$ 1,735,855	
Budget	\$ 1,877,005	\$ 1,952,128	\$ 1,949,215	\$ 1,872,739	\$ 1,976,311	\$ 2,036,536	\$ 1,986,258	\$ 1,949,832	\$ 2,012,386	\$ 2,020,816	\$ 2,051,641	\$ 21,684,866	\$ 1,971,351	
Prior Year	\$ 1,431,988	\$ 1,602,167	\$ 1,517,326	\$ 1,513,842	\$ 1,516,902	\$ 1,594,334	\$ 1,541,595	\$ 1,489,397	\$ 1,595,886	\$ 1,501,037	\$ 1,574,447	\$ 16,878,919	\$ 1,534,447	
<b>Multi-Unit 2-4</b>														
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 15,819	\$ 15,767	\$ 15,496	\$ 15,387	\$ 15,704	\$ 16,018	\$ 172,974	\$ 15,725	
Budget	\$ 15,982	\$ 16,707	\$ 16,656	\$ 15,857	\$ 16,392	\$ 16,876	\$ 16,643	\$ 16,260	\$ 17,527	\$ 17,100	\$ 17,207	\$ 183,207	\$ 16,655	
Prior Year	\$ 12,873	\$ 14,215	\$ 13,595	\$ 13,583	\$ 13,704	\$ 14,466	\$ 13,990	\$ 13,418	\$ 14,418	\$ 13,538	\$ 14,220	\$ 152,019	\$ 13,820	
<b>Multi-Unit 5+</b>														
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 349,101	\$ 367,256	\$ 344,244	\$ 338,402	\$ 352,669	\$ 371,761	\$ 3,876,286	\$ 352,390	
Budget	\$ 387,068	\$ 401,507	\$ 399,515	\$ 372,282	\$ 397,709	\$ 411,152	\$ 404,255	\$ 389,172	\$ 404,391	\$ 411,324	\$ 422,123	\$ 4,400,498	\$ 400,045	
Prior Year	\$ 324,197	\$ 352,643	\$ 334,562	\$ 322,131	\$ 318,915	\$ 360,340	\$ 334,996	\$ 310,016	\$ 325,846	\$ 312,742	\$ 333,832	\$ 3,630,220	\$ 330,020	
<b>SGS</b>														
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 671,740	\$ 694,327	\$ 696,069	\$ 729,560	\$ 772,851	\$ 858,431	\$ 8,317,186	\$ 756,108	
Budget	\$ 861,177	\$ 851,972	\$ 833,952	\$ 741,792	\$ 741,660	\$ 771,065	\$ 730,594	\$ 753,402	\$ 823,837	\$ 827,305	\$ 877,152	\$ 8,813,908	\$ 801,264	
Prior Year	\$ 720,511	\$ 787,794	\$ 743,962	\$ 649,301	\$ 662,503	\$ 740,317	\$ 672,769	\$ 629,555	\$ 741,030	\$ 651,870	\$ 814,086	\$ 7,813,697	\$ 710,336	
<b>Schertz Sewer</b>														
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 1,311	\$ 1,407	\$ 1,192	\$ 1,449	\$ 1,543	\$ 1,599	\$ 14,950	\$ 1,359	
Budget	\$ 1,902	\$ 1,867	\$ 1,902	\$ 1,865	\$ 1,853	\$ 2,085	\$ 2,178	\$ 1,877	\$ 2,082	\$ 2,112	\$ 2,171	\$ 21,893	\$ 1,990	
Prior Year	\$ 1,476	\$ 1,282	\$ 1,310	\$ 1,306	\$ 1,194	\$ 1,269	\$ 1,425	\$ 1,178	\$ 1,251	\$ 1,272	\$ 1,307	\$ 14,270	\$ 1,297	
<b>Total Sales</b>														
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 2,770,413	\$ 2,818,188	\$ 2,775,328	\$ 2,811,440	\$ 2,911,265	\$ 3,069,331	\$ 31,475,799	\$ 2,861,436	
Budget	\$ 3,143,133	\$ 3,224,180	\$ 3,201,239	\$ 3,004,535	\$ 3,133,925	\$ 3,237,713	\$ 3,139,928	\$ 3,110,543	\$ 3,260,223	\$ 3,278,657	\$ 3,370,295	\$ 35,104,372	\$ 3,191,307	
Prior Year	\$ 2,491,044	\$ 2,758,100	\$ 2,610,754	\$ 2,500,162	\$ 2,513,218	\$ 2,710,727	\$ 2,564,775	\$ 2,443,564	\$ 2,678,431	\$ 2,480,459	\$ 2,737,892	\$ 28,489,126	\$ 2,589,921	

**NEW BRAUNFELS UTILITIES**  
**Wastewater Revenue Variance**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD		
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	ACT	AVG	
<b>Residential</b>														
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 1,732,442	\$ 1,739,432	\$ 1,718,326	\$ 1,726,642	\$ 1,768,497	\$ 1,821,523	\$ 19,094,403	\$ 1,735,855	
Actual vs Budget	\$ (256,620)	\$ (171,872)	\$ (258,420)	\$ (135,477)	\$ (217,468)	\$ (304,094)	\$ (246,826)	\$ (231,506)	\$ (285,744)	\$ (252,318)	\$ (230,119)	\$ (2,590,464)	\$ (235,497)	
Actual vs Prior Year	\$ 188,397	\$ 178,089	\$ 173,470	\$ 223,421	\$ 241,941	\$ 138,108	\$ 197,837	\$ 228,929	\$ 130,756	\$ 267,461	\$ 247,076	\$ 2,215,484	\$ 201,408	
<b>Multi-Unit 2-4</b>														
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 15,819	\$ 15,767	\$ 15,496	\$ 15,387	\$ 15,704	\$ 16,018	\$ 172,974	\$ 15,725	
Actual vs Budget	\$ (1,628)	\$ (430)	\$ (738)	\$ 270	\$ (286)	\$ (1,056)	\$ (876)	\$ (764)	\$ (2,139)	\$ (1,396)	\$ (1,189)	\$ (10,233)	\$ (930)	
Actual vs Prior Year	\$ 1,481	\$ 2,063	\$ 2,323	\$ 2,544	\$ 2,402	\$ 1,353	\$ 1,776	\$ 2,078	\$ 969	\$ 2,167	\$ 1,798	\$ 20,955	\$ 1,905	
<b>Multi-Unit 5+</b>														
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 349,101	\$ 367,256	\$ 344,244	\$ 338,402	\$ 352,669	\$ 371,761	\$ 3,876,286	\$ 352,390	
Actual vs Budget	\$ (24,285)	\$ (32,143)	\$ (72,316)	\$ (28,430)	\$ (48,054)	\$ (62,050)	\$ (37,000)	\$ (44,928)	\$ (65,989)	\$ (58,655)	\$ (50,362)	\$ (524,212)	\$ (47,656)	
Actual vs Prior Year	\$ 38,586	\$ 16,721	\$ (7,364)	\$ 21,721	\$ 30,740	\$ (11,239)	\$ 32,260	\$ 34,228	\$ 12,556	\$ 39,927	\$ 37,928	\$ 246,066	\$ 22,370	
<b>SGS</b>														
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 671,740	\$ 694,327	\$ 696,069	\$ 729,560	\$ 772,851	\$ 858,431	\$ 8,317,186	\$ 756,108	
Actual vs Budget	\$ 36,188	\$ (33,935)	\$ (113,873)	\$ (2,025)	\$ (22,698)	\$ (99,326)	\$ (36,267)	\$ (57,332)	\$ (94,277)	\$ (54,454)	\$ (18,722)	\$ (496,721)	\$ (45,156)	
Actual vs Prior Year	\$ 176,854	\$ 30,242	\$ (23,883)	\$ 90,466	\$ 56,459	\$ (68,578)	\$ 21,558	\$ 66,515	\$ (11,470)	\$ 120,981	\$ 44,345	\$ 503,489	\$ 45,772	
<b>Schertz Sewer</b>														
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 1,311	\$ 1,407	\$ 1,192	\$ 1,449	\$ 1,543	\$ 1,599	\$ 14,950	\$ 1,359	
Actual vs Budget	\$ (595)	\$ (547)	\$ (606)	\$ (552)	\$ (640)	\$ (774)	\$ (771)	\$ (685)	\$ (633)	\$ (569)	\$ (572)	\$ (6,943)	\$ (631)	
Actual vs Prior Year	\$ (169)	\$ 38	\$ (14)	\$ 7	\$ 19	\$ 41	\$ (18)	\$ 14	\$ 198	\$ 271	\$ 292	\$ 680	\$ 62	
<b>Total Sales</b>														
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 2,770,413	\$ 2,818,188	\$ 2,775,328	\$ 2,811,440	\$ 2,911,265	\$ 3,069,331	\$ 31,475,799	\$ 2,861,436	
Actual vs Budget	\$ (246,941)	\$ (238,926)	\$ (445,953)	\$ (166,214)	\$ (289,145)	\$ (467,300)	\$ (321,740)	\$ (335,215)	\$ (448,783)	\$ (367,392)	\$ (300,963)	\$ (3,628,573)	\$ (329,870)	
Actual vs Prior Year	\$ 405,148	\$ 227,154	\$ 144,532	\$ 338,159	\$ 331,561	\$ 59,686	\$ 253,414	\$ 331,764	\$ 133,009	\$ 430,806	\$ 331,439	\$ 2,986,673	\$ 271,516	

**NEW BRAUNFELS UTILITIES**  
**Wastewater Usage (Gallons)**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD		
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	ACT	AVG	
<b>Residential</b>														
Actuals	104,591,818	110,400,361	98,017,580	104,695,640	106,901,538	102,505,493	103,123,767	100,389,112	99,651,088	105,063,485	112,520,175	1,147,860,061	104,350,915	
Prior Year	105,945,683	113,046,276	100,144,142	99,574,341	99,394,434	165,422,006	103,083,536	95,079,883	112,004,672	96,091,872	106,496,139	1,196,282,984	108,752,999	
<b>Multi-Unit 2-4</b>														
Actuals	835,859	859,259	803,385	849,140	838,636	814,487	800,547	771,054	756,820	807,749	867,871	9,004,807	818,619	
Prior Year	834,405	876,991	783,357	774,377	790,783	904,980	832,938	758,277	902,042	776,317	868,611	9,103,078	827,553	
<b>Multi-Unit 5+</b>														
Actuals	26,464,494	26,498,569	21,294,621	23,400,792	23,794,355	23,835,720	25,905,743	23,228,453	22,304,354	23,818,525	24,978,326	265,523,952	24,138,541	
Prior Year	25,753,140	28,032,246	23,907,336	22,819,107	22,650,042	27,891,169	24,467,609	20,651,634	22,916,972	20,798,039	23,856,366	263,743,660	23,976,696	
<b>SGS</b>														
Actuals	147,287,980	131,416,134	111,637,606	114,268,301	111,907,830	102,975,607	107,558,109	108,463,284	115,704,856	125,955,294	140,826,238	1,318,001,242	119,818,295	
Prior Year	130,005,417	129,722,018	125,164,836	97,417,889	104,504,690	119,839,409	108,336,432	99,625,140	121,947,383	104,364,672	134,644,800	1,275,572,690	115,961,154	
<b>Schertz Sewer</b>														
Actuals	433,200	437,700	429,500	435,300	402,200	434,500	466,400	395,200	429,100	422,500	437,900	4,723,500	429,409	
Prior Year	145,500	141,667	144,733	144,333	131,933	140,267	157,433	130,133	138,233	140,600	144,467	1,559,300	141,755	
<b>Total Sales</b>														
Actuals	279,613,351	269,612,023	232,182,693	243,649,174	243,844,560	230,565,808	237,854,567	233,247,104	238,846,219	256,067,554	279,630,510	2,745,113,562	249,555,778	
Prior Year	262,684,145	271,819,198	250,144,405	220,730,048	227,471,883	314,197,831	236,877,949	216,245,068	257,909,303	222,171,500	266,010,383	2,746,261,712	249,660,156	

**NEW BRAUNFELS UTILITIES**  
**Wastewater Customers**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023 AUG	2023 SEP	2023 OCT	2023 NOV	2023 DEC	2024 JAN	2024 FEB	2024 MAR	2024 APR	2024 MAY	2024 JUN	FY 2024 YTD AVG
<b>Residential</b>												
Actuals	32,187	32,472	32,558	32,545	32,691	32,878	32,947	33,120	33,338	33,469	33,477	32,880
Budget	34,071	34,211	34,352	34,494	34,636	34,779	34,922	35,066	35,211	35,356	35,502	34,782
Prior Year	31,424	31,569	31,602	31,627	31,697	31,757	31,772	31,793	31,703	31,733	32,000	31,698
<b>Multi-Unit 2-4</b>												
Actuals	173	186	189	188	188	187	187	186	187	186	183	185
Budget	182	182	182	182	182	182	182	182	182	182	182	182
Prior Year	174	174	173	174	175	175	174	172	173	172	173	174
<b>Multi-Unit 5+</b>												
Actuals	261	268	269	269	270	270	270	270	270	278	290	271
Budget	260	261	263	265	267	268	270	272	274	275	277	268
Prior Year	256	257	259	258	258	258	258	258	256	258	257	258
<b>SGS</b>												
Actuals	2,158	2,167	2,168	2,167	2,185	2,191	2,190	2,192	2,202	2,202	2,190	2,183
Budget	2,135	2,139	2,142	2,146	2,150	2,154	2,158	2,162	2,166	2,169	2,173	2,154
Prior Year	2,125	2,127	2,131	2,131	2,134	2,127	2,130	2,133	2,132	2,140	2,149	2,133
<b>Schertz Sewer</b>												
Actuals	1	1	1	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1	1	1	1
<b>Total Accounts</b>												
Actuals	34,780	35,094	35,185	35,170	35,335	35,527	35,595	35,769	35,998	36,136	36,141	35,521
Budget	36,648	36,794	36,941	37,088	37,236	37,384	37,533	37,683	37,833	37,984	38,135	37,387
Prior Year	33,980	34,128	34,166	34,191	34,265	34,318	34,335	34,357	34,265	34,304	34,580	34,263
<b>New Customers</b>	85	314	91	(15)	165	192	68	174	229	138	5	131
<b>New Customer Growth %</b>	0.2%	0.9%	0.3%	0.0%	0.5%	0.5%	0.2%	0.5%	0.7%	0.4%	0.0%	0.4%

**NEW BRAUNFELS UTILITIES**  
**Wastewater Rates (per Customer)**  
**For Month Ending June 30, 2024**

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	AVG
<b>Residential</b>												
Actuals	\$ 50.34	\$ 54.82	\$ 51.93	\$ 53.38	\$ 53.80	\$ 52.69	\$ 52.79	\$ 51.88	\$ 51.79	\$ 52.84	\$ 54.41	\$ 52.79
Budget	\$ 55.09	\$ 57.06	\$ 56.74	\$ 54.29	\$ 57.06	\$ 58.56	\$ 56.88	\$ 55.60	\$ 57.15	\$ 57.16	\$ 57.79	\$ 56.67
Prior Year	\$ 45.57	\$ 50.75	\$ 48.01	\$ 47.87	\$ 47.86	\$ 50.20	\$ 48.52	\$ 46.85	\$ 50.34	\$ 47.30	\$ 49.20	\$ 48.41
<b>Multi-Unit 2-4</b>												
Actuals	\$ 82.97	\$ 87.52	\$ 84.22	\$ 85.78	\$ 85.67	\$ 84.60	\$ 84.31	\$ 83.31	\$ 82.29	\$ 84.43	\$ 87.53	\$ 84.78
Budget	\$ 87.80	\$ 91.78	\$ 91.48	\$ 87.08	\$ 90.01	\$ 92.65	\$ 91.36	\$ 89.25	\$ 96.19	\$ 93.84	\$ 94.41	\$ 91.44
Prior Year	\$ 73.98	\$ 81.69	\$ 78.58	\$ 78.06	\$ 78.31	\$ 82.66	\$ 80.40	\$ 78.01	\$ 83.34	\$ 78.71	\$ 82.20	\$ 79.63
<b>Multi-Unit 5+</b>												
Actuals	\$ 1,389.97	\$ 1,378.22	\$ 1,216.35	\$ 1,278.26	\$ 1,295.02	\$ 1,292.97	\$ 1,360.21	\$ 1,274.98	\$ 1,253.34	\$ 1,268.59	\$ 1,281.93	\$ 1,299.08
Budget	\$ 1,490.48	\$ 1,535.99	\$ 1,518.40	\$ 1,405.67	\$ 1,491.88	\$ 1,532.25	\$ 1,496.72	\$ 1,431.48	\$ 1,477.75	\$ 1,493.28	\$ 1,522.49	\$ 1,490.58
Prior Year	\$ 1,266.40	\$ 1,372.15	\$ 1,291.75	\$ 1,248.57	\$ 1,236.11	\$ 1,396.67	\$ 1,298.43	\$ 1,201.61	\$ 1,272.83	\$ 1,212.18	\$ 1,298.96	\$ 1,281.42
<b>SGS</b>												
Actuals	\$ 415.83	\$ 377.50	\$ 332.14	\$ 341.38	\$ 329.04	\$ 306.59	\$ 317.04	\$ 317.55	\$ 331.32	\$ 350.98	\$ 391.98	\$ 346.49
Budget	\$ 403.40	\$ 398.37	\$ 389.25	\$ 345.61	\$ 344.93	\$ 357.97	\$ 338.57	\$ 348.52	\$ 380.42	\$ 381.34	\$ 403.59	\$ 372.00
Prior Year	\$ 339.06	\$ 370.38	\$ 349.11	\$ 304.69	\$ 310.45	\$ 348.06	\$ 315.85	\$ 295.15	\$ 347.57	\$ 304.61	\$ 378.82	\$ 333.07
<b>Schertz Sewer</b>												
Actuals	\$ 1,306.75	\$ 1,320.32	\$ 1,295.59	\$ 1,313.08	\$ 1,213.24	\$ 1,310.67	\$ 1,406.90	\$ 1,192.12	\$ 1,449.00	\$ 1,543.18	\$ 1,599.43	\$ 1,359.12
Budget	\$ 1,902.07	\$ 1,866.97	\$ 1,901.70	\$ 1,864.68	\$ 1,853.06	\$ 2,084.54	\$ 2,178.27	\$ 1,877.19	\$ 2,081.67	\$ 2,111.82	\$ 2,171.20	\$ 1,990.29
Prior Year	\$ 1,476.00	\$ 1,282.01	\$ 1,309.76	\$ 1,306.14	\$ 1,193.93	\$ 1,269.34	\$ 1,424.69	\$ 1,177.64	\$ 1,250.94	\$ 1,272.36	\$ 1,307.35	\$ 1,297.29

# Financial Update



- **June 2024 Financials**

- Kimberly Huffman, Accounting Manager

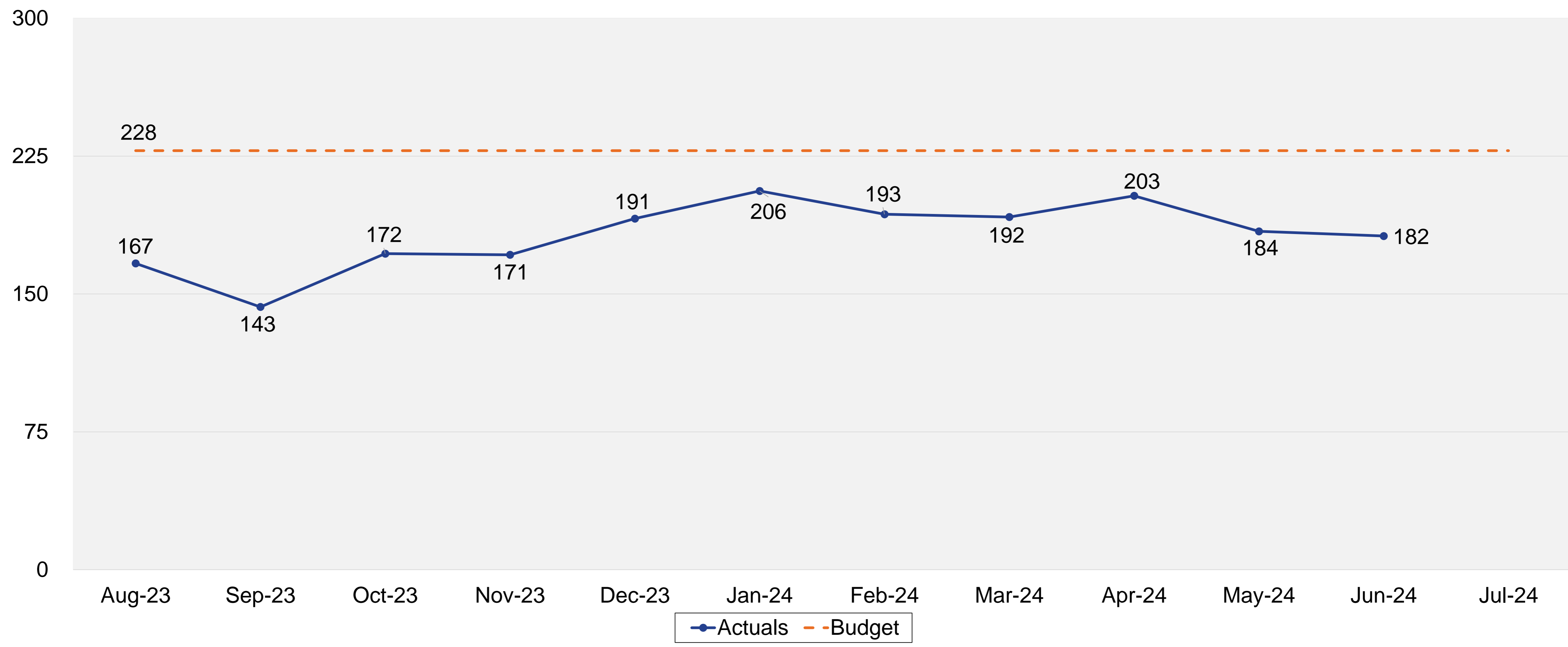
# Board Financial Policy Compliance - June 2024 YTD

	FY 2023 Actual	FY 2024 Budget	Financial Policy	FY 2024 Actual*
<b>Debt to Capitalization (lower is better)</b>	39.1%	47.4%	≤55.0%	<b>41.7%</b>
<b>Debt Service Coverage (higher is better)</b>	5.05	4.28	≥2.40	<b>4.84</b>
<b>Days Cash on Hand (higher is better)</b>	214	228	≥140	<b>182</b>
<b>Days Liquidity on Hand (higher is better)</b>	442	N/A	N/A	<b>503</b>

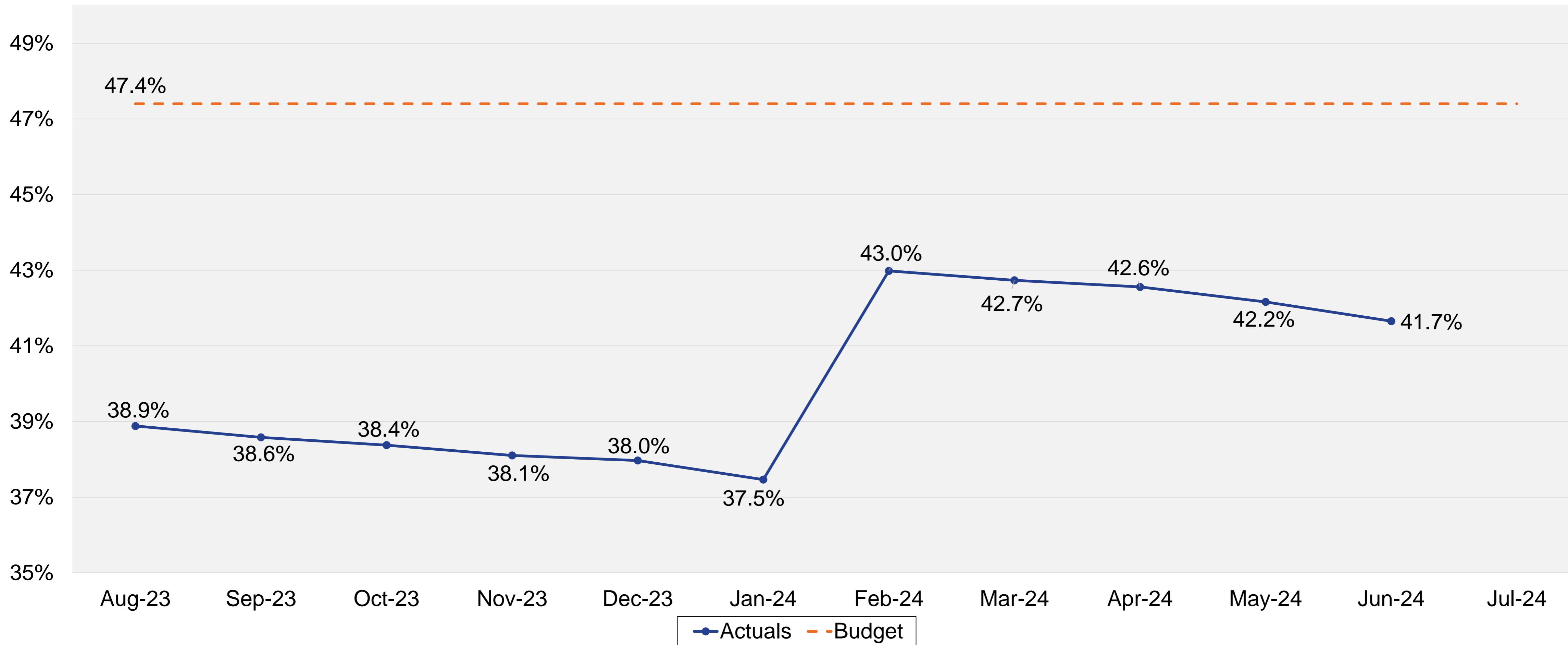
\* Amounts are calculated by annualizing the YTD results



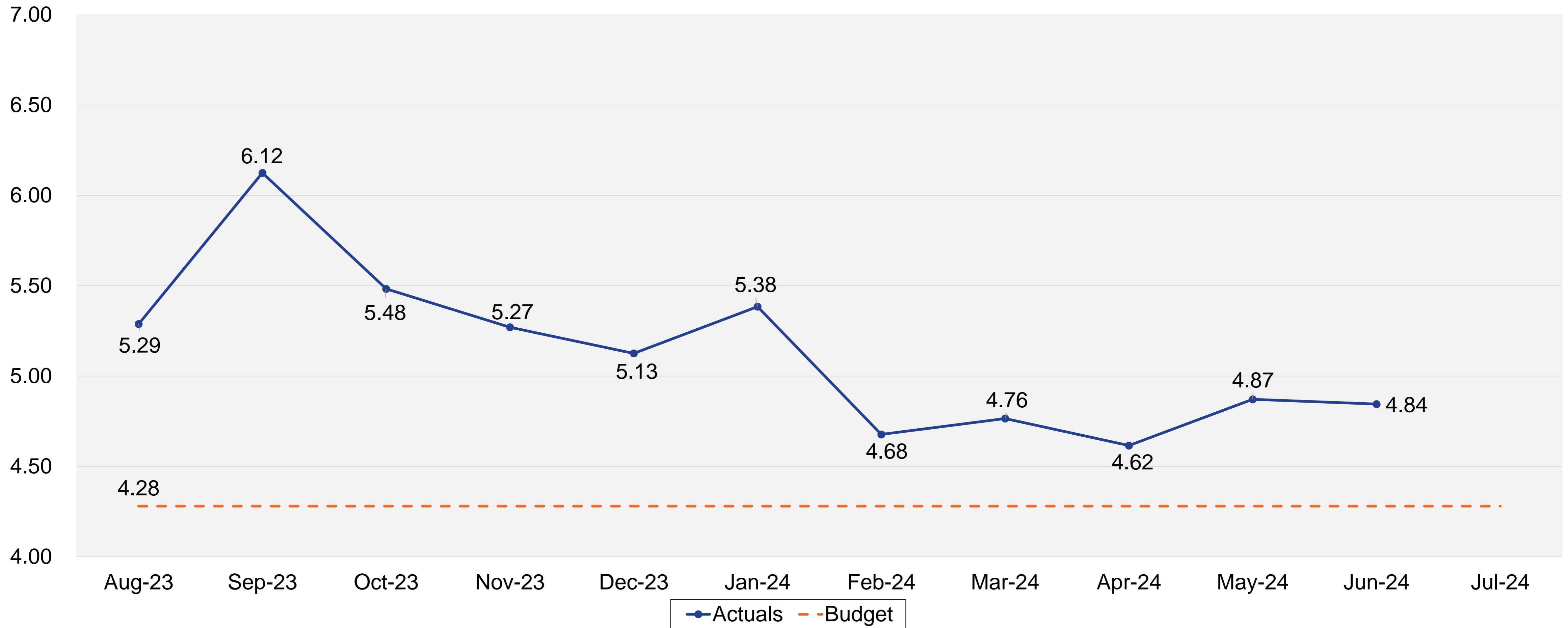
# Days Cash on Hand - June 2024 YTD



# Debt to Capitalization - June 2024 YTD



# Debt Service Coverage - June 2024 YTD



## Mission

Strengthening our community by providing resilient essential services



## Vision

Be a trusted community partner dedicated to excellence in service

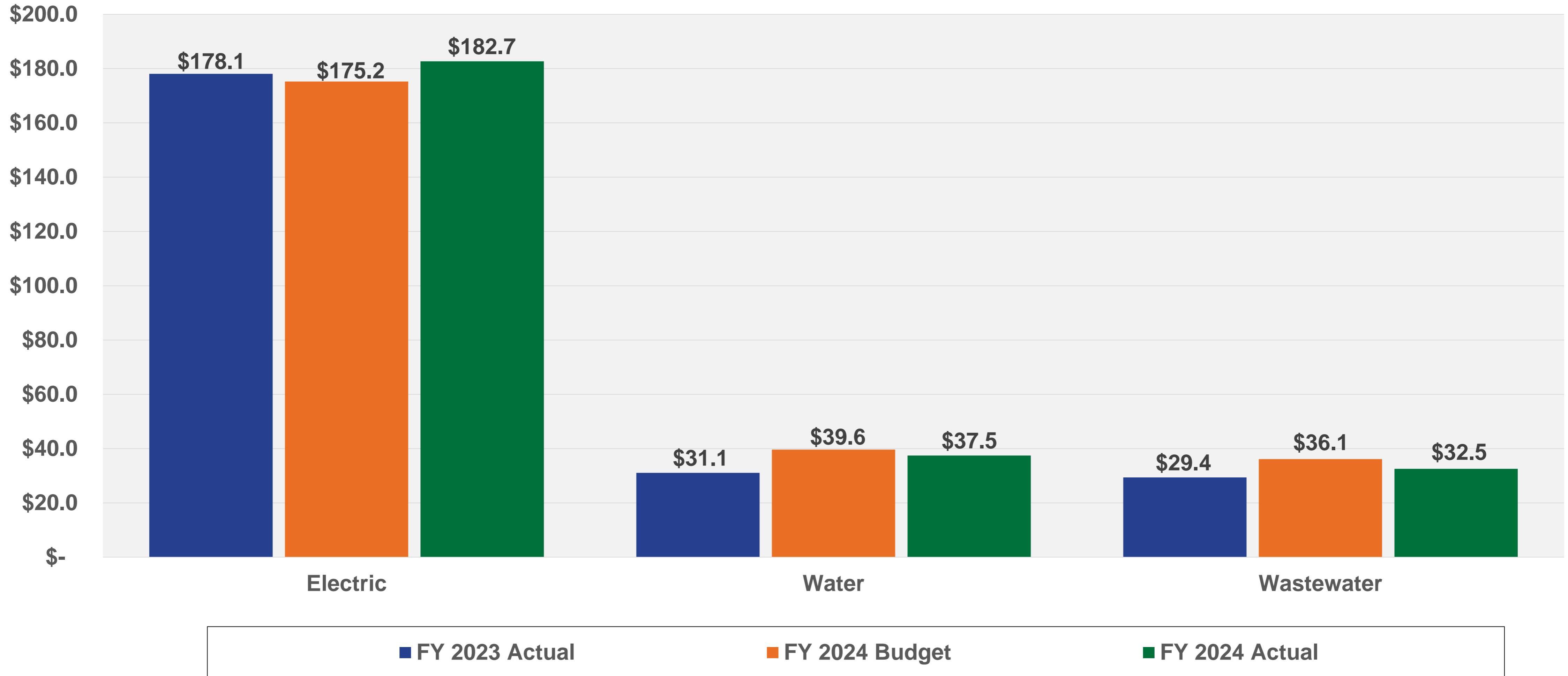


## Core Values

Safety, Team, Integrity, Culture, and Stewardship

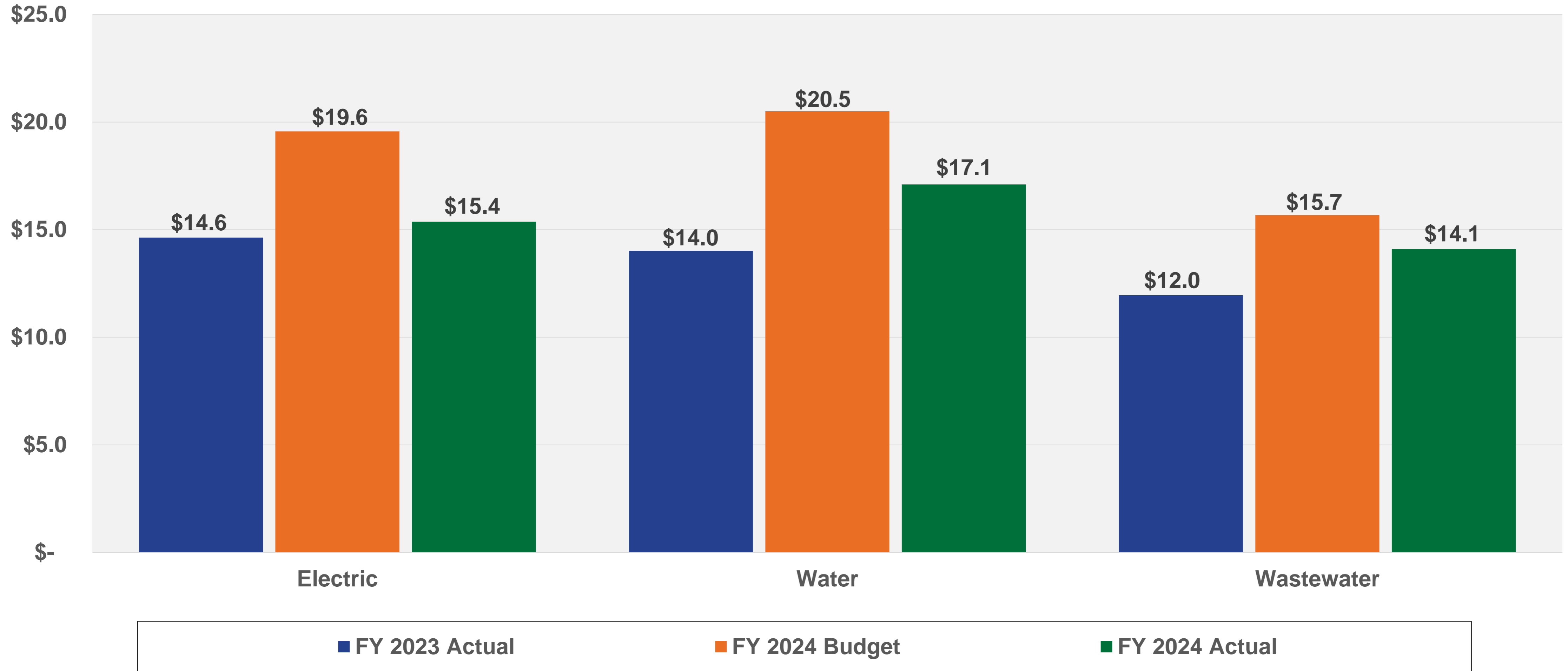
# Operating Revenue by LOB

## June 2024 YTD – Amounts in Millions



# Operating Expenses\* by LOB

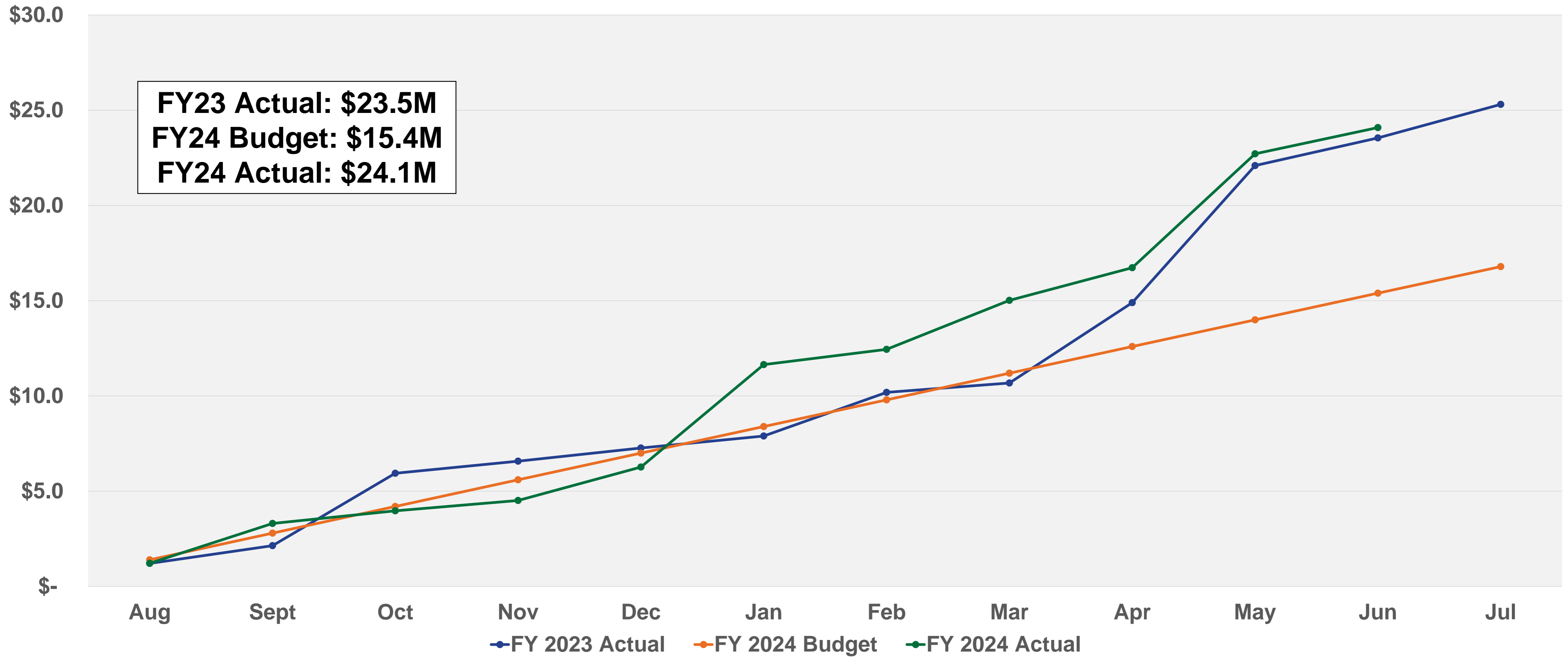
## June 2024 YTD – Amounts in Millions



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

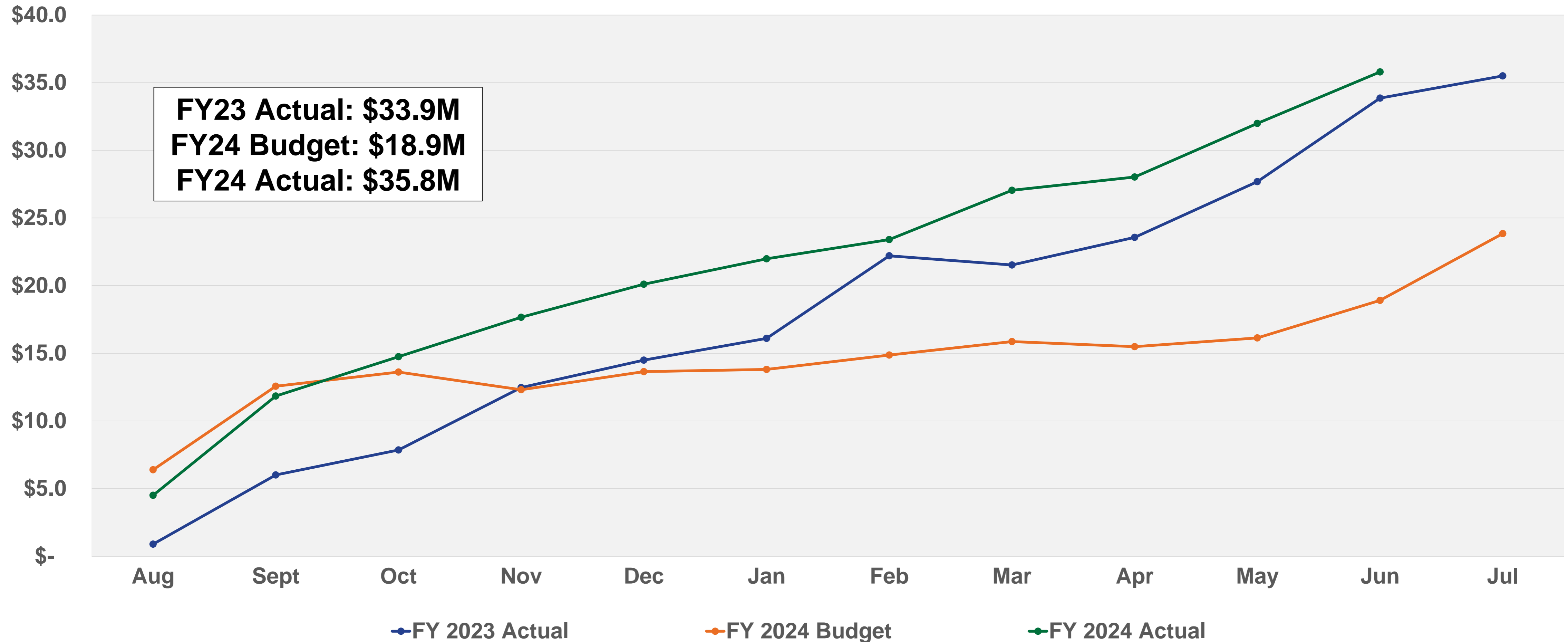
# Impact Fees

## June 2024 YTD – Amounts in Millions\*



\* Amounts shown are YTD for each month

# Net Operating Income June 2024— Amounts in Millions\*



\* Amounts shown are YTD for each month

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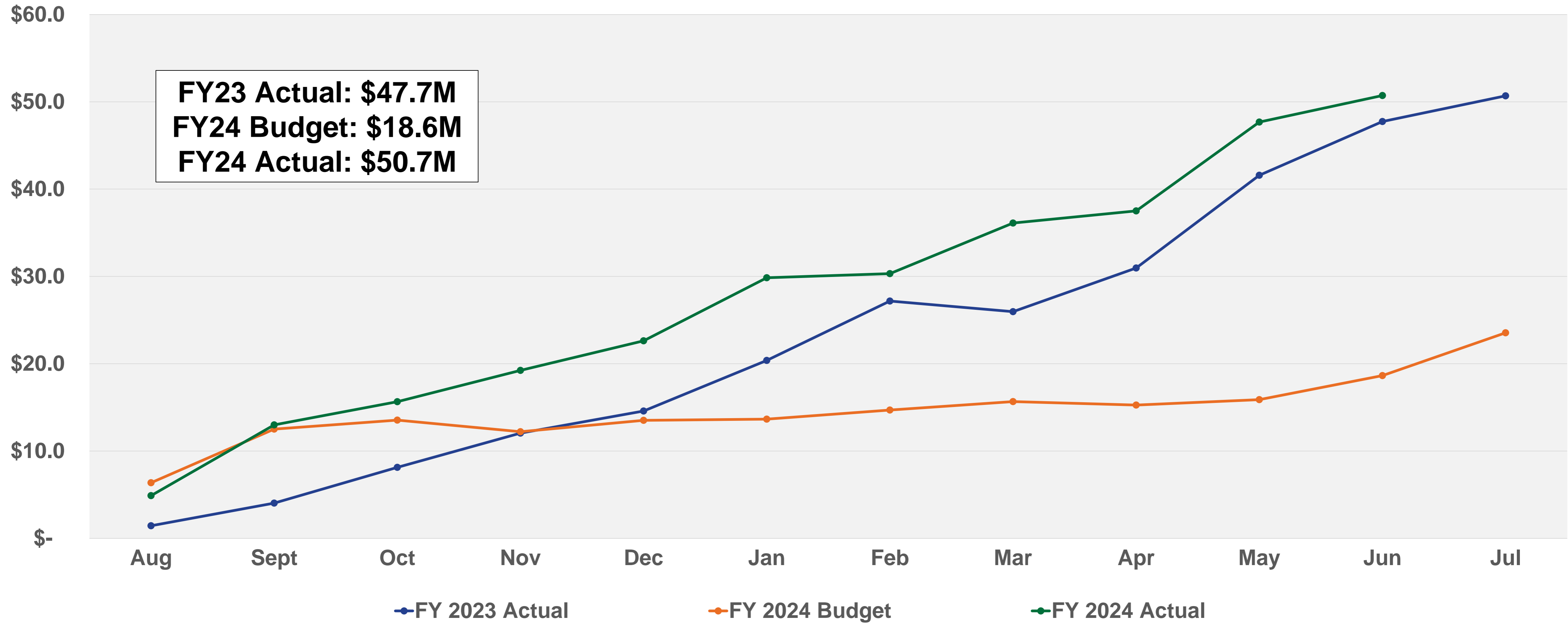


## Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Change in Net Position After Contributions

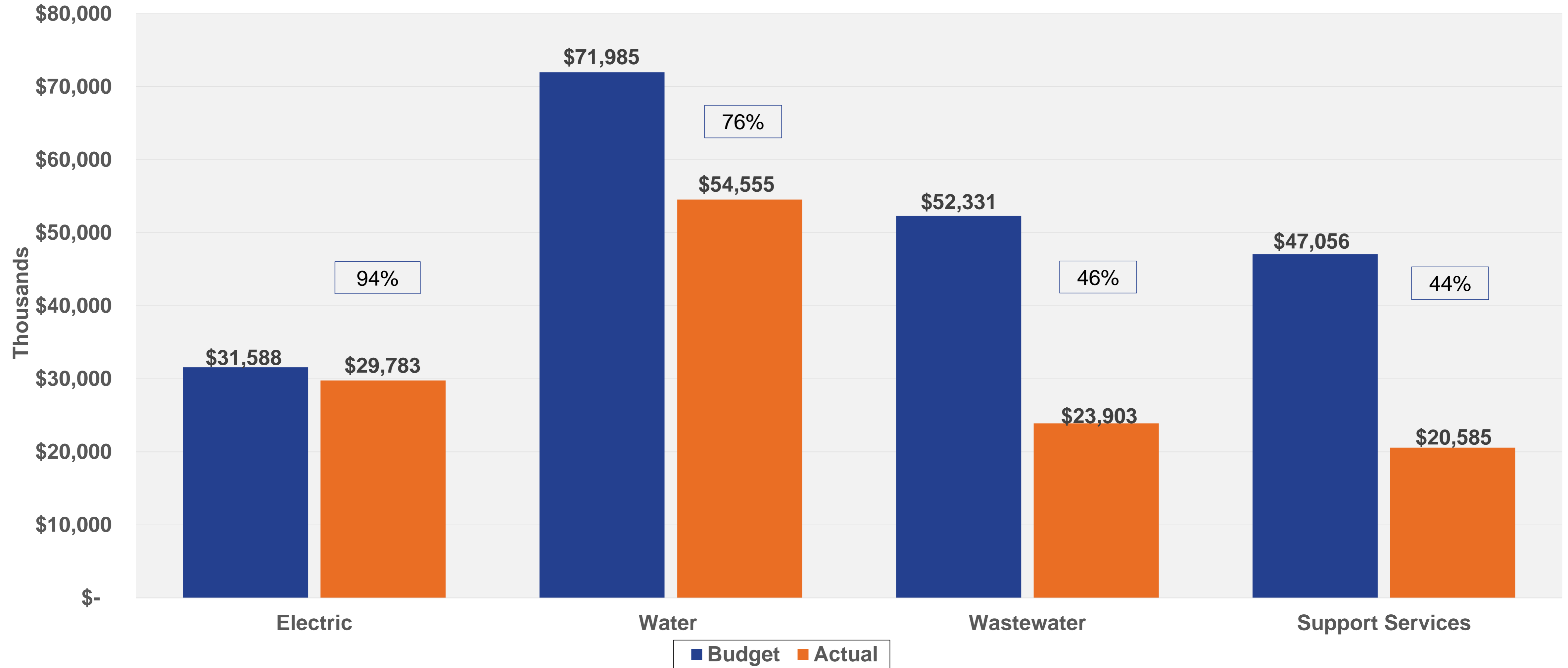
## June 2024– Amounts in Millions\*



\* Amounts shown are YTD for each month



# Capital Project Expenditures June 2024 YTD – Amounts in Thousands



# Questions?

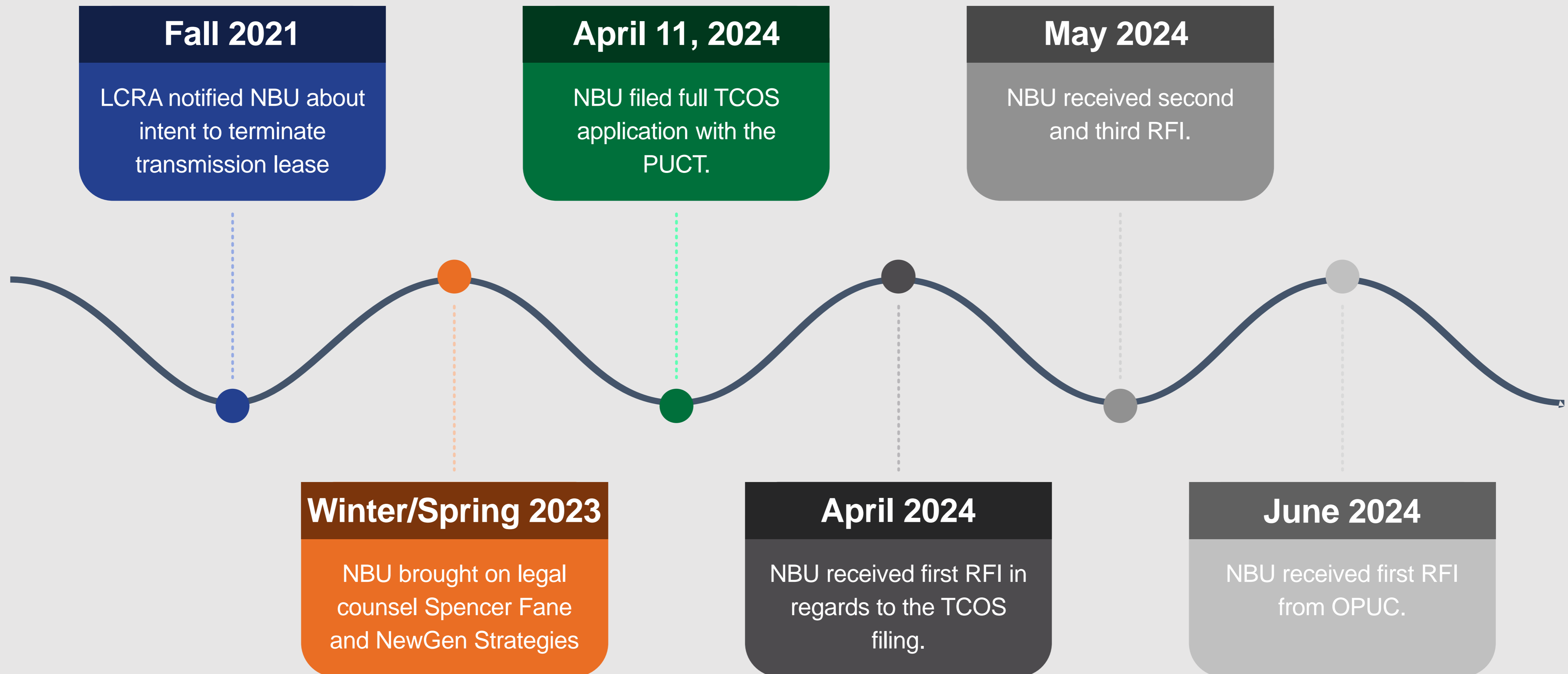
# Transmission Cost of Service Update



June 27, 2024

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

# TCOS Timeline



# Update on the NBU Community Advisory Panel



## Laying a Foundation

January-March 2024

- The Priorities of CAP Members: Affordability and Reliability
- Defining an Integrated Resource Plan (IRP)
- Overview of NBU's current power supply model
- Introduction to The Energy Authority's (TEA) Plexos® Modeling Tool
- Forecasts for Employment, EVs and Load
- Introduction to Natural Gas and ERCOT energy markets
- Regulatory and ERCOT Overview

BRITTON STRATEGIES



# Update on the NBU Community Advisory Panel

## IRP Modeling

### April-June 2024

- Introduction to Building a Base Case
- Assumptions (e.g. future load, forward natural gas pricing, etc.) for the Base Case
- Building and Comparing scenarios to Base case – CAP Members & NBU
- IRP Preliminary Models at the Extremes
- The IRP Destination

## IRP Wrap-up

### August-December 2024

- TEA’s IRP to the CAP October 1
- CAP reviews and digests IRP for the meeting October 22
- CAP IRP feedback captured at the October 22 meeting
- Feedback will be incorporated in the CAP’s Final Report and discussed at the November 12 meeting
- CAP Final Report and IRP presented at Board Retreat December 5

BRITTON STRATEGIES





# CIP Update

• FY 2024, Q3

Thursday, August 29, 2024

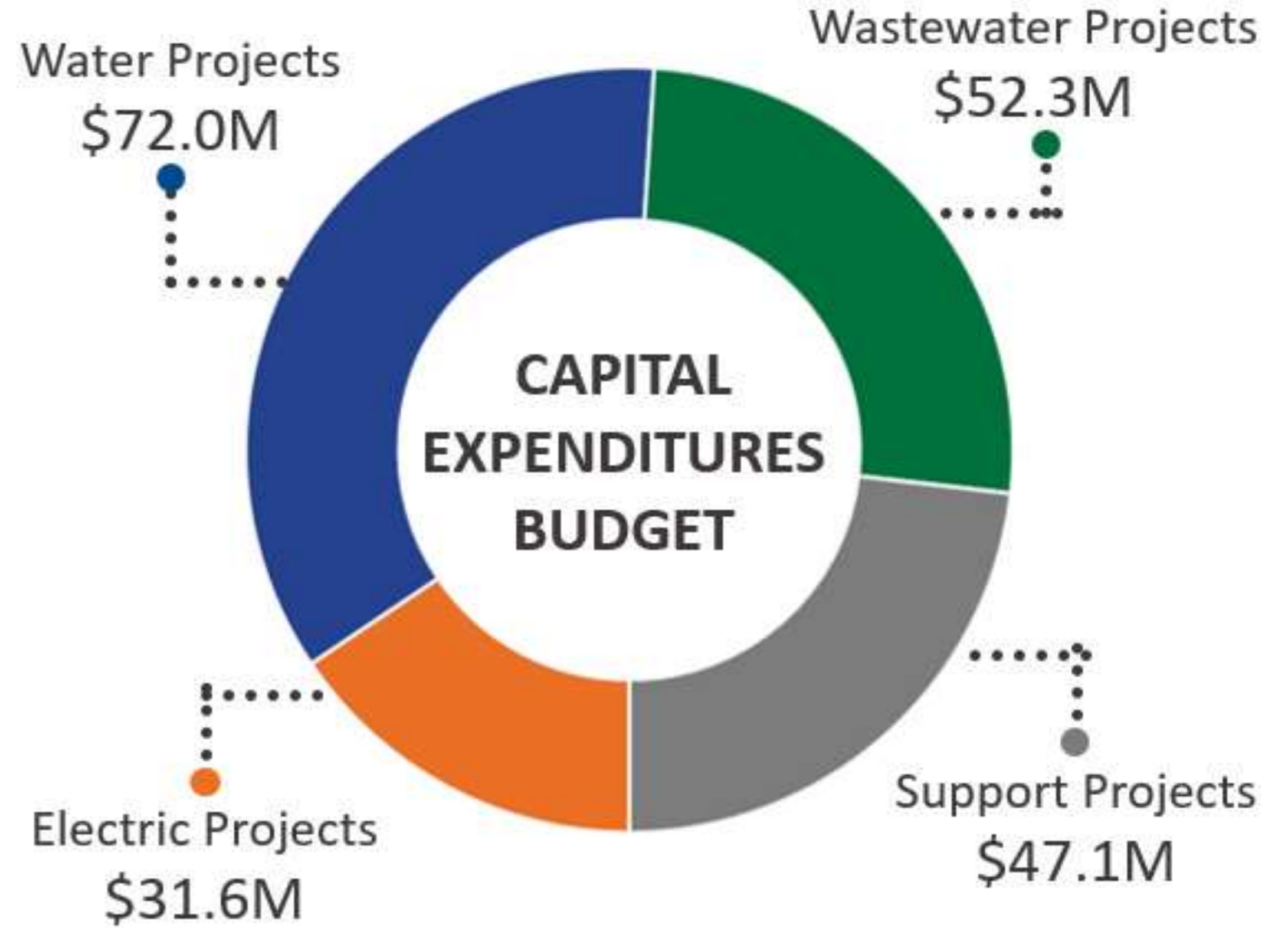
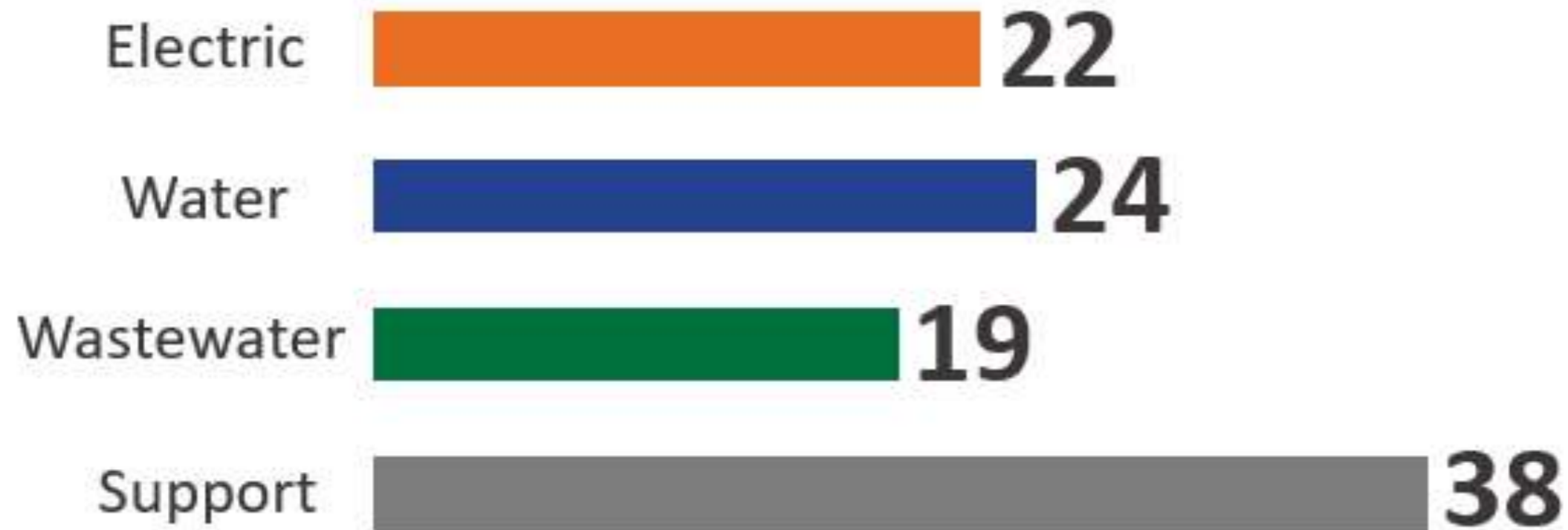


- **Program Status through May 2024**
- **Performance & Accomplishments for each line of business**

# FY 2024 Budget Capital Projects

## FY 2024 Budget Capital Projects

### PROJECT COUNT



### BUDGET

Developed in February 2023 based on expected project costs

**\$202,959,183**

### SPENDING

Year-to-date project spending through May 2024

**\$113,386,707**

### YTD %

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

**56%**

### VARIANCE

Difference between budget and year-end projected costs

**\$60,119,783**

### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service



### Core Values

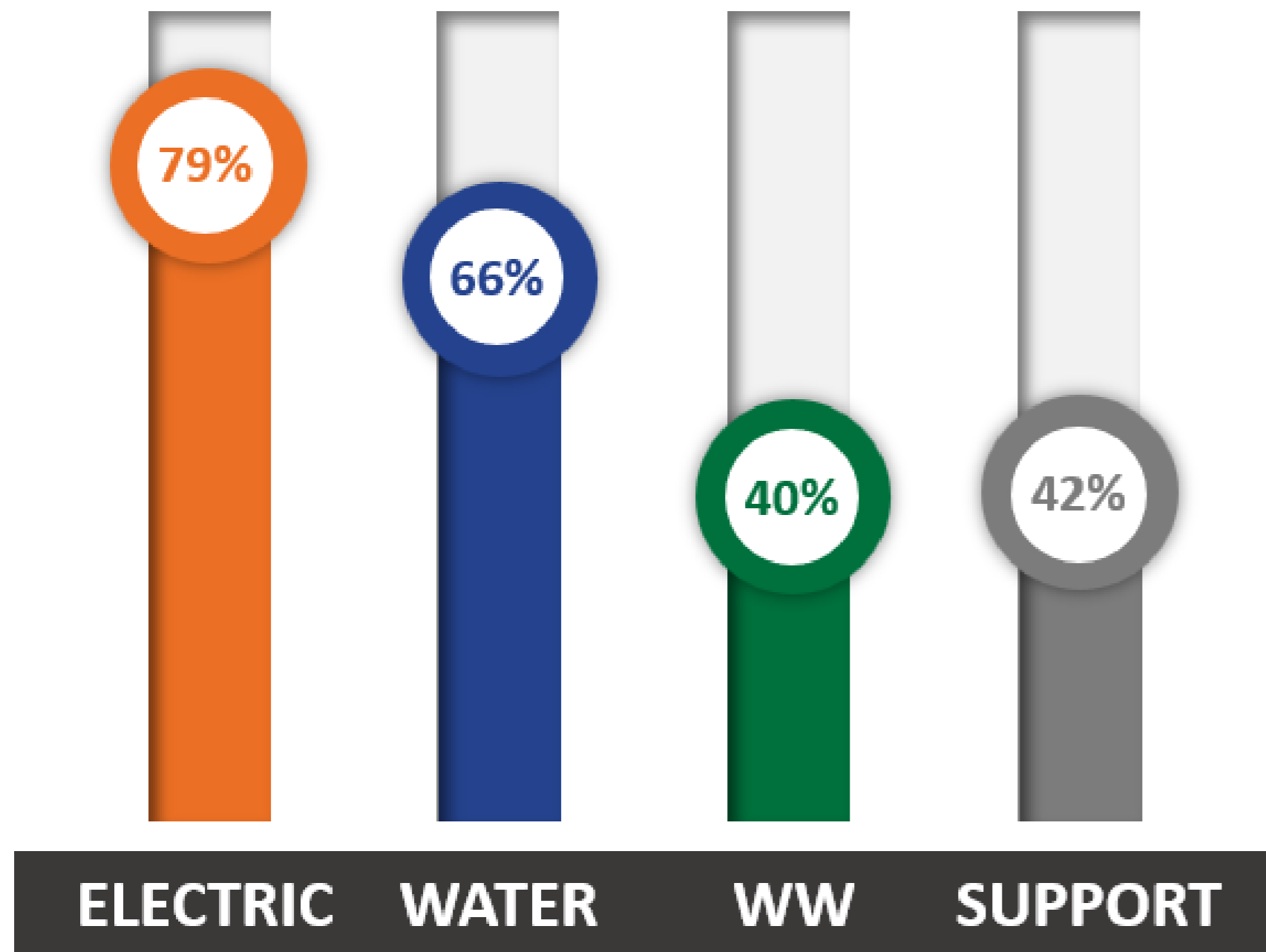
Safety, Team, Integrity, Culture, and Stewardship

# FY 2024 Spending Capital Projects










## FY 2024 Spending Capital Projects

- Through Q3 expect spending to be ~75% of budget
- Electric projects right on budget and projected to be slightly over budget by year-end, pending transformer invoices
- Significant number of projects delayed and postponed throughout the year
- Developing a tool to assist in schedule and budget modeling to help close the gap
- Key Performance Indicators (KPI) have been added to Level of Service (LoS) dashboard to increase visibility

YTD Actual Spending vs Budget



# Project Stage

	NOT STARTED 	PLANNING OR STUDY 	DESIGN & LAND ACQ. 	CONSTRUCTION OR EXECUTION 	COMPLETE 				
 WATER	1	→	1	→	6	→	14	→	2
 WASTEWATER	1	→	0	→	10	→	6	→	2
 ELECTRIC	0	→	3	→	6	→	12	→	1
 SUPPORT	12	→	11	→	3	→	7	→	5
<b>Q3 TOTAL</b>	<b>14</b>	→	<b>15</b>	→	<b>25</b>	→	<b>39</b>	→	<b>10</b>
<b>FY24 Q2 TOTAL</b>	<b>17</b>	→	<b>10</b>	→	<b>26</b>	→	<b>42</b>	→	<b>8</b>

**Mission**

Strengthening our community by providing resilient essential services

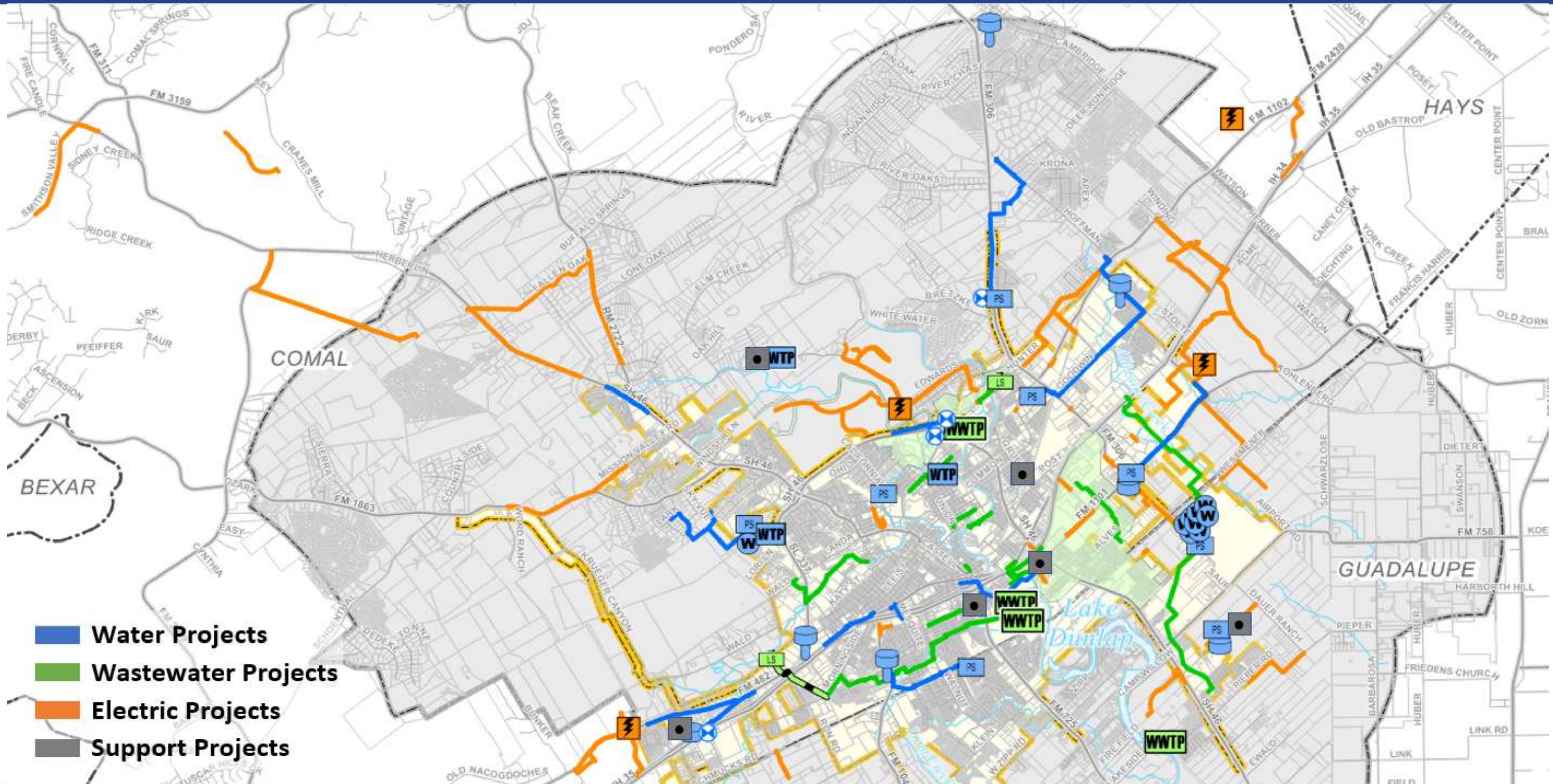
+ **Vision**

Be a trusted community partner dedicated to excellence in service

+ **Core Values**

Safety, Team, Integrity, Culture, and Stewardship

# Capital Projects (5-Year Plan)



## Mission

Strengthening our community by providing resilient essential services



## Vision

Be a trusted community partner dedicated to excellence in service



## Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Traffic Impacts

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

### Mission/Westpointe WLS

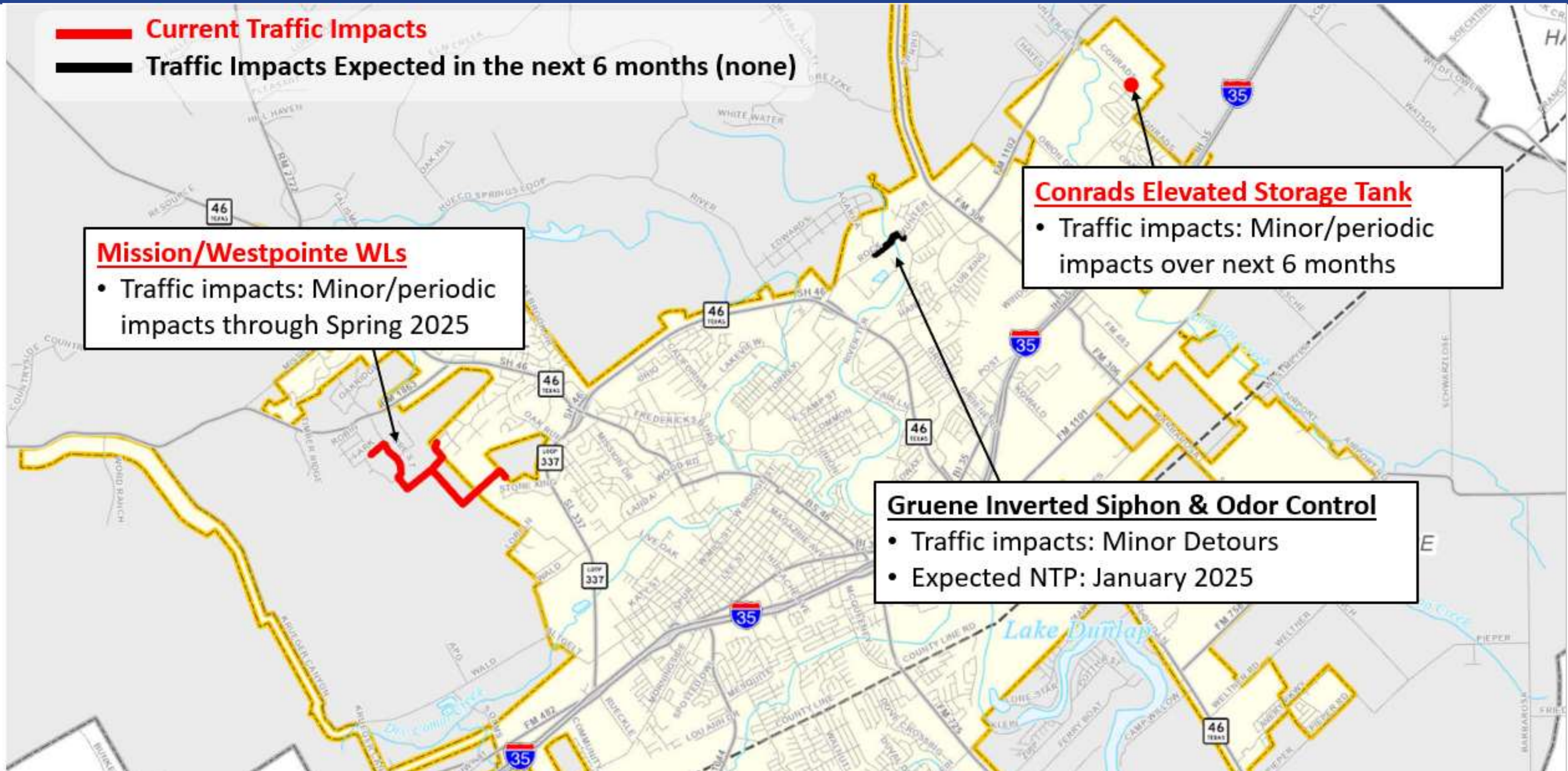
- Traffic impacts: Minor/periodic impacts through Spring 2025

### Conrads Elevated Storage Tank

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

### Gruene Inverted Siphon & Odor Control

- Traffic impacts: Minor Detours
- Expected NTP: January 2025



# CIP Performance and Accomplishments



## Mission

Strengthening our community by providing resilient essential services

+

## Vision

Be a trusted community partner dedicated to excellence in service

+

## Core Values

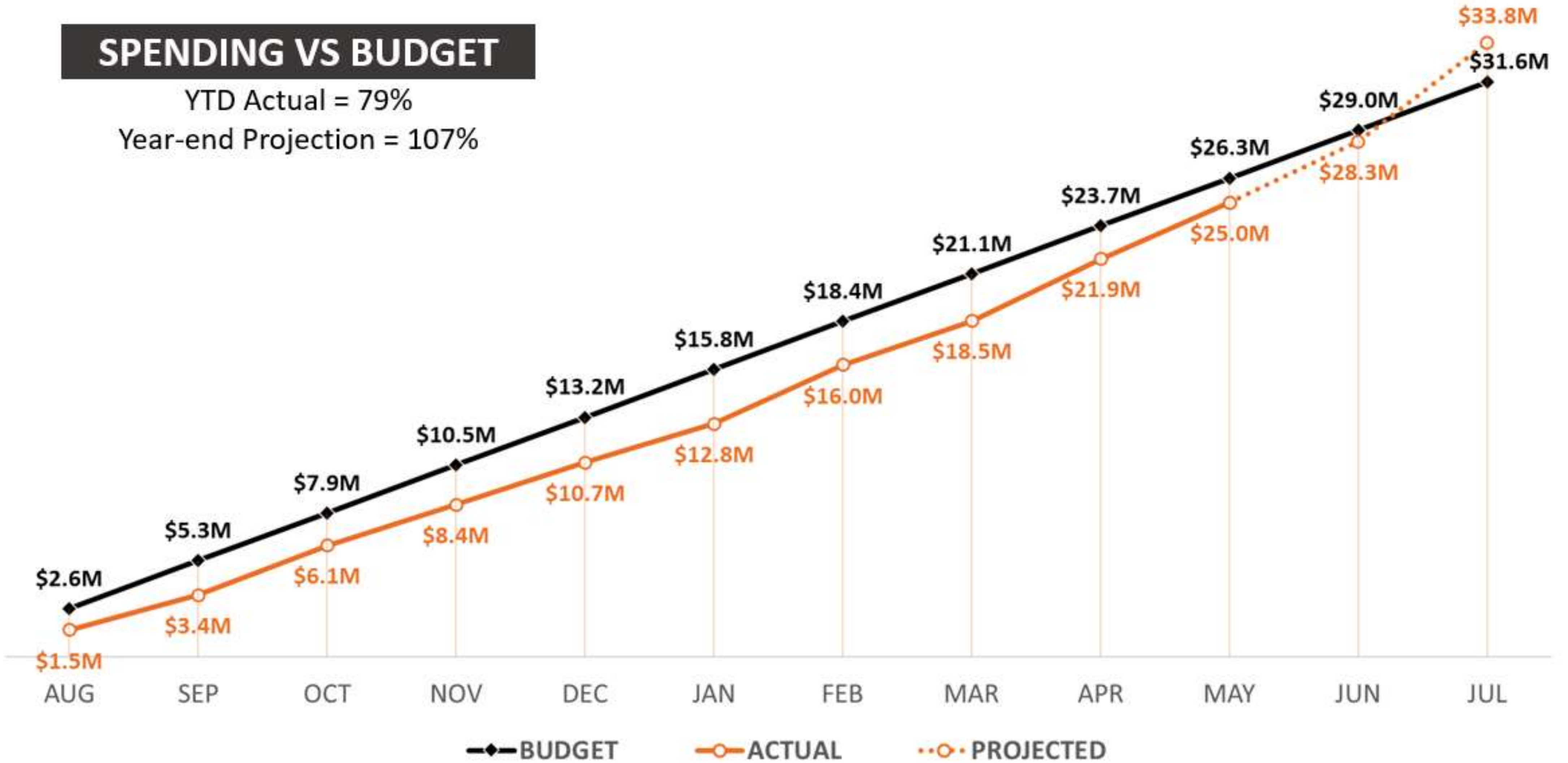
Safety, Team, Integrity, Culture, and Stewardship



# Electric – Spending vs Budget

## SPENDING VS BUDGET

YTD Actual = 79%  
Year-end Projection = 107%



### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service



### Core Values

Safety, Team, Integrity, Culture, and Stewardship



# Q3 Electric Accomplishments

- Added 1,562 metered customers Q3 FY24, within developments previously completed and within wholly new developments. This is an all-time quarterly high.
- Energized service to 9 single-family projects and 3 multi-family projects. Major projects include
  - Kohlenberg Subdivision Unit#1, now called Legacy at Lake Dunlap
  - Veramendi Apartments, now called Legacy at Veramendi
  - Mayfair E-8 Unit#1
  - Camp Landa RV
  - Villas at Creekside Phase 2
- Initiated construction of the HE11 OH Feeder from Henne Substation to FM 1102 and the CO14 UD Feeder Exit to Bell St.
- Completed Edwards Blvd. Phase 1 overhead project, in preparation for future Hueco Springs Substation tie-in.
- Fully commissioned E.C. Mornhinweg T2 (ECT2). It is placed into service backing up ECT1 as first duty.



## Mission

Strengthening our community by providing resilient essential services



## Vision


Be a trusted community partner dedicated to excellence in service




## Core Values

Safety, Team, Integrity, Culture, and Stewardship


# Feature Projects - Electric

 **ELECTRIC**


**DISTRIBUTION**



**TRANSMISSION**



**SUBSTATION**




## E.C. Mornhinweg FM 482 to IH-35

Completion: April 2024

Purpose: The bulk feeder overhead extension creates a new E.C. Mornhinweg feeder from FM 482 to IH-35, to help serve growing load in the region. Such load includes the Park 35 Industrial Park within the City of Schertz. The total distance of extension is 4,200'. NBU secured the property line easement from the property owner, and constructed the overhead distribution with in-house crews.



## E.C. Mornhinweg Transformer#2 (ECT2) Feeder Additions Include

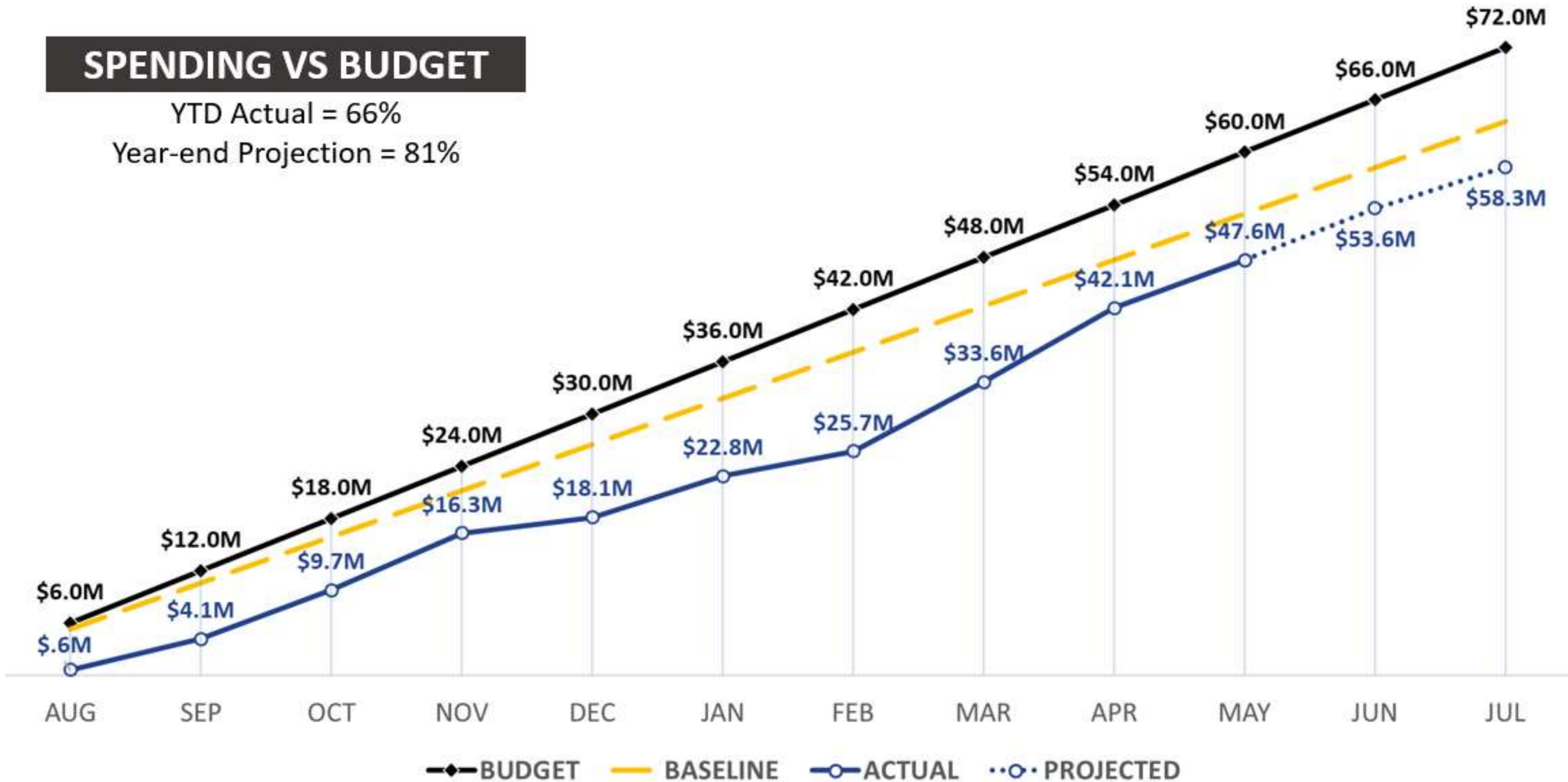
- EC22 Park 35
- EC23 Rusch Ln.
- EC24 Cemex Q.



# Water – Spending vs Budget

## SPENDING VS BUDGET

YTD Actual = 66%  
Year-end Projection = 81%



### Mission

Strengthening our community by providing resilient essential services

### + Vision

Be a trusted community partner dedicated to excellence in service

### + Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Q3 Water Accomplishments

- IH-35 Waterline and Goodwin Waterline put into service
- Tank Decommissioning
  - Loop 337 Elevated Tank
  - Coll Street Standpipe
  - Sunset Standpipe
- Completed 110 developer plan reviews



## Mission

Strengthening our community by providing resilient essential services



## Vision

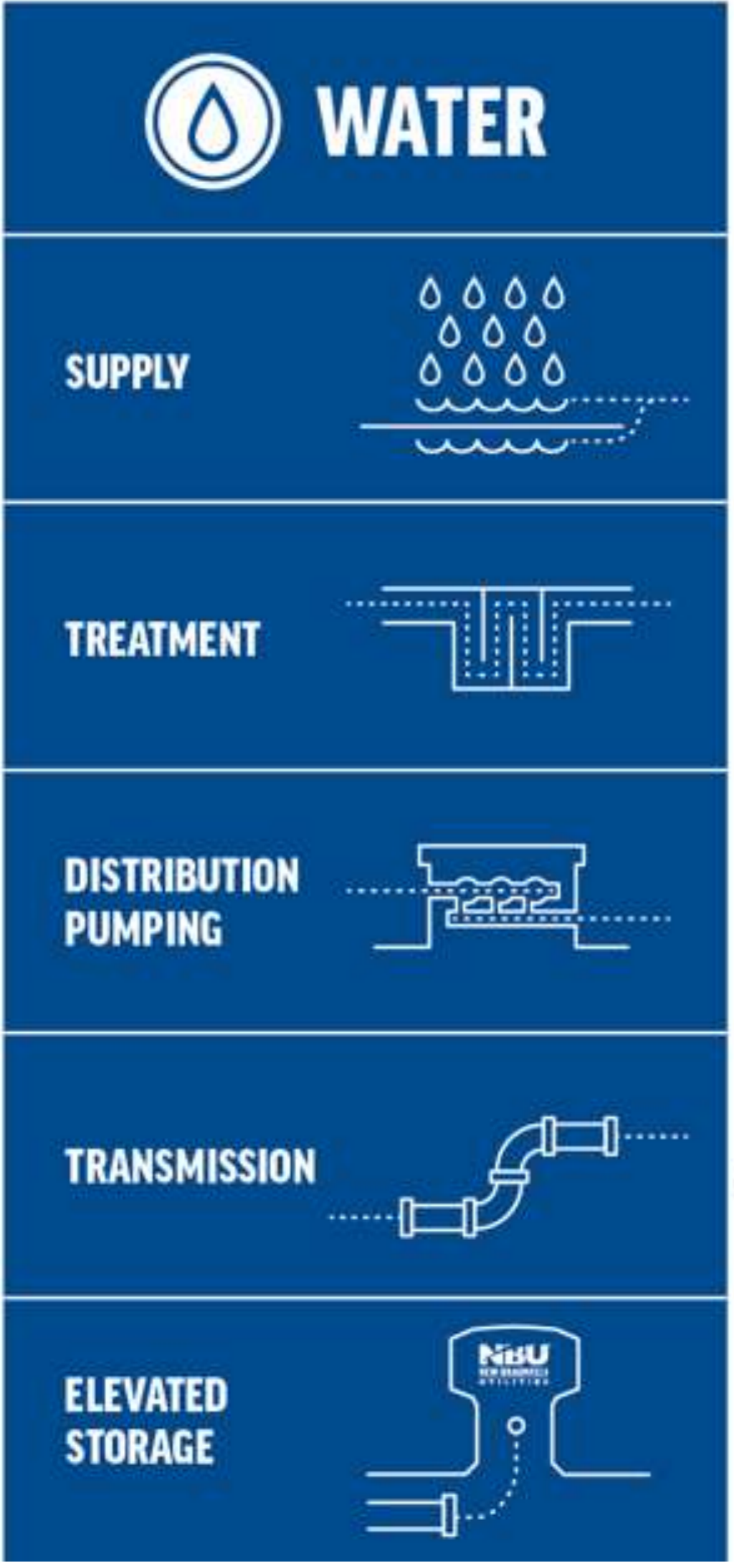
Be a trusted community partner dedicated to excellence in service



## Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Feature Project - Water



## I-35 Waterline

Completion: Q3 2024

Purpose: Provided a direct large-diameter transmission connection from the downtown water production area to the eastern portion of the water system. This project included over 9,500 linear feet of 24" waterline, two TxDOT crossings including IH-35, and a horizontal directional drill under the Guadalupe River



Dunlap Drive

Construction area east of Camp Comal softball fields

### Mission

Strengthening our community by providing resilient essential services

### + Vision

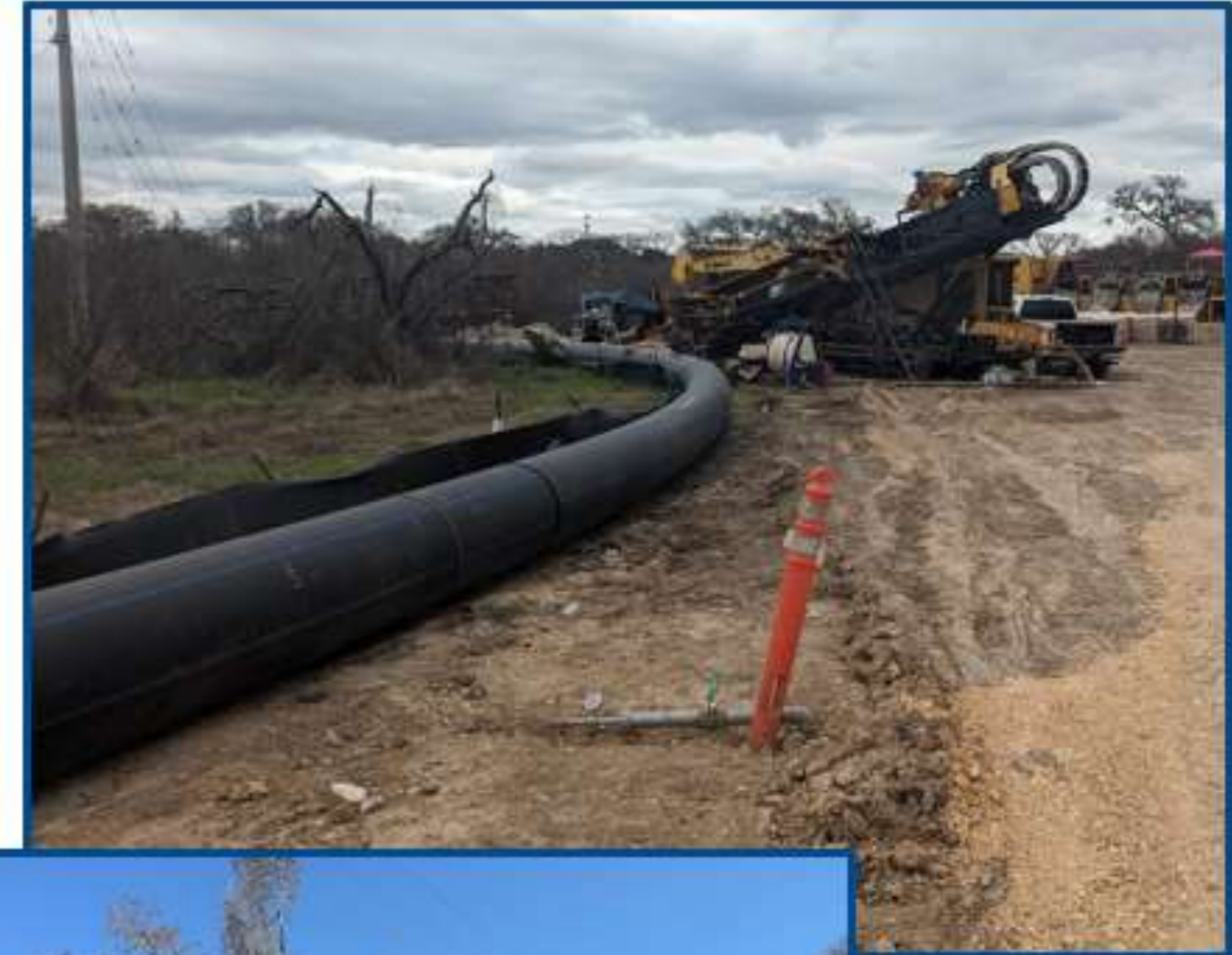
Be a trusted community partner dedicated to excellence in service

### + Core Values

Safety, Team, Integrity, Culture, and Stewardship



# Featured Project – IH 35 Waterline



## Mission

Strengthening our community by providing resilient essential services



## Vision

Be a trusted community partner dedicated to excellence in service



## Core Values

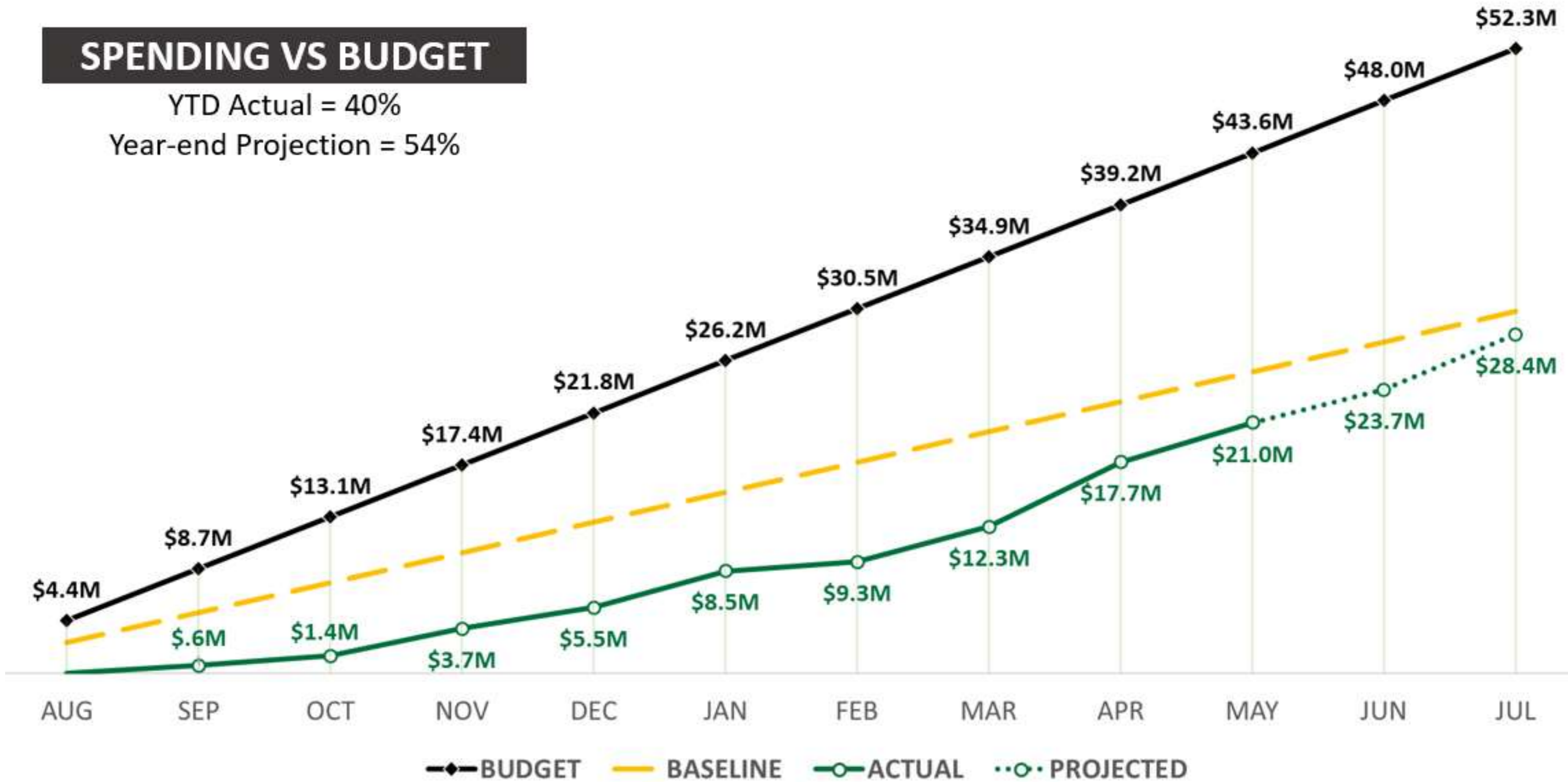
Safety, Team, Integrity, Culture, and Stewardship

# Wastewater – Spending vs Budget

## SPENDING VS BUDGET

YTD Actual = 40%

Year-end Projection = 54%



### Mission

Strengthening our community by providing resilient essential services

### + Vision

Be a trusted community partner dedicated to excellence in service

### + Core Values

Safety, Team, Integrity, Culture, and Stewardship

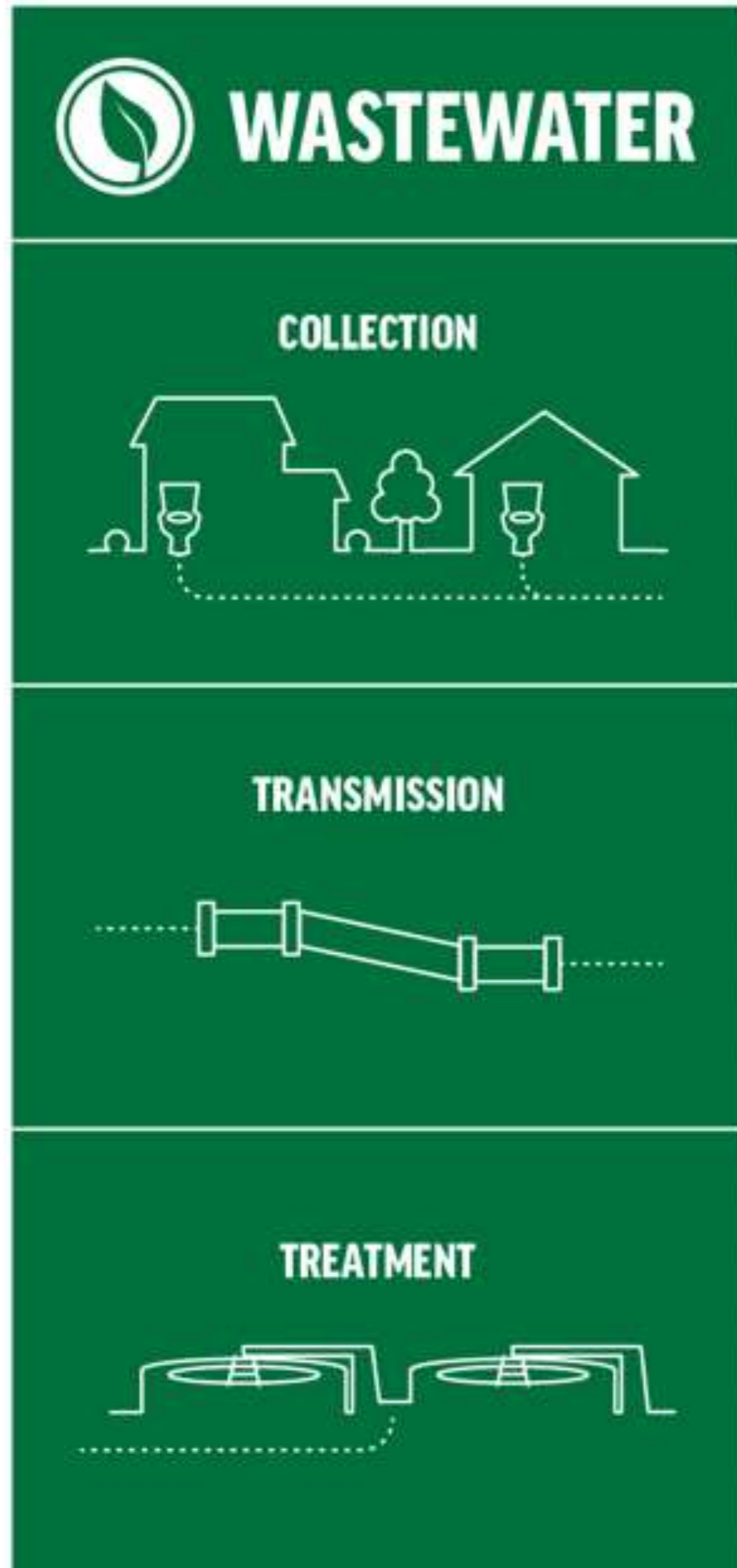
# Q3 Wastewater Accomplishments

- McKenzie WRF construction on track at ~25% complete





# Feature Project - Wastewater



### Gruene Spoils Yard

Completion: Q3 2024

Purpose: provided over an acre of space for Operations personnel to use for spoils and material storage adjacent to the existing Gruene Water Reclamation Facility

## Mission

Strengthening our community by providing resilient essential services

## + Vision

Be a trusted community partner dedicated to excellence in service

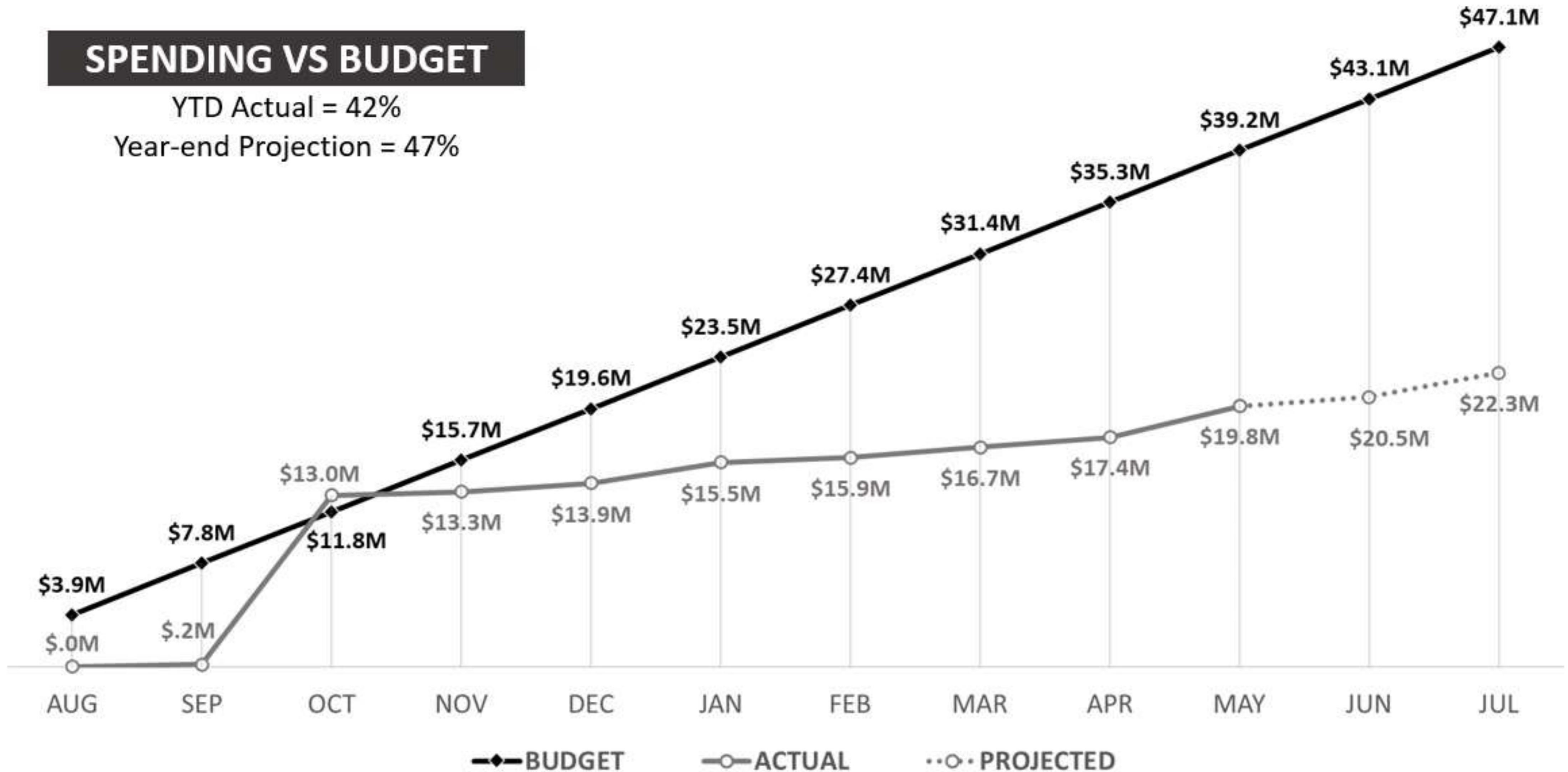
## + Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Support – Spending vs Budget

## SPENDING VS BUDGET

YTD Actual = 42%  
Year-end Projection = 47%



### Mission

Strengthening our community by providing resilient essential services

### + Vision

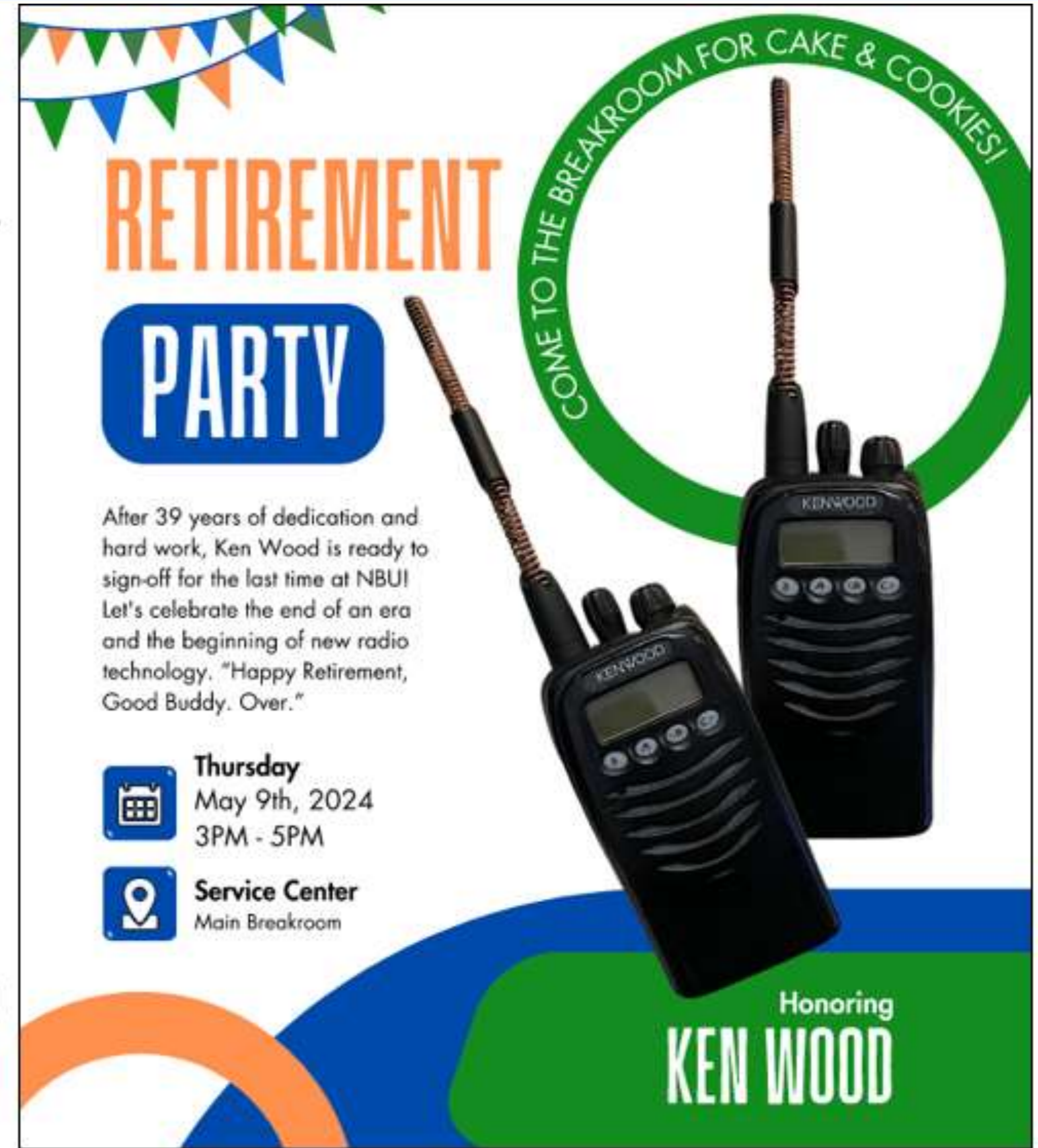
Be a trusted community partner dedicated to excellence in service

### + Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Q3 Support Accomplishments

- Telematics installed in fleet vehicles
- Contracts completed for the Annex and pre-construction work started
- Schematic Design drawings issued and reviewed for the HQ, TxDOT permits application submitted
- Digital radios replaced both handheld and vehicle radios and uses the Comal County Radio transmitters with 6 towers in the area



**RETIREMENT PARTY**

COME TO THE BREAKROOM FOR CAKE & COOKIES!

After 39 years of dedication and hard work, Ken Wood is ready to sign-off for the last time at NBU! Let's celebrate the end of an era and the beginning of new radio technology. "Happy Retirement, Good Buddy. Over."

**Thursday**  
May 9th, 2024  
3PM - 5PM

**Service Center**  
Main Breakroom

Honoring  
**KEN WOOD**

The poster features two Kenwood handheld radios, one in the foreground and one in the background, set against a white background with colorful decorative elements like a string of bunting and a green circular graphic. The text is in various colors and fonts, including orange, blue, and green.

## Mission

Strengthening our community by providing resilient essential services



## Vision

Be a trusted community partner dedicated to excellence in service



## Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Feature Project – Support

**SUPPORT**

**FLEET & FACILITIES**

**INFORMATION TECHNOLOGY**

**SYSTEMS CONTROL**

**DATA STRATEGY**



## Water/Wastewater SCADA Master Plan

Completion: Jan 2024

Purpose: This was the first master plan conducted by NBU. The Master Plan included Technical Memorandums for Requirements, Current State, Gap Analysis, Human Machine Interface (HMI Standards), Governance, Staffing Analysis, a recommended project list, and Cybersecurity Strategic Plan.



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## QUESTIONS

### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service



### Core Values

Safety, Team, Integrity, Culture, and Stewardship





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

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

**Submitted by:** Rocio Gallegos  
Chief of Staff      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Approve Minutes of the NBU Regular Board Meeting of June 27, 2024

**BACKGROUND**

None

**FINANCIAL IMPACT**

None

**LINK TO STRATEGIC PLAN**

**Customers and Community**

**EXHIBITS**

- 1. June 27, 2024 Regular Board Meeting Minutes

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

**3:00 P.M.  
Thursday, June 27, 2024  
NBU Board Room  
263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130**

Board President Wayne Peters opened the meeting at 3:00 p.m. A quorum of the NBU Board was present.

**PRESENT**

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

**ABSENT**

Board Trustee John Harrell

**NBU PERSONNEL**

Ryan Kelso, Dawn Schriewer, Connie Lock, David Hubbard, Greg Brown, Mark Steelman, and Rocio Gallegos

**NBU CONSULTANTS**

None

**PLEDGE AND INVOCATION**

Board Trustee Yvette Barrera Villanueva led the pledge of allegiance and offered the invocation.

**NBU MISSION**

Chief of Technology and Security Greg Brown shared the NBU Mission: Strengthening our community by providing resilient essential services. NBU is committed to the construction of the Conrads Elevated Storage Tank, which will ensure consistent water pressure and support in the Creekside, Kohlenberg, Goodwin, Hunter Road, and Gruene areas.

**PUBLIC COMMENT**

There were no public comment requests.

**ITEMS FROM THE CHAIR**

- 1. American Public Power Association (APPA) National Conference and Day of Giving Update**  
Board Vice President Judith Dykes-Hoffman, Board Trustee Yvette Barrera Villanueva, and Mayor Neal Linnartz provided an update on attending the APPA National Conference
- 2. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code**  
Board President Wayne Peters recognized the NBU Award of Quality and Superior Water and recognized staff from the Water department.

## ITEMS FROM STAFF

### 1. CEO Update

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

- a. American Public Power Association (APPA) National Conference and Day of Giving Update

Several members of NBU's Leadership Team and board members attended the American Public Power Association (APPA) National Conference in San Diego, CA, from June 7th to June 12th. The conference explored how changing policy, technology, and lifestyles are reshaping the energy industry and impacting communities.

Volunteers representing NBU also participated in the Day of Giving, helping remove litter and debris at Mission Beach, Belmont Park, to protect our oceans and marine life.

- b. Reliability Recognition from APPA

New Braunfels Utilities was recognized for excellence in electric reliability for 2023. The American Public Power Association commended our outstanding performance, which placed us in the top 25% of utilities nationwide for System Average Interruption Duration Index (SAIDI). This recognition is based on a comparison of our reliability data to the national statistics compiled by the Energy Information Administration (EIA) from 2018 to 2022. Our remarkable achievement has earned us the prestigious 2023 Certificate of Excellence in Reliability.

- c. NBU All Retiree Luncheon

The annual NBU Retiree Luncheon was held on June 25<sup>th</sup> at the NBU Service Center. A total of 49 retirees and their guests attended the event.

- d. Control Center Recognition Week

We celebrated NBU Control Center Recognition Week, also known as National Control Room Worker Appreciation Week, from June 10th to June 14th to express gratitude and appreciation to our dedicated Control Center Team. This team operates 24/7 and plays a crucial role in keeping NBU operations running smoothly.

- e. Leadership Announcements:

Mark Steelman was introduced as the new Chief Operations Officer. He comes to NBU after serving as Vice President of Operations at Inframark.

Phillip Neal Borne was introduced as the new Cybersecurity Manager. He comes to NBU after serving as the Vice President of Technology and Security Engineering at RSI.

Rocio Gallegos was introduced as the new Chief of Staff. She previously served as the Executive Assistant to the CEO at NBU.



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

2. **Financial Update and Report, Including an Update on the Filing of the NBU Transmission Cost of Service Application with the Public Utility Commission of Texas**  
Accounting Manager Kimberly Huffman provided an update on the financial status of NBU. Energy Risk Manager Missy Quent provided an update on the Transmission Cost of Service application with the Public Utility Commission of Texas that was filed in April 2024.
3. **Water Supply Fee Report**  
Finance Manager John Warren provided an update on the Water Supply Fee Report.

### CONSENT ITEMS FOR ACTION

**Mayor Neal Linnartz made a motion, and Board Vice President Judith Dykes-Hoffmann seconded the motion to approve the Consent Items for Action as follows: #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, and #23. The vote was unanimous.**

1. Approve Minutes of the NBU Regular Board Budget Workshop of May 30, 2024
2. Approve Minutes of the NBU Regular Board Meeting of May 30, 2024
3. Approve the Change Order Log from April 15, 2024, through May 15, 2024
4. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through May 15, 2024
5. Approve the Electric Line of Business Alternative Procurements from April 15, 2024, through May 15, 2024
6. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Raftelis Financial Consultants, Inc. DBA Raftelis for a Water, Wastewater, and Electric Rate Design Review
7. Authorize CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Pawelek and Moy, Inc. for the Design of the Sewer Infrastructure Replacement Package Two Project for Four Construction Locations, Including Landa Street, Fredericksburg Road, Sundance Parkway, and Elizabeth Avenue, New Braunfels, Texas
8. Authorize CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Arcadis U.S. Inc. for the Design of the NBU Surface Water Treatment Plant Expansion Project
9. Authorize CEO or His Designee to Negotiate and Execute a Fifth Amendment to the Work Authorization with Quiddity Engineering, LLC, for the Design of the Kuehler Water Reclamation Facility Expansion Project

10. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Terracon Consultants, Inc. for Cultural Services for the Water and Wastewater Capital Improvements Program
11. Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with MGC Contractors, Inc. for Construction of the North Kuehler Interceptor Odor Control Facility Project
12. Authorize CEO or His Designee to Negotiate and Execute a Grant Agreement for Fiscal Year 2025 between New Braunfels Utilities and Headwaters at the Comal
13. Authorize the CEO or His Designee to Execute a Change Order to the Guaranteed Maximum Price Amendment with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase 2 Sitework & Envelope
14. Authorize the CEO or His Designee to Execute a Guaranteed Maximum Price Amendment with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase 2 for Additional Site Improvements and Fencing
15. Authorize CEO or His Designee to Negotiate and Execute a Purchase Order Standard Terms and Conditions with Virginia Transformer Corp. for the Manufacture, Delivery, Assembly, and Testing of Three (3) Substation Power Transformers
16. Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Lambda Construction I, LTD for Construction of the Hueco Springs Substation and Henne Substation Breaker Additions Project
17. Authorize CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Environmental Improvements, Inc. for Water and Wastewater Systems Chlorine and Sulfur Dioxide Repair, Maintenance, and Replacement Services
18. Authorize CEO or His Designee to Negotiate and Execute Professional Services Agreements with (i) Allen, Williford, and Seale, Inc.; (ii) Lowery Property Advisors, LLC; (iii) Titan Commercial Valuation, LLC; and (iv) Dugger Grafe Swanson, Inc., DBA Valbridge Property Advisors/San Antonio, Inc. for Real Property and Easement Appraisal Services for New Braunfels Utilities Capital Improvement Projects
19. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Public Relations Advertising Company dba Vladimir Jones for Communication and Marketing Support Services
20. Authorize CEO or His Designee to Negotiate and Execute a Cooperative Agreement with SHI/Government Solutions, Inc. for the Renewal of Microsoft EA Licensing to Maintain Critical Software Usage
21. Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Spiess Construction Co., Inc. for the Construction of the Infrastructure Replacement Package 1 Project

22. Approve Resolution #2024-185 Authorizing (i) the Transfer of .4388 Acres of Real Property Located at 1032 W. Coll Street, New Braunfels, Texas, to the City of New Braunfels (the “City”) in Exchange for .581 Acres of Real Property Located along FM 1044, New Braunfels, Texas (near the intersection of Old Marion Road and FM 1044) from the City to NBU for Construction and Operation of an Elevated Storage Tank (the “EST”); (ii) Acceptance of an Access Easement, Utility Easement, Drainage Easement, and Temporary Construction Easements from the City for Construction and Operation of the EST; (iii) Execution of Any and All Documents Necessary to Effectuate the Conveyances; and (iv) Other Matters in Connection Therewith
23. Ratification of the Statement of Intent to Change Transmission Cost of Service and Wholesale Transmission Rates Application, and in Support Thereof, on April 11, 2024

### **ACTION ITEMS**

1. **Discuss and consider Approval of the Fiscal Year 2025 Budget and Five-Year Operation Plan**

Dawn Schriewer presented the Fiscal Year 2025 Budget and Five-Year Operation Plan.

Board Vice President Judith Dykes-Hoffmann made a motion, and Board Trustee Yvette Barrera Villanueva seconded the motion to approve the Fiscal Year 2025 Budget and Five-Year Operation Plan.

### **EXECUTIVE SESSION**

Board President Wayne Peters recessed the Open Session at 3:43 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included Power Supply Resources – Competitive Matters: a. Discuss Credit Risk Management Waiver; Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney Client Privilege: a. Discuss Legal Options Relating to Status of Real Estate Negotiations to Secure Easements Regarding the McKenzie Interceptor Upgrade Project:

- i. a 0.296 Acre Permanent Utility Easement, a 0.044 Acre Temporary Construction Easement, and a 0.213 Acre Temporary Construction Easement, all being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across Lot 18, Block J, Avery Park Subdivision, Unit 2 (Amended), as recorded in Volume 7, Page 267 of the Map and Plat Records of Guadalupe County, Texas (Guadalupe County Parcel No. 125092)
- ii. a 0.632 Acre Permanent Utility Easement, situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across Lots 901 and 902, Block 4, Avery Park 13, as recorded in Document Number 201899025604 of the Map and Plat Records of Guadalupe County, Texas (Guadalupe County Parcel Nos. 171818 and 171819)
- iii. a 0.312 Acre Temporary Construction Easement, and a 0.022 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across Lot 902, Block 4, Avery Park 13, as recorded in Document Number 201899025604 of the Map and Plat Records of Guadalupe County, Texas (Guadalupe County Parcel No. 171819)

- iv. a 0.763 Acre Permanent Utility Easement, and a 0.500 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across the remainder of a 60.36 Acre Tract described in a Deed recorded in Volume 3037, Page 741 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 55555)
- v. a 0.415 Permanent Utility Easement, a 0.028 Acre Temporary Construction Easement, and a 0.258 Acre Temporary Construction Easement, all being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across a 12.500 Acre Tract described in a Deed recorded in Volume 1783, Page 833 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 55553)
- vi. a 1.079 Permanent Utility Easement, 0.702 Acre Temporary Construction Easement, 0.107 Acre Access Easement, all being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across the remainder of a 32.77 Acre Tract described in a Deed recorded in Volume 670, Page 801 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 56231)
- vii. a 0.563 Acre Temporary Construction Easement, situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across a 105.316 Acre tract described in a Deed recorded in Document Number 202199040676 and also recorded in Document Number 202399020238 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 55904)
- viii. a 1.827 Acre Permanent Utility Easement, and a 1.025 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across that 34.27 acre tract described in a Common Area deed recorded in Document Number 202399024397 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel No. 56337)
- ix. a 2.088 Acre Permanent Utility Easement, and a 1.395 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across a 52.50 Acre Tract described in a Deed recorded in Document Number 202399002975 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel Nos. 191564 and 108128)
- x. a 0.209 Acre Permanent Utility Easement, and a 0.162 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, over and across a 10.37 Acre Tract described in a Deed recorded in Document Number 202399003051 of the Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel Nos. 56079 and 106382)
- xi. a 1.879 Acre Permanent Utility Easement, and a 1.253 Acre Temporary Construction Easement, both being out of the A. M. Esnaurizar Survey, Abstract Number 20, Guadalupe County, Texas, and being over part of that remainder of a 32 acre tract described in a deed recorded in Volume 2502, Page 699, Official Public Records of Guadalupe County, Texas and being over part of that 4.307 acre tract, designated as Third Tract, described in a deed recorded in Volume 2659, Page 759, Official Public Records of Guadalupe County, Texas (Guadalupe County Parcel Nos. 54767; 54768; and 56414)

- xii. a 1.937 Acre Permanent Utility Easement, and a 1.127 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 1, Comal County, Texas, over and across Lot 2, Block 1 of Titan Industrial NB Park Unit 2, as recorded in Document Number 201806048472 of the Map and Plat Records of Comal County, Texas, Lot 3, Block 1 of Titan Industrial NB Park Unit 3, as recorded in Document Number 201906003134 of the said Map and Plat Records, and the remainder of a 66.182 Acre tract, designated Tract 1, in a Deed recorded in Document Number 202106057346 of the Official Public Records of Comal County, Texas, and described in a Deed as recorded in Document Number 201506039028 of the Official Public Records, Comal County Texas (Comal County Parcel Nos. 421640; 422735; and 441204);
- xiii. a 1.846 Acre Permanent Utility Easement, and a 0.847 Acre Temporary Construction Easement, both being situated in the A. M. Esnaurizar Survey, Abstract Number 1, Comal County, Texas, over and across a 40.37 Acre tract described in a Deed recorded in Document Number 202206025070 of the Official Public Records of Comal County, Texas (Comal County Parcel No. 71650)

The Executive Session was opened at 3:56 pm and closed at 4:46 pm.

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

The Regular Session resumed at 4:46 pm.

**ADJOURN**

There was no further business, and Board President Wayne Peters adjourned the meeting at 4:49 p.m.

*Attest:*

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

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

*Date Approved: August 29, 2024*



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

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

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

## **BACKGROUND**

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

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

## **FINANCIAL IMPACT**

Change orders less than \$50,000:

- GBRA Interconnect Metering Station, Out of Owner's contingency - \$48,194.65, out of Board approved contingency - \$11,054.83, Installing platforms, ladders, grating, and pipe supports in vaults, Argo Utilities, LLC, Change order No. 2, Cost increase of \$11,054.83.
- Trinity Expansion Well Field, Owner's Contingency - primary conduit modifications from (1) 4" to (3) 3", Pesado Construction Company, Change order No. 3, No cost increase.
- I-35 Water Line (Downtown), From Owner's contingency - 2 additional valves installed, (credit for 4 unused water services and cut/cap 8" WL at Burger King), additional HDD bore to miss existing utilities along Dunlap, Pesado Construction Company, Change order No. 2, No cost increase.
- I-35 Water Line (Downtown), From Owner's contingency - New double swing gates, Pesado Construction Company, Change order No. 3, No cost increase.
- Kuehler WRF Rehabilitation - Clarifier Replacement, Install the scum spray wash system and wiring, reroute piping to membrane thickener screen box, reroute NPW piping to both clarifiers

and install piping/valves on pipe supports. Add days for CIPP liner manufacture and modification of the SEL Control Panel, MGC Contractors, Inc., Change order No. 1, No cost increase

- McKenzie WRF Expansion, Surface prep and recoat generator enclosure, reroute 8" DI-DR pipe due to conflict between proposed and existing pipes, MGC Contractors, Inc., Change order No. 4, No cost increase
- Goodwin Lane Water Main, Deduct change order for work not needed: 6 LF 42" steel casing, 2 temp line stops, 1000 cy hot mix asphalt, remaining owner's contingency credited back, Change order No. 4, Cost decrease of \$412,042.72.

Change orders more than \$50,000:

- Hueco Springs NBU Substation, Comal T3 and Hueco Springs T1 Power Transformer Procurements, Virginia Transformer, Change order No. 1, Cost increase of \$164,234.90.

## **LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

## **EXHIBITS**

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None



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

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

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

## BACKGROUND

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

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

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

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



## **FINANCIAL IMPACT**

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The total value of new contracts added from May 15<sup>th</sup> to July 15<sup>th</sup> is \$7,972,338.00.

## **LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

## **EXHIBITS**

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

### Water Engineering PSAs Presented to the Board FY 2024

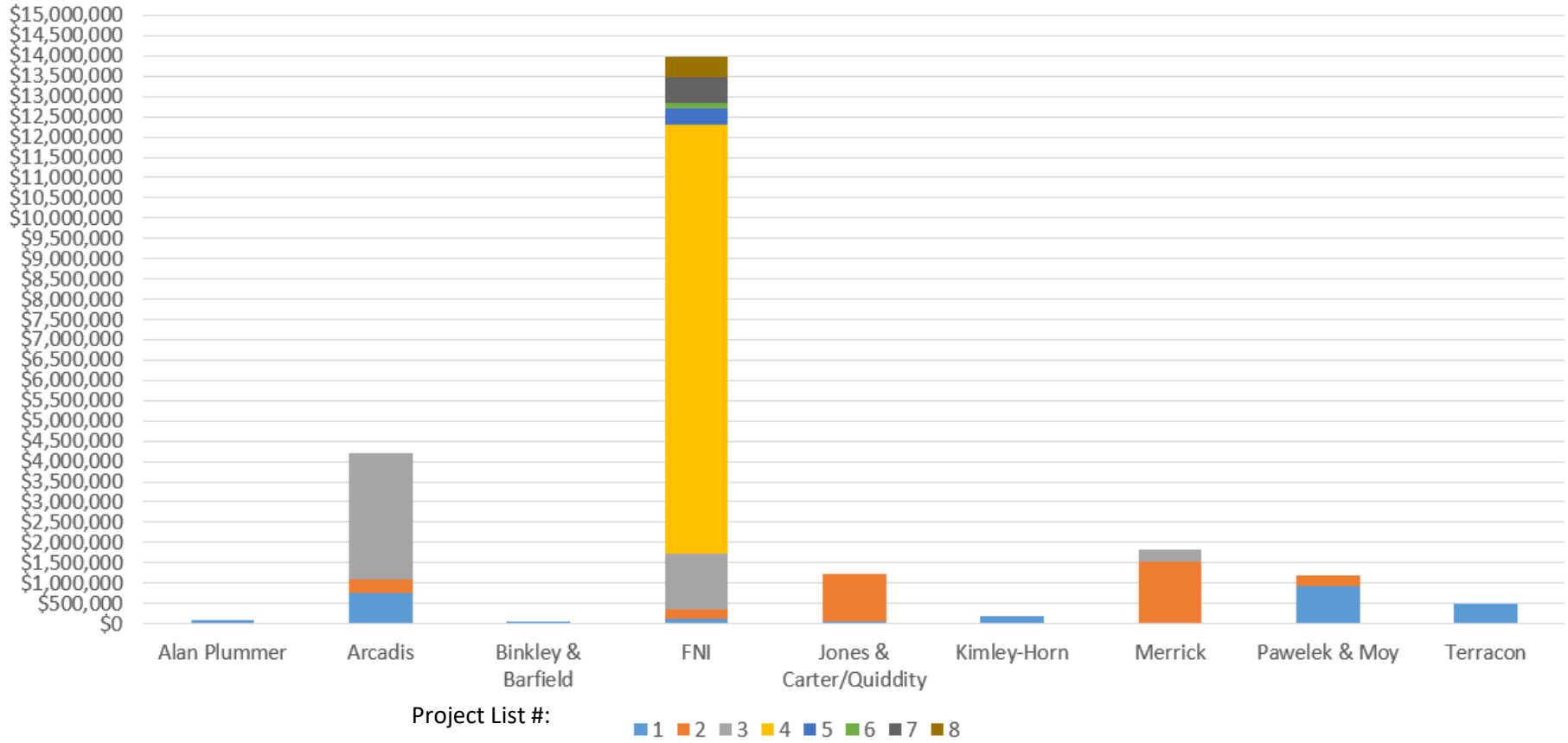
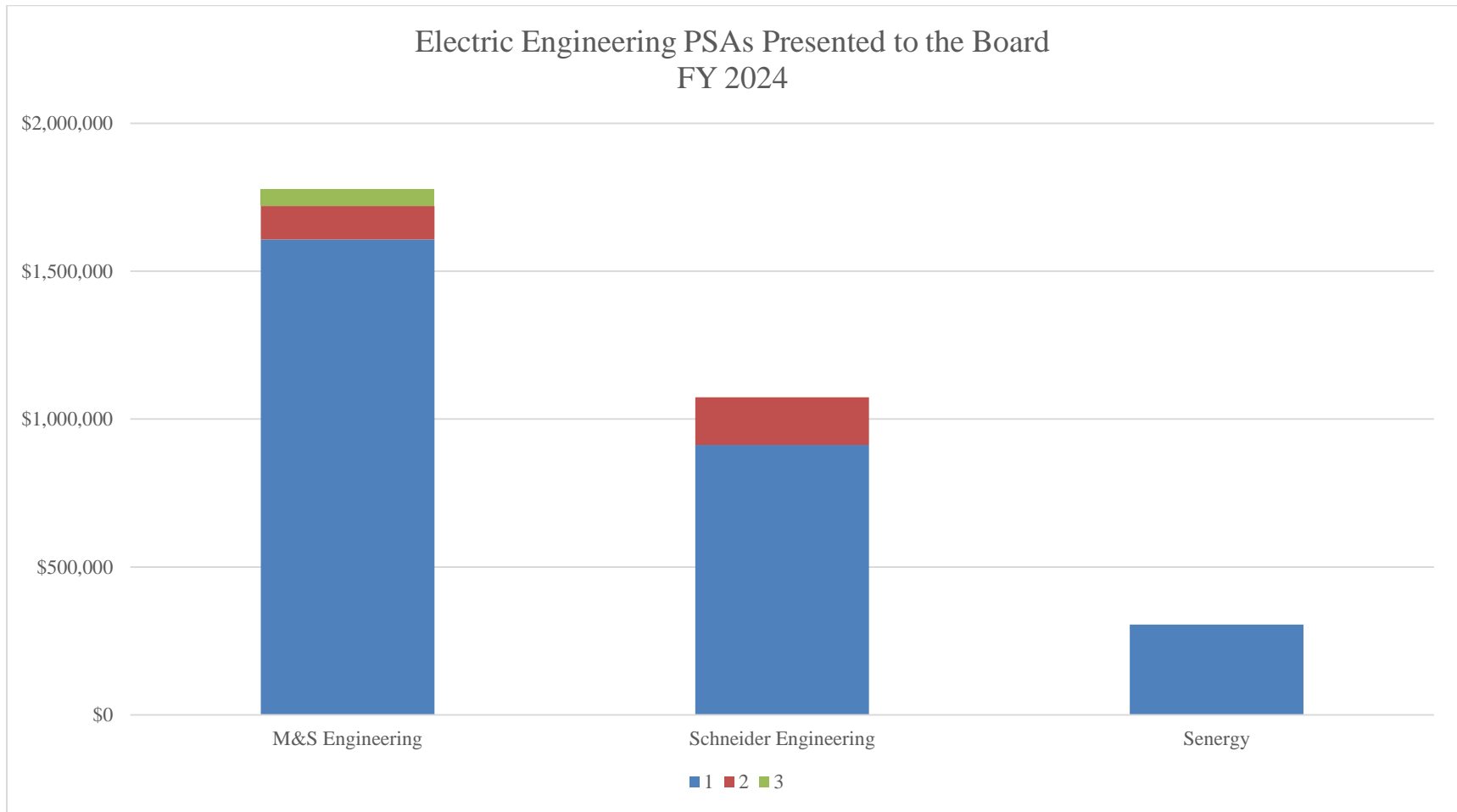


Exhibit A – Report for Water Engineering Contracts July 2024

Project List #	Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
1	Castell Ave Rehabilitation (CNB)	Binkley and Barfield Inc.	\$ 50,892.00	8/31/2023	Engineering	Amendment	9/1/2023
1	Solms Lift Station Expansion	Merrick & Company	\$ 30,988.00	8/31/2023	Engineering	Amendment	9/1/2023
1	Well 4 to Grandview Pump Station and Discharge Line Upgrades	Freese and Nichols, Inc.	\$ 108,850.00	8/31/2023	Engineering	Amendment	9/7/2023
1	Kuehler WRF Access Road - Courtyard Drive	Quiddity Engineering, LLC	\$ 66,410.00		Engineering	Amendment	10/3/2023
2	South Kuehler Interceptor Phase 1	Quiddity Engineering, LLC	\$ 52,780.00	9/28/2023	Engineering	Amendment	10/3/2023
1	24-Inch McQueeney Road Parallel Water Line (Downtown)	Alan Plummer and Associates, Inc.	\$ 70,000.00	9/28/2023	Engineering	Amendment	10/3/2023
2	FM 306 Pump Station & Discharge Line	Freese and Nichols, Inc.	\$ 228,917.00	9/28/2023	Engineering	Amendment	10/3/2023
3	San Antonio St Rehabilitation Phase 3 (CNB)	Quiddity Engineering, LLC	\$ 341,540.00		Engineering	PSA	11/3/2023
3	Water Tank Rehabilitations	Freese and Nichols, Inc.	\$ 1,380,592.00	10/26/2023	Engineering	PSA	11/13/2023
1	Water Resource Plan	Arcadis, US, Inc.	\$ -	12/14/2023	Engineering	Amendment	12/22/2023
1	Aquifer Strg & Recovery Project	Arcadis, US, Inc.	\$ 744,898.00	12/14/2023	Engineering	Amendment	12/22/2023
4	Staff Augmentation	Freese and Nichols, Inc.	\$ 10,578,296.00	12/14/2023	Engineering	PSA	12/22/2023
5	Trinity Expansion Treatment Plant	Freese and Nichols, Inc.	\$ 394,525.00	1/25/2024	Engineering	Amendment	2/21/2024
1	I-35 Interceptor Upgrade	Kimley-Horn and Associates, Inc.	\$ 199,000.00	1/25/2024	Engineering	Amendment	2/21/2024
6	Construction Management & Inspection Services	Freese and Nichols, Inc.	\$ 138,570.00	3/28/2024	Engineering	Amendment	4/12/2024
7	Gruene Rd Sewer Main Rehabilitation/Relocation (Inverted Siphc	Freese and Nichols, Inc.	\$ 634,844.00	3/28/2024	Engineering	Amendment	4/19/2024
2	Solms Pump Station and GST	Merrick & Company	\$ 1,492,066.00	4/25/2024	Engineering	Professional Service Agreement	5/3/2024
1	Downtown to Loop PZ Conversion	Parkhill	\$ 391,400.00		Engineering	Professional Service Agreement	6/5/2024
3	Development Plan Review	Merrick & Company	\$ 290,000.00	5/30/2024	Engineering	Amendment	6/5/2024
2	Aquifer Strg & Recovery Project	Arcadis, US, Inc.	\$ 341,922.00	5/30/2024	Engineering	Amendment	6/5/2024
8	Environmental/ Cultural Services	Freese and Nichols, Inc.	\$ 500,000.00	5/30/2024	Engineering	Professional Service Agreement	6/5/2024
1	North Kuehler Interceptor Segment 3	Pawelek & Moy, Inc.	\$ 924,200.00	5/30/2024	Engineering	Professional Service Agreement	6/5/2024
3	SWTP Expansion - Water Supply Facilities	Arcadis, US, Inc.	\$ 3,112,200.00	6/27/2024	Engineering	Amendment	7/8/2024
2	Sewer Infrastructure Replacement Package 2	Pawelek & Moy, Inc.	\$ 277,498.00	6/27/2024	Engineering	Amendment	7/8/2024
4	Kuehler WRF Rehabilitation	Quiddity Engineering, LLC	\$ 1,162,000.00	6/27/2024	Engineering	Amendment	7/8/2024
1	Environmental/ Cultural Services	Terracon Consultants, Inc.	\$ 500,000.00	6/27/2024	Engineering	Professional Service Agreement	7/8/2024



Project List #	Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
1	Substation and transmission Design FY 2024	Schneider Engineering	\$ 912,000.00	8/31/2023	Engineering		9/1/2023
1	Electric Distribution Projects	M&S Engineering	\$ 1,607,590.00	8/31/2023	Engineering		9/1/2023
2	Electric Regulatory Compliance Consulting Services	Schneider Engineering	\$ 162,000.00		Engineering		3/25/2024
2	Industrial Meter Upgrades	M&S Engineering	\$ 112,148.00		Engineering		5/16/2024
3	Coll St Conversion Project	M&S Engineering	\$ 55,970.00		Engineering		
1	FRCH & Breaker Additions COT3 &CO33 Additions	Senergy	\$ 305,000.00		Engineering		6/27/2024



Meeting Date: August 29, 2024 Agenda Type: Consent Items for Action

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

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

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

BACKGROUND

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

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

FINANCIAL IMPACT

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

- Substation Capacity Additions (Hueco Springs) Power Transformer Procurement, for the purchase of two (2) substation power transformers from Virginia Transformer Corporation. This purchase was originally reported to the board in March of 2023, with a cost of \$2,884,698.00. Due to unanticipated construction delays, one NBU site will not be ready to accept a new transformer for an additional five months past the original scheduled date. This delay has caused a need for additional storage and equipment handling fees totaling \$164,234.90. The new total sum of the procurement is \$3,048,932.90.

**LINK TO STRATEGIC PLAN**

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**Infrastructure and Technology**

**Stewardship**

**EXHIBITS**

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None



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

**From:** Kimberly Huffman      **Reviewed by:** Ashley Van Booven  
 Accounting Manager      Director of Finance

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

**RECOMMENDED ACTION:** Approval of the City Transfer Payable in Fiscal Year 2025, Based on Preliminary Financial Results for Fiscal Year 2024

**BACKGROUND**

The NBU Board of Trustees by Charter and Ordinance has the discretion after paying for operations and maintenance expense and meeting all debt service requirements, to make a payment to the City of New Braunfels. Since the creation of the utility in 1942, the Board of Trustees has authorized a transfer every year.

Based on preliminary financial results for fiscal year 2024, and based on total revenue performance of the electric, water and wastewater lines of business, NBU Staff recommends the transfer of \$11,749,998 to the City of New Braunfels in fiscal year 2025. This amount will be paid over 12 monthly installments. This amount is unaudited and will be adjusted pending the final audit results. This amount is \$156,964 less than the budgeted amount of \$11,906,962. The fiscal year 2025 estimated payment is approximately \$426,457 or 3.8%, more than the amount paid last year of \$11,323,540.

Since 2000, NBU has provided the City of New Braunfels \$170 million in city transfers (including the fiscal year 2025 transfer). Under NBU’s Financial and Operating Plan through fiscal year 2029, it is estimated that NBU will provide an additional \$71 million. The current methodology calculates the total general fund transfer based on a percentage of a rolling three-year average of electric, water, and sewer operating revenues. For purposes of estimating the general transfer for the budget year, the three-year average of revenues included in the calculation is based on two previous actual fiscal year revenues (2022 and 2023) and an estimate of revenues for the immediate past fiscal year (2024). The transfer formula percentage is 7.45% for electric, 4.35% for water, and 4.35% for sewer. The total general fund transfer will be “trued up” after the fiscal year 2024 financial statements are audited and approved. As a result, the remaining monthly general fund transfers in the current year would ultimately be adjusted to reflect the average of the audited actual revenues for the most recent three years.

**FINANCIAL IMPACT**

Approximately \$11.7 Million, which is 1.3% less than the amount of \$11.9 Million included in the fiscal year 2025 budget that was approved by the Board of Trustees on June 27, 2024.



**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Financial Excellence**

**EXHIBITS**

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1. Exhibit I – Calculation of the estimated city transfer payable in fiscal year 2025
2. Exhibit II – Schedule of projected cash flows utilizing pledging of revenues
3. Letter to the Mayor and City Council, dated August 30, 2024

**NEW BRAUNFELS UTILITIES**  
**Calculation For City Contribution**  
**For Fiscal Year 2025**  
**(\$ In Thousands)**

	<b>FY 2022-2024 Three Year Average</b>
<b><i>ELECTRIC</i></b>	
Total Electric Operating Revenues	\$ 190,284
Less: Direct Generation and Transmission Pass-Through Costs	
GCRF Revenue	\$ 49,628
TCRF Revenue	14,717
Transmission Service Rate Pass-Throughs	3,385
Total Direct Generation and Transmission Pass-Through Costs	\$ 67,729
Net Electric Operating Revenues	\$ 122,555
Electric General Transfer Rate	7.45%
<b>Electric General Transfer Amount</b>	<b>\$ 9,130</b>
 <b><i>WATER</i></b>	
Water Operating Revenue	\$ 35,005
Purchase Water Cost	\$ 8,951
Less: Purchase Water Cap of \$2.5 Million per year	(2,500)
Net Purchase Water Adjustment to Revenues (Amount Greater than \$2.5 M)	\$ 6,451
Adjusted Net Water Revenues	\$ 28,554
Water General Transfer Rate	4.35%
<b>Water General Transfer Amount</b>	<b>\$ 1,242</b>
 <b><i>WASTEWATER</i></b>	
Wastewater Operating Revenues	\$ 31,668
Wastewater General Transfer Rate	4.35%
<b>Wastewater General Transfer Amount</b>	<b>\$ 1,378</b>
 <b>Grand Total - Electric, Water and Wastewater General Transfer Amount</b>	 <b>\$ 11,750</b>

**EXHIBIT II**

**NEW BRAUNFELS UTILITIES  
Projected Cash Flows and Pledging of Revenues  
Based on FY 2025 Budget\*  
(\$ in Thousands)**

	<u><b>Fiscal Year 2025</b></u>	
Revenues of the System		
Electric Operating Revenues	\$	211,196
Water Operating Revenues		43,437
Wastewater Operating Revenues		39,360
Other Operating Revenues		2,885
Total Operating Revenues	\$	296,879
Interest Income		6,174
Transmission Revenues		3,698
Lease Revenues		673
Impact Fees		25,179
Services, Jobbing and Other		2,093
Total Revenues	\$	334,697
 <i>Pledging of Revenues by Priority:</i>		
1. Maintenance and Operating Expenses (excluding depreciation)		
a. Purchased Power Costs	\$	(152,645)
b. Purchased Water Costs		(14,995)
c. Operating and Maintenance Expenses		(66,543)
Balance of Revenues after Priority #1	\$	100,514
2. Debt Service on Indebtedness		
a. Debt Service	\$	(28,792)
b. Deposits to Bond Reserve or Other Indebtedness Junior to the Bonds		-
Balance of Revenues after Priority #2	\$	71,722
3. Deposit to Construction Fund		
a. 7.45% of Electric Base Revenues	(a)	(9,130)
b. 4.35% of Net Water and Wastewater Revenues	(b)	(2,620)
Balance of Revenues after Priority #3	\$	59,972
4. General Transfer to the City		
a. 7.45% of Electric Base Revenues		(9,130)
b. 4.35% of Net Water and Wastewater Revenues		(2,620)
Balance of Revenues after Priority #4 - Available to System	(c) \$	48,222
<b>Total Available for Construction Fund and System</b>	<b>\$</b>	<b>59,972</b>
		= SUM of (a) (b) (c)

\*Adjusted for FY 2025 Estimated City Transfer (all other factors unchanged).

August 30, 2024

Mayor Neal Linnartz and City Council Members  
City of New Braunfels  
550 Landa St.  
New Braunfels, Texas 78130

Dear Mayor Linnartz and City Council Members:

The NBU Board of Trustees by Charter and Ordinance has the discretion after paying for operations and maintenance expense and meeting all debt service requirements, to make a payment to the City of New Braunfels. Since the creation of the utility in 1942, the Board of Trustees has authorized a transfer every year.

The NBU Board of Trustees has reviewed the preliminary financial results for fiscal year 2024, and based on total revenue performance for the electric, water and wastewater lines of business, has authorized the transfer of \$11,749,998 to the City of New Braunfels over 12 monthly payments. NBU's Financial and Operating Plan estimates a total transfer of \$71.3 million over the next five years.

The city transfer is calculated based on a percentage of a rolling three-year average of electric, water and sewer operating revenues. For purposes of estimating the general transfer for the budget year, the three-year average of revenues included in the calculation is based on two previous actual fiscal year revenues (2022 and 2023) and an estimate of revenues for the immediate past fiscal year (2024). The total general fund transfer will be "trued up" after the fiscal year 2024 financial statements are audited and approved. As a result, the remaining monthly general fund transfers in the current year would ultimately be adjusted to reflect the average of the audited actual revenues for the most recent three years. Exhibit I shows the general transfer calculation for fiscal year 2025.

In addition to the cash payment, NBU adds value to the city in a number of others ways.

- NBU currently provides billing and collection services for 27,247 City of New Braunfels garbage and recycling accounts, for an estimated annual cost of \$494,212.
- NBU operates and maintains 5,468 street lights on city streets and 602 IH 35 for an annual cost of \$322,754.
- NBU installs and maintains Christmas decorations on the plaza for an annual cost of \$37,002.

- NBU manages the banner program over S. Seguin Ave., Landa St., E. San Antonio St. and W. San Antonio St for an annual cost of \$2,679.
- New Braunfels Utilities (NBU) employees have dedicated over 12,774 hours to community service since 2001. During Fiscal Year 2024 alone, they volunteered more than 184 hours at various events and initiatives, such as Back to School Fairs, NBISD Teacher Expo, and Resource Fairs. Notable highlights from this period include:
  - **20th Annual Kinderschuhe 5K:** Held on March 2, 2024, in historic Gruene, Texas, this event saw over three dozen NBU employees assisting the 367 registrants. This event raised a total of \$116,092.27 since 2004. On March 28, 2024, NBU’s Board of Trustees and the Athlete Guild presented Communities in Schools with a \$5,000 check.
  - **Comal County Fair Parade:** NBU proudly participated with four volunteers representing the organization in two vehicles, continuing the tradition of this cherished community event.
  - **National Night Out:** Twenty volunteers and two bucket trucks engaged with residents across two neighborhoods, fostering community connections.
  - **Spooktacular:** At this popular event, 30 NBU employees distributed candy and treats to over 2,000 attendees.
  - **Veterans Day:** On November 11, 2023, NBU honored its veteran employees and participated in the Veterans Day parade. A pre-parade lunch celebration at Krause’s Café on November 9 highlighted NBU's 45 veterans and community veterans.
  - **New Braunfels Home and Garden Show:** From February 17-18, 2024, eight NBU volunteers showcased the organization’s services and conservation initiatives. They engaged with hundreds of participants over the two-day event.
  - **New Braunfels Food Bank:** More than 45 NBU volunteers supported the Food Bank throughout the year, assisting with food packaging, shelf stocking, and other tasks to aid in feeding the hungry.
  - **United Way Annual Employee Giving Campaign:** The FY 2024 campaign was a tremendous success, with over 73% of employees contributing or pledging more than \$57,139. This exceptional level of giving underscores our team's generosity and commitment to the community.

NBU has operated the system with conservative fiscal policies allowing it to achieve strong credit ratings, competitive rates for electric, water and wastewater services and

provide for increased payments to the City over the years. It is a good track record that we plan to continue to for the benefit of our customers and the community we are proud to serve.

Sincerely,

Ryan Kelso, Chief Executive Officer

Enclosures: Exhibit I – Calculation for City Contribution-Fiscal Year 2025

**NEW BRAUNFELS UTILITIES**  
**Calculation For City Contribution**  
**For Fiscal Year 2025**  
**(\$ In Thousands)**

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 <b>Grand Total - Electric, Water and Wastewater General Transfer Amount</b>	 <b>\$ 11,750</b>



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman  
 Chief Operations Officer      **Approved by:** Ryan Kelso  
 Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with C.F. McDonald Electric, Inc. for the Construction of the Emergency Preparedness Plan Generators, Phase 1 Project

## **BACKGROUND**

On May 10, 2024, New Braunfels Utilities (“NBU”) issued a request for bids for the Senate Bill 3 Emergency Preparedness Plan Generators, Phase 1 Project, which includes the installation of emergency generators and automatic transfer switches at the Well No. 4 Pump Station, Grandview Pump Station, the Hoffmann Pump Station, and Oak Run Flow Control valve site, preparation of sites includes clearing and grubbing and construction staking, stormwater pollution prevention, tree protection, site restoration, and all other appurtenances necessary to complete the project (the “Project”). The Project will bring NBU into compliance with the first phase of the TCEQ-required Emergency Preparedness Plan.

On June 7, 2024, NBU received two (2) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of C.F. McDonald Electric, Inc. (“McDonald Electric”) for the Project. McDonald Electric was selected as the respondent who provides the best value to NBU based on the selection criteria, the weighted value for those criteria, and the ranking evaluation, including their cost of work, proposed schedule, past performance on similar projects, overall qualifications, available resources, corporate history, and references. McDonald Electric’s proposal includes a base bid of \$1,429,569, the lowest base bid out of the two (2) respondents.

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

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



## FINANCIAL IMPACT

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The total financial impact of the Contract with McDonald Electric for the Project is \$1,429,569.00. The Project is budgeted within the fiscal year 2024 through fiscal year 2026 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency of \$145,000.00, which is approximately 10% of the total contract amount, will be added to the project construction budget. The total contract amount plus contingency is \$1,574,569.00.

## LINK TO STRATEGIC PLAN

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### Customers and Community

### Infrastructure and Technology

### Safety and Security

## EXHIBITS

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1. Construction Contract with McDonald Electric
2. Bid Evaluation Matrix – Competitive Sealed Proposal 24-0079

Item	Criteria	McDonald Electric	Argo Utilities
1.	Cost of the Work	5	0
2.	Proposed Schedule / Contract Time	3.167	0.33
3.	Past Performance on Similar Projects	3.5	0.33
4.	Overall Qualifications, Reputation, Past Relationship w/ NBU and Public Owners	3.67	0.33
5.	Available resources to complete the Project	3	0.67
6.	The Contractor's corporate history and stability	3	0.67
7.	References	3	0.33
	<b>Total Score</b>	<b>4.15</b>	<b>0.183</b>

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

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

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

**ARTICLE 1 - WORK**

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

**Contract Agreement and the related Exhibits;**  
**Standard General Conditions of the Contract;**  
**Special Conditions;**  
**Technical Specifications;**  
**Payment Bond;**  
**Performance Bond;**  
**Design Drawings - New Braunfels Utilities Emergency Preparedness Plan Generators – Phase 1 produced by Freese and Nichols, Inc. dated April 18, 2024; and**  
**Vol. 2 - Technical Specifications For Construction of Emergency Preparedness Plan Generators – Phase 1 NBU23436 produced by Freese and Nichols, Inc. dated March 29, 2024.**

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

**The Project is anticipated to include some or all of the following items within its scope: (i) installation of emergency generators and automatic transfer switches at the Well No. 4 Pump Station, Grandview Pump Station, the Hoffmann Pump Station, and Oak Run Flow Control valve site; (ii) preparation of sites includes clearing and grubbing and construction staking; (iii) storm water pollution prevention; (iv) tree protection; (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:

**Emergency Preparedness Plan Generators, Phase 1**

**ARTICLE 3 - ENGINEER**

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

**Michael Lafferty, P.E.**  
**Freese and Nichols, Inc.**  
**10431 Morado Circle, Suite 300**  
**Austin, TX 78759**  
**512-643-0821**

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

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

**ARTICLE 4 - CONTRACT TIMES**

**4.01** *Time of the Essence*

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

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

A. The Work shall be substantially complete within **Five Hundred and Sixty (560) calendar days from the Notice to Proceed date** and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

**4.03** *Liquidated Damages*

A. The Contractor and NBU recognize that time is of the essence of this Agreement and that NBU will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by NBU if the Work is not completed on time. Accordingly, instead of requiring any such proof, NBU and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to NBU **One Thousand Dollars (\$1000)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by NBU, the Contractor shall pay to NBU **One Thousand Dollars (\$1000)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

**4.04** *Special Damages*

A. In addition to the amount provided for in liquidated damages, the Contractor shall reimburse NBU (1) for any fines or penalties imposed on NBU as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, the Contractor shall reimburse NBU for the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

**ARTICLE 5 - CONTRACT PRICE**

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

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

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

**ARTICLE 6 - PAYMENT PROCEDURES**

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

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

**6.02** *Progress Payments; Retainage*

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

**6.03** *Final Payment*

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

**ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS**

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

- A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. The Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site that may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- E. The Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. The Contractor is aware of the general nature of work to be performed by NBU and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. The Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all

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

additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- H. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 8 - MISCELLANEOUS**

**8.01** *Terms*

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

**8.02** *Assignment of Contract*

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

**8.03** *Successors and Assigns*

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

**8.04** *Severability*

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

**8.05** *Governing Law*

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

**8.06** *Venue*

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

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

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

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

2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

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

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

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

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

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

- A. If the Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Contractor represents the following:
1. it is not owned by or the majority of stock or other ownership interest in the Contractor is not held or controlled by:
    - a. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
    - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
  2. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.
- B. The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment

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

facility. "Affiliate," with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

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

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

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

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

**8.12** *Texas Public Information Act*

- A. The Contractor recognizes that this Project is publicly owned, and NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to NBU's audit rights.
- B. This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.
- C. The Contractor must
  - 1. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement;
  - 2. promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of NBU; and
  - 3. on completion of the Agreement, either:

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

- a. provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
- b. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

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

**8.13 *Electronic Signatures***

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

**ARTICLE 9 - INSURANCE**

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

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

**Exhibit A – Insurance Rider**

**Exhibit B – Contractor's Bid Form**



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

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

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

NEW BRAUNFELS UTILITIES:

C.F. McDONALD ELECTRIC, INC:

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

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

Printed Name: Ryan Kelso

Printed Name: Wayne Berkenmeier

Title: Chief Executive Officer

Title: Vice President Special Projects

[CORPORATE SEAL]

[CORPORATE SEAL]

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

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

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

Title: Diane Dollar, Secretary/Treasurer

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

5044 Timber Creek

\_\_\_\_\_

Houston, TX 77017

\_\_\_\_\_

\_\_\_\_\_

(Attach evidence of authority to sign and resolution or other documents authorizing execution of NBU-Contractor Agreement.)

License No.: 18339  
(Where Applicable)

Agent for service or process:  
Wayne Berkenmeier

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

**END OF DOCUMENT**

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

**1. Specific Insurance Requirements**

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

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

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

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

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

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

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

**B. Policies.**

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

**C. Limits, Deductibles and Retentions**

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

**D. Evidence of Insurance.**

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

Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;

- f. Amount of any deductible or self-insured retention in excess of \$25,000;
  - g. Designated Construction Project(s) General Aggregate Limit;
  - h. Primary and non-contributory status;
  - i. Waivers of subrogation; and
  - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
- a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

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

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance and offset all costs and expenses from the Contract Sum. Owner's exercise of this right shall not relieve or excuse Contractor from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Contract Agreement.

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

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

**G. Use of the Owners Equipment**

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

**H. Release and Waiver**

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required

herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**



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

New Braunfels Utilities  
 355 FM 306  
 New Braunfels, TX 78130

**PROJECT:** Emergency Preparedness Plan Generators, Phase 1

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

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

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

**Well No. 4 Items**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
1	Mobilization: Not to exceed 5% of Bid Items No. 2 through 8	LS	1	\$ 22,000.00	\$ 22,000.00
2	Site Preparation: Includes clearing/grubbing/tree removal, construction staking, demolition, tree trimming, and tree protection needed at the Well #4 Site.	LS	1	\$ 10,000.00	\$ 10,000.00
3	Erosion and Sedimentation Control: Including but not limited to all necessary erosion and sedimentation control measures, as detailed in the contract documents, preparation of Stormwater Pollution Prevention Plan ("SWPPP").	LS	1	\$ 100.00	\$ 100.00
4	Well No. 4 Generator: Installation of a 400-kW natural gas engine generator, generator pad, associated site work, as-built survey, natural gas piping and metering, materials testing, relocation of SCADA cabinet, startup and testing, including all labor, equipment, tools, materials, and related appurtenances.	LS	1	\$ 190,000.00	\$ 190,000.00
5	Electrical and Instrumentation: Including but not limited to automatic transfer switch, instrumentation, SCADA, power system studies, start-up and testing, as-built survey, and all other electrical items to be installed at the Well No. 4 site, as detailed in the contract documents.	LS	1	\$ 212,000.00	\$ 212,000.00

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

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
6	Chain Link Fencing: Includes furnishing and installing chain link fencing per the plans, including as-built survey.	LF	28	\$ 100.00	\$ 2,800.00
7	Concrete Fencing: Includes furnishing and installing concrete fencing per the plans, including as-built survey.	LF	15	\$ 300.00	\$ 4,500.00
8	Site restoration: Including but not limited to all necessary work required for restoration of the Well No. 4 site including installation of topsoil, compost, fertilizer, seeding for erosion control, and vegetative watering, including all labor, equipment, tools, materials, and related appurtenances.	LS	1	\$ 1,000.00	\$ 1,000.00

**Grandview Pump Station Items**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
9	Mobilization: Not to exceed 5% of Bid Items No. 10 through 14	LS	1	\$ 29,000.00	\$ 29,000.00
10	Site Preparation: Includes clearing/grubbing/tree removal, construction staking, tree trimming, and tree protection needed at the Grandview Pump Station Site.	LS	1	\$ 10,000.00	\$ 10,000.00
11	Erosion and Sedimentation Control: Including but not limited to all necessary erosion and sedimentation control measures, as detailed in the contract documents, preparation of SWPPP.	LS	1	\$ 100.00	\$ 100.00

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

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
12	Grandview Pump Station Generator: Installation of a 500-kW natural gas engine generator, generator pad, as-built survey, associated site work, natural gas piping and metering, materials testing, startup and testing, including all labor, equipment, tools, materials, and related appurtenances.	LS	1	\$ 200,000.00	\$ 200,000.00
13	Electrical and Instrumentation: Including but not limited to automatic transfer switch, instrumentation, SCADA, power system studies, start-up and testing, as-built survey, and all other electrical items to be installed at the Grandview Pump Station site, as detailed in the contract documents.	LS	1	\$ 356,000.00	\$ 356,000.00
14	Site restoration: Including but not limited to all necessary work required for restoration of the Grandview Pump Station site including installation of topsoil, compost, fertilizer, seeding for erosion control, and vegetative watering, including all labor, equipment, tools, materials, and related appurtenances.	LS	1	\$ 100.00	\$ 100.00

**Hoffmann Pump Station Items**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
15	Mobilization: Not to exceed 5% of Bid Items No. 16 through 21.	LS	1	\$ 10,000.00	\$ 10,000.00

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

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
16	Site Preparation: Includes clearing/grubbing/tree removal, construction staking, tree trimming, and tree protection needed at the Hoffmann Pump Station Site.	LS	1	\$ 10,000.00	\$ 10,000.00
17	Erosion and Sedimentation Control: Including but not limited to all necessary erosion and sedimentation control measures, as detailed in the contract documents, preparation of SWPPP.	LS	1	\$ 100.00	\$ 100.00
18	Hoffmann Pump Station Generator: Installation of a 100-kW diesel engine generator, generator pad, as-built survey, associated site work, materials testing, startup and testing, including all labor, equipment, tools, materials, and related appurtenances.	LS	1	\$ 75,000.00	\$ 75,000.00
19	Electrical and Instrumentation: Including but not limited to automatic transfer switch, instrumentation, SCADA, power system studies, start-up and testing, as-built survey, and all other electrical items to be installed at the Hoffmann Pump Station site, as detailed in the contract documents.	LS	1	\$ 113,900.00	\$ 113,900.00
20	Gate: Includes furnishing and installing of chain link man gate per the plans, including as-built survey.	EA	1	\$ 2,000.00	\$ 2,000.00

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

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
21	Site restoration: Including but not limited to all necessary work required for restoration of the Hoffmann Pump Station site including installation of topsoil, compost, fertilizer, seeding for erosion control, and vegetative watering, including all labor, equipment, tools, materials, and related appurtenances.	LS	1	\$ 2,000.00	\$ 2,000.00

**Oak Run Flow Control Valve Items**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
22	Mobilization: Not to exceed 5% of Bid Items No. 23 through 27.	LS	1	\$ 8,000.00	\$ 8,000.00
23	Site Preparation: Includes clearing/grubbing/tree removal, construction staking, tree trimming, and tree protection needed at the Oak Run Flow Control Valve site.	LS	1	\$ 10,000.00	\$ 10,000.00
24	Erosion and Sedimentation Control: including but not limited to all necessary erosion and sedimentation control measures, as detailed in the contract documents, preparation of SWPPP.	LS	1	\$ 100.00	\$ 100.00

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

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
25	Oak Run Flow Control Valve Generator: Installation of a 20-kW natural gas engine generator, generator pad, as-built survey, associated site work, natural gas piping and metering, materials testing, startup and testing, including all labor, equipment, tools, materials, and related appurtenances.	LS	1	\$ 40,000.00	\$ 40,000.00
26	Electrical and Instrumentation: Including but not limited to automatic transfer switch, instrumentation, SCADA, power system studies, start-up and testing, as-built survey, and all other electrical items to be installed at the Oak Run Flow Control Valve site, as detailed in the plan set.	LS	1	\$ 117,869.00	\$ 117,869.00
27	Site restoration: Including but not limited to all necessary work required for restoration of the Oak Run Flow Control Valve site including installation of topsoil, compost, fertilizer, seeding for erosion control, and vegetative watering, including all labor, equipment, tools, materials, and related appurtenances.	LS	1	\$ 1,000.00	\$ 1,000.00
28	Fencing: Includes furnishing and installing of chain link fencing and gates per the plans, including as-built survey.	LS	1	\$ 2,000.00	\$ 2,000.00

TOTAL BASE BID

\$ 1,429,569.00

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

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to 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.
  - b) List of BIDDER's primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
7. Communication concerning this Bid shall be addressed to:
 

New Braunfels Utilities  
 Purchasing Manager  
 355 FM 306  
 New Braunfels, TX 78130  
 Phone: 830-608-8867  
 Email: [Purchasing@NBUTexas.com](mailto:Purchasing@NBUTexas.com)
8. The terms used in this Bid that are defined in the Standard General Conditions of the Contract included as part of the Contract Documents have the meanings assigned to them in the Standard General Conditions of the Contract.
9. The undersigned acknowledges receipt of the following addenda:
 

Addendum No. 1 dated	None Shown	Received	06/06/24
Addendum No. 2 dated	None Shown	Received	06/06/24
Addendum No. 3 dated	None Shown	Received	06/06/24



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



\_\_\_\_\_  
Secretary, \*if bidder is a corporation  
Diane Dollar, Secretary/Treasurer

(Seal)

McDonald Municipal and Industrial - A Division  
of C. F. McDonald Electric, Inc.

\_\_\_\_\_  
Company Name of Bidder

  
\_\_\_\_\_  
Authorized Signature

06/07/24  
\_\_\_\_\_  
Date

Wayne Berkenmeier  
\_\_\_\_\_

Printed Name of Authorized Signature  
5044 Timber Creek  
\_\_\_\_\_

Houston, TX 77017  
\_\_\_\_\_  
Address

713-921-1368 713-921-5109  
\_\_\_\_\_  
Telephone Number/Fax Number

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

**END OF DOCUMENT**



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman      **Approved by:** Ryan Kelso  
 Chief Operations Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with Hydro Resources Mid–Continent, Inc. for the Construction of the Aquifer Storage and Recovery D1 Well Deepening Project

## **BACKGROUND**

On April 29, 2024, New Braunfels Utilities (“NBU”) issued a request for bids for the Aquifer Storage and Recovery D1 (“ASR – D1”) Well Deepening Project, which includes (i) construction for the disassembly, deepening by drilling, acid treatment, development, testing, and reassembly of the existing Edwards Aquifer ASR-D1 well at the NBU ASR site; and (ii) all other appurtenances necessary to complete the Project (the “Project”). The Project will extend the existing ASR well deeper into the Lower Edwards Aquifer to allow for a better formation of the ASR bubble and improved water retrieval.

On May 29, 2024, NBU received one (1) bid for the Project during the public bidding process. The project team evaluated the bid and recommends the selection of Hydro Resources Mid – Continent , Inc. (“Hydro Resources”) for the Project. Hydro Resources proposal includes a base bid of \$823,349.00.

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

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

## **FINANCIAL IMPACT**

The total financial impact of the Contract with Hydro Resources for the Project is \$823,349.00. The Project is budgeted within the fiscal year 2024 through fiscal year 2025 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency of \$85,000, which is approximately 10% of the total contract amount, will be added to the project construction budget. The total contract amount plus contingency is \$908,349.00.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Infrastructure and Technology**

**Financial Excellence**

**Stewardship**

**EXHIBITS**

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1. Construction Contract with Hydro Resources
2. Contract Agreement Bid Form
3. Letter of Recommendation from ASR Systems



540 NE 5<sup>th</sup> Avenue, Gainesville, Florida 32601  
Phone 352-336-3820  
Fax 352-373-2381  
www.asrsystems.ws

The Pioneer of ASR Technology

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June 10, 2024

Mr Dean Watson  
Water Systems Engineering Project Manager  
New Braunfels Utilities  
355 FM 306 | New Braunfels, Texas 78130

Re: Award of Bid Recommendation \_ Deepening Well ASR-D1

Dear Mr Watson:

ASR Systems LLC has reviewed the sole base bid for the referenced project, submitted by Hydro Resources. The bid amount was \$823,349.00. Hydro Resources constructed the ASR well five years ago and is therefore familiar with the ASR project. We recommend award of the contract to Hydro Resources.

A handwritten signature in black ink, appearing to read "R. David G. Pyne", is written over a light gray rectangular background.

R. David G. Pyne, P.E.  
President

Cc: Jeff Reck/ Arcadis  
Charles Schoening/ Arcadis  
Grant Snyder/ GLS Solutions  
Stephen Belser/ ASR Systems

**THIS AGREEMENT** (the “Agreement” or the “Contract”) is between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **HYDRO RESOURCES – MID CONTINENT, INC.**, a Delaware corporation authorized to transact business in the State of Texas (the “Contractor”).

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

**ARTICLE 1 - WORK**

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

- Contract Agreement and the related Exhibits;**
- Standard General Conditions of the Contract;**
- Special Conditions;**
- Technical Specifications;**
- Payment Bond;**
- Performance Bond;**
- Design Drawings & Technical Specifications for the Construction of Well ASR-D1, ASR-D1 Well Improvements Project produced by ASR Systems, LLC dated June 23, 2023; and**
- Technical Specifications ASR-D1 Well Improvements Project produced by ASR Systems, LLC dated January 10, 2024.**

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

**The Project is anticipated to include some or all of the following items within its scope: (i) construction for the disassembly, deepening by drilling, acid treatment, development, testing, and reassembly of the existing Edwards Aquifer, ASR-D1 well at the NBU ASR site; and (ii) 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:

**ASR-D1 Well Improvements Project**

**ARTICLE 3 - ENGINEER**

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

**David Pyne, P.E.**  
**ASR Systems, LLC**  
**540 NE 5<sup>th</sup> Avenue**  
**Gainesville, Florida 32601**  
**352-336-3820**

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

**ARTICLE 4 - CONTRACT TIMES**

**4.01** *Time of the Essence*

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

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

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

**4.03** *Damages*

A. The Contractor shall achieve Substantial Completion of the entire Work within **one hundred and fifty (150) calendar days** from the Notice to Proceed date, subject to and adjustments of the Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between NBU and the Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a material breach of this Agreement.

B. Should the Contractor default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, NBU may withhold, deduct, or recover from the Contractor all costs and damages for compensable delay caused by the Contractor from the Contract Price. Such costs shall include any professional or consultant's fees (including but not limited to fees for attorneys, architects, engineers, and construction managers), and all other costs, expenses, and damages actually incurred by NBU as a result of such delay. NBU's delay damages may be incidental to and not directly associated with the Project.

C. Timely final completion is an essential condition of this Agreement. The Contractor agrees to achieve final completion of the Work within 30 days of the designated or extended Substantial Completion date. The date of Substantial Completion shall be fixed by this Agreement, unless modified by Change Order, and memorialized by a Certificate of Substantial Completion as provided in the General Conditions.

**4.04** *Special Damages*

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

B. After the Contractor achieves Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, the Contractor shall reimburse NBU for the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Section 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

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

**ARTICLE 5 - CONTRACT PRICE**

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

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

**ARTICLE 6 - PAYMENT PROCEDURES**

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

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

**6.02** *Progress Payments; Retainage*

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

1. Prior to Substantial Completion, NBU shall make progress payments in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the Engineer may determine or NBU may withhold, including but not limited to damages, in accordance with Section 14.02 of the General Conditions:

- a. 95% (percent) of Work completed.
- b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

**6.03** *Final Payment*

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

**ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS**

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

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

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

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

**ARTICLE 8 - MISCELLANEOUS**

**8.01** *Terms*

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

**8.02** *Assignment of Contract*

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

**8.03** *Successors and Assigns*

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

**8.04** *Severability*

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

**8.05** *Governing Law*

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



**8.06** *Venue*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.12**    *Texas Public Information Act*

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

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

**8.13** *Electronic Signatures*

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

**ARTICLE 9 - INSURANCE**

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

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

**Exhibit A – Insurance Rider**

**Exhibit B – Contractor's Bid Form**

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

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

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

NBU: NEW BRAUNFELS UTILITIES, a Texas municipally owned utility

CONTRACTOR: HYDRO RESOURCES – MID CONTINENT, INC, a Delaware corporation authorized to transact business in the State of Texas

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

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

Printed Name: Ryan Kelso

Printed Name: Joshua C. Buse

Title: Chief Executive Officer

Title: General Manager

[CORPORATE SEAL]

[CORPORATE SEAL]

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

Attest:   
Wesley Box

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

Title: Drilling Sales Manager

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Hydro Resources – Mid Continent, Inc.  
11536 Old Lockhart Road  
Creedmoor, TX 78610

(Attach evidence of NBU authority to sign and resolution or other documents authorizing execution of NBU-Contractor Agreement.)

License No.: TDLR #61375  
(Where Applicable)

Agent for service or process:

Joshua Buse - Vice President & General Manager  
(If the Contractor is a corporation or a partnership, attach evidence or authority to sign.)

**END OF DOCUMENT**

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

**1. Specific Insurance Requirements**

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

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

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

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

	<p>shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing.</p> <ul style="list-style-type: none"> <li>• <del>The policy must provide coverage for:</del> <ul style="list-style-type: none"> <li>○ Agreed Value <span style="float: right;">Included</span></li> <li>○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse <span style="float: right;">Included</span></li> <li>○ Debris removal additional limit <span style="float: right;">\$1,000,000</span></li> <li>○ Earthquake and Earthquake Sprinkler Leakage <span style="float: right;">\$5,000,000</span></li> <li>○ Flood <span style="float: right;">Included</span></li> <li>○ Freezing <span style="float: right;">Included</span></li> <li>○ Mechanical breakdown including hot &amp; cold testing <span style="float: right;">\$1,000,000</span></li> <li>○ Ordinance or law removal <span style="float: right;">\$—25,000</span></li> <li>○ Pollutant clean up and removal <span style="float: right;">Included</span></li> <li>○ Preservation of property <span style="float: right;">Included</span></li> <li>○ Theft <span style="float: right;">\$10,000</span></li> <li>• Deductible shall not exceed <span style="float: right;">2% subject to \$50,000</span></li> <li>○ All Risks of Direct Damage, Per Occurrence, except <span style="float: right;">minimum \$100,000</span></li> <li>○ Named Storm <span style="float: right;">\$100,000</span></li> <li>○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</li> <li>○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V</li> </ul> </li> </ul>	<p>and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;</p> <ul style="list-style-type: none"> <li>○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;</li> <li>○ all property including materials and supplies on site for installation;</li> <li>○ all property including materials and supplies at other locations but intended for use at the site;</li> <li>○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and</li> <li>○ other Work at the site identified in the Agreement to which this Exhibit is attached.</li> <li>• No protective safeguard warranty shall be permitted.</li> <li>• The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> <li>○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;</li> <li>○ occupancy, in whole or in part;</li> <li>○ the date on which release of substantial completion is executed; or</li> <li>○ the date on which the insurable interests of Contractor in the Covered Property has ceased.</li> </ul> </li> <li>• A waiver of subrogation provision shall be provided in favor of all insureds listed above.</li> </ul> <div style="border: 1px solid black; padding: 10px; margin-top: 20px;"> <p>Builders Risk coverage shall be substituted with a substantially equivalent policy with similar coverage amounts for subsurface work.</p> </div>
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## 2. General Insurance Requirements

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

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

### B. Policies.

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

### C. Limits, Deductibles and Retentions

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

### D. Evidence of Insurance.

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

Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;

- d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;
  - f. Amount of any deductible or self-insured retention in excess of \$25,000;
  - g. Designated Construction Project(s) General Aggregate Limit;
  - h. Primary and non-contributory status;
  - i. Waivers of subrogation; and
  - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
- a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

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

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance and offset all costs and expenses from the Contract Sum. Owner's exercise of this right shall not relieve or excuse Contractor from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Contract Agreement.

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

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

**G. Use of the Owners Equipment**

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

**H. Release and Waiver**

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

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

New Braunfels Utilities  
 355 FM 306  
 New Braunfels, TX 78130

**PROJECT:** ASR-D1 Well Improvements 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 Request for Bid, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to RFP: evaluation and ranking for forty-five (45) days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other Documents required by the Bidding Requirements within ten (10) days after the date of NBU’s Notice of Award.
3. In submitting this bid, BIDDER represents, as more fully set forth in the Agreement, that:
  - a) BIDDER has examined copies of all the Bidding Documents and of all addenda.
  - b) BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
  - c) BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies that pertain to the subsurface of physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of Work as BIDDER considers necessary for the performance or finishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.02 of the Standard General Conditions of the Contract; and no additional examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by BIDDER for such purposes.
  - d) BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumed responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by the BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.04 of the Standard General Conditions of the Contract.
  - e) BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
  - f) BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable by BIDDER.
  - g) The Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over NBU.

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

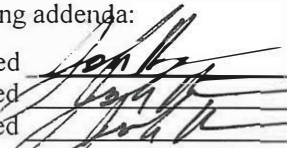
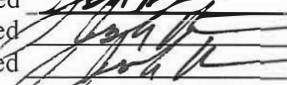
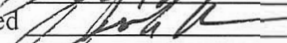
4. BIDDER will complete the Work for the following prices:

<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>UNIT COST, \$</b>	<b>TOTAL, \$</b>
Item 1 – Mobilization and Demobilization (Maximum 10% of Line Items 2-12)	LS	1	\$75,000.00	\$75,000.00
Item 2 – Drilling Rig Setup	LS	1	\$10,000.00	\$10,000.00
Item 3 – Disconnect and Disassemble Wellhead: Remove Drive Motor and Pump	LS	1	\$28,349.00	\$28,349.00
Item 4 – Drill Pilot Borehole	VF	240	\$575.00	\$138,000.00
Item 5 – Pilot Borehole Geophysical Logging Suite	LS	1	\$25,000.00	\$25,000.00
Item 6 – Ream Pilot Borehole to a Minimum 19-inch Diameter	VF	240	\$875.00	\$210,000.00
Item 7 – Furnish and Install 20,000 Gallons of 28% Hydrochloric Acid	LS	1	\$170,000.00	\$170,000.00
Item 8 – Acidizing in Excess of 20,000 Gallons 28% Hydrochloric Acid	GAL	1000	\$21.00	\$21,000.00
Item 9 - Remove and Dispose of Acid Residue	LS	1	\$100,000.00	\$100,000.00
Item 10 – Final Well Color Video Log	LS	1	\$5,000.00	\$5,000.00
Item 11 – Reconnect and Reassemble Wellhead: Install Drive Motor and Pump	LS	1	\$31,000.00	\$31,000.00
Item 12 – Well Disinfection	LS	1	\$10,000.00	\$10,000.00

**TOTAL BASE BID** \$ 823,349.00

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to delay damages and special damages in the event of failure to complete the Work on time.
6. The following documents are attached to and made a condition of this Bid:

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

- a) Required Bid security of five percent (5%) of the Bidder's maximum base bid price and in the form of approved Bid Bond.
  - b) List of BIDDER's primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
7. Communication concerning this Bid shall be addressed to:  
 New Braunfels Utilities  
 Purchasing Manager  
 355 FM 306  
 New Braunfels, TX 78130  
 Phone: 830-608-8867  
 Email: [Purchasing@NBUTexas.com](mailto:Purchasing@NBUTexas.com)
8. The terms used in this Bid that are defined in the Standard General Conditions of the Contract included as part of the Contract Documents have the meanings assigned to them in the Standard General Conditions of the Contract.
9. The undersigned acknowledges receipt of the following addenda:
- |                      |                 |          |  |
|----------------------|-----------------|----------|--|
| Addendum No. 1 dated | <u>05.10.24</u> | Received |  |
| Addendum No. 2 dated | <u>05.10.24</u> | Received |  |
| Addendum No. 3 dated | <u>05.22.24</u> | Received |  |

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

Justin Traurig


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

Hydro Resources - Mid Continent, Inc.

Company Name of Bidder



Authorized Signature

05.29.24

Date

Joshua C. Buse

Printed Name of Authorized Signature

Hydro Resources - Mid Continent, Inc.

11536 Old Lockhart Road  
Creedmoor, TX 78610

Address

512-858-4375

Telephone Number/Fax Number

**END OF DOCUMENT**



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman  
Chief Operations Officer      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the FM 1044 Elevated Storage Tank Project

## **BACKGROUND**

On September 30, 2021, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Services Agreement (the “Agreement”) with Freese and Nichols, Inc. (“FNI”) for professional engineering services for the FM 1044 Elevated Storage Tank (“EST”) Project (the “Project”). On July 29, 2022, NBU staff approved a Supplemental Services Authorization with FNI for additional design services needed to facilitate site acquisition for the Project.

During the course of design, NBU and the Professional identified a need to add additional services due to unanticipated delays in property evaluation and acquisition. As a result, NBU staff requests that the Board approve the First Amendment to the Agreement (the “First Amendment”), which includes (i) conducting additional feasibility studies of various potential Project sites for the EST, (ii) preparing figures and exhibits of the EST at a City of New Braunfels (“CoNB”) property, (iii) preparing 50% design drawings for the EST at the CoNB property and another potential Project site, (iv) additional project management, meetings, and design services due to extended project duration, and (v) additional construction resident Project representative services.

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

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



**FINANCIAL IMPACT**

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The total financial impact for the First Amendment is \$302,046.00. The total contract amount for the Agreement and the First Amendment with FNI for the Project is \$1,216,661.00, including supplemental services. The Project is budgeted within the fiscal year 2024 through fiscal year 2026 NBU Board approved Capital Improvements Projects Budget.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Stewardship**

**EXHIBITS**

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1. First Amendment to the Professional Services Agreement with FNI

**FIRST AMENDMENT TO PROFESSIONAL  
SERVICES AGREEMENT  
(FM 1044 ELEVATED STORAGE TANK PROJECT)**

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

**RECITALS**

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated October 1, 2021 (the “Original Agreement”), for project management, preliminary engineering, final design, field services, permitting and stakeholder coordination, bid phase, and construction phase services (the “Original Services”) for the FM 1044 Elevated Storage Tank Project (“the “Project”) to be completed by May 17, 2024;

WHEREAS, NBU and the Professional included miscellaneous engineering services contemplated by Chapter 2254 of the Texas Government Code in the Original Agreement, to include additional design services due to unforeseen field conditions, as Supplemental Services (the “Supplemental Services”) whereby NBU and the Professional could agree in writing to engage such Supplemental Services at a later date, if needed;

WHEREAS, NBU entered into a Supplemental Services Authorization on July 29, 2022 (i) engaging and defining the Supplemental Services, (ii) authorizing the related compensation, and (iii) defining a time of completion for the Supplemental Services (the “Authorization” and, together with the Original Agreement, the “Agreement”);

WHEREAS, during the course of design, NBU and the Professional identified a need to add additional services due to unanticipated delays in property evaluation and acquisition;

WHEREAS, the additional services include (i) conducting additional feasibility studies of various potential Project sites for the elevated storage tank (“EST”), (ii) preparing figures and exhibits of the EST at a City of New Braunfels (“CoNB”) property, (iii) preparing 50% design drawings for the EST at the CoNB property and another potential Project site, (iv) additional project management, meetings, and design services due to an extended project duration, and (v) additional construction resident Project representative services, more fully described in Exhibit “A” attached hereto (the “New Services” and, together with the Original Services, the “Services”) that were not contemplated in the Original Agreement;

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

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

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New

Services, (ii) include additional compensation for the New Services, and (iii) extend the Project completion date to October 21, 2026.

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

#### AGREEMENT

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

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

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

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

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

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

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

*(The remainder of this page intentionally left blank)*

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

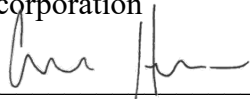
**NBU:**

**NEW BRAUNFELS UTILITIES,**  
a Texas municipal owned utility

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

**THE PROFESSIONAL:**

**FREESE AND NICHOLS, INC.**  
a Texas corporation

By:  \_\_\_\_\_  
Name: Anne Hoskins, P.E.  
Title: Principal

**Exhibit A**  
**Services**

NO CHANGE

**SERVICES**

NO CHANGE

**Task 1. Project Management**

NO CHANGE

**Task 2. Preliminary Engineering Phase**

2. NO CHANGE

2.1 MEETINGS. The Professional shall provide meeting agenda and meeting minutes to NBU for the following meetings:

2.1.1 NO CHANGE

2.1.2 monthly progress status meetings (seventeen (17) meetings);

2.1.3 NO CHANGE

2.1.4 NO CHANGE

2.1.5 meetings with property owners (six (6) meetings); and

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

2.2 STORAGE TANK ANALYSIS.

2.2.1 NO CHANGE

2.2.2 NO CHANGE

2.2.3 analyze eight (8) additional potential storage tank site locations;

2.2.4 analyze and recommend locations of easements for three (3) additional potential EST locations, providing figures and exhibits of the EST to NBU;

2.2.5 identify and provide basic site improvements for the potential EST sites;

2.2.6 identify basic one-line yard piping improvements for the potential EST sites;

2.2.7 NO CHANGE

2.2.8 NO CHANGE

2.2.9 perform a storm water and overflow analysis for the potential EST sites;

2.2.9.1 NO CHANGE

2.2.9.2 NO CHANGE

2.2.9.3 NO CHANGE

2.2.9.4 NO CHANGE

2.3 50% DESIGN DOCUMENTS

2.3.1 The Professional shall perform four (4) preliminary site visits to gather project information.

2.3.2 NO CHANGE

2.3.3 The Professional shall prepare 50% design drawings including plan views of the site improvements and stormwater improvements within the Project Site for two (2) additional potential EST sites.

2.3.4 NO CHANGE

2.4 NO CHANGE

2.5 NO CHANGE

**Task 3. Final Design Phase**

NO CHANGE

**Task 4. Field Services**

NO CHANGE

**Task 5. Permitting & Stakeholders**

NO CHANGE

**Task 6. Bid Phase Services**

NO CHANGE

**Task 7. Construction Phase Services**

7.1 NO CHANGE

7.2 NO CHANGE

7.3 NO CHANGE

7.4 NO CHANGE

7.5 NO CHANGE

7.6 NO CHANGE

7.7 NO CHANGE

7.8 RESIDENT REPRESENTATION. The Professional shall provide a part-time Resident Project Representative (“RPR”) on the Site for thirteen (13) months. The RPR effort shall be twenty (20) hours per week. The effort for construction management will be five (5) hours per week.

7.8.1 NO CHANGE

7.8.2 NO CHANGE

7.8.3 NO CHANGE

7.8.4 NO CHANGE

7.8.5 NO CHANGE

7.8.6 NO CHANGE

7.8.7 NO CHANGE

7.8.8 NO CHANGE

7.8.9 NO CHANGE

7.9 NO CHANGE

7.10 NO CHANGE

**Supplemental Services**

NO CHANGE

**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.

<b>Project Milestones</b>	<b>Start Date</b>	<b>End Date</b>
Notice to Proceed	NO CHANGE	-
ROE	10/1/21	10/31/23
Survey, Geotechnical Analysis	11/1/23	6/1/24
50% Preliminary Design	12/7/23	4/17/24
90% Final Design	4/18/24	7/17/24
100% Final Design	7/18/24	8/7/24
Permitting	8/8/24	10/16/24
Bid Phase	8/8/24	1/30/25
Construction Phase	2/28/25	10/21/26



## Exhibit B

### Compensation

NBU shall 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 \$1,191,661.

Task	Cost	First Amendment	Total Contract
Task 1: Project Management	\$55,510	\$27,001	\$82,511
Task 2: Preliminary Design Phase	\$140,963	\$65,014	\$205,977
Task 3: Final Design Phase	\$240,957	\$49,614	\$290,571
Task 4: Field Services	\$62,913	\$12,724	\$75,637
Task 5: Permitting & Stakeholders	\$11,833	\$2,958	\$14,791
Task 6: Bid Phase	\$12,337	\$3,594	\$15,931
Task 7: Construction Phase	\$365,102	\$141,141	\$506,243
<b>Total</b>	<b>\$889,615</b>	<b>\$302,046</b>	<b>\$1,191,661</b>

#### Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$25,000, as modified below; provided, however, that NBU must provide written approval in the form of a supplemental services agreement prior to the Professional performing the Supplemental Services.

Task	Supplemental Services Cost Breakdown		
	Agreement	Supplemental Services Authorization	Balance
Board Approved Funds Available for Supplemental Services	\$25,000	(\$25,000)	\$0
<b>Total</b>	<b>\$25,000</b>	<b>(\$25,000)</b>	<b>\$0</b>



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman  
Chief Operations Officer      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the FM 1101 Discharge Line Project

## **BACKGROUND**

This Professional Services Agreement (the “Agreement”) with Freese and Nichols, Inc. (“FNI”) provides project management services, preliminary design phase services, final design phase services, field services, permitting services and coordination with stakeholders, bid phase services, and construction phase services for the New Braunfels Utilities (“NBU”) FM 1101 Discharge Line Project (the “Project”). The Project is anticipated to install approximately 12,400 linear feet (“LF”) of 24-inch waterline starting at a property on the southwest side of Barbarosa Road, approximately 1,100 LF to the FM 1101 and Barbarosa Road intersection, traveling northwest up Barbarosa Road to FM 1101, then traveling along FM 1101 to the northeast and then traveling northwest down Kohlenberg Road approximately 1,400 feet to terminate at the property line of the NBU Kohlenberg Elevated Storage Tank site, and will facilitate additional distribution pumping capacity in the Kohlenberg Pressure Zone to serve projected growth. The Project is tied to the Mayfair Cost Sharing Agreement.

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

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

Upon completion of the final design, NBU staff will solicit a construction contract and anticipates bringing the construction contract to the Board for approval in April 2026. NBU staff plans to begin construction in May 2026 and completing construction by April 2027.

## **FINANCIAL IMPACT**

The total financial impact for the Agreement with FNI for the Project is \$1,405,475.00, including supplemental services. The Project is budgeted within the fiscal year 2025 through fiscal year 2028 NBU Board approved Capital Improvements Projects Budget.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Infrastructure and Technology**

**Stewardship**

**EXHIBITS**

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1. Professional Services Agreement with FNI

## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **FREESE AND NICHOLS, INC.**, a Texas corporation (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

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

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

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

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

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

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

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

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

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

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

Section 9. Indemnification.

**(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:**

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

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

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

Section 10. Insurance.

(A) General.

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



(subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

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

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be

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

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

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

#### Section 11. Termination.

(A) For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services

performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

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

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement.

The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

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

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

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

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

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

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

(G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and

superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

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

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

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

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

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

(M) Offset.

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

- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.

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

If to NBU:

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

With copy to:

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

If to the Professional:

Freese and Nichols, Inc.  
801 Cherry St., Suite 2800  
Fort Worth, Texas 76102

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

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

required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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



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

Section 16. Information Technology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 22. Texas Public Information Act. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its

obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of NBU's obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU's audit rights in Section 12(P).

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

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

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

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

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

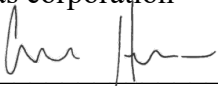
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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this the \_\_\_\_ day of \_\_\_\_\_, 2024.

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

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

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

By:  \_\_\_\_\_  
Name: Anne Hoskins  
Title: Principal

## Exhibit A

### Services

The Professional shall provide all labor, material, and equipment necessary to provide project management services, preliminary design phase services, final design phase services, field services, permitting services and coordination with stakeholders, bid phase services, and construction phase services for the Farm to Market 1101 Discharge Line Project (the “Project”). The Project consists of installing approximately 12,400 linear feet (“LF”) of 24-inch waterline starting at a property on the southwest side of Barbarosa Road, approximately 1,100 LF to the FM 1101 (“FM 1101”) and Barbarosa Road intersection, traveling northwest up Barbarosa Road to FM 1101, then traveling along FM 1101 to the northeast and then traveling northwest down Kohlenberg Road approximately 1,400 feet to terminate at the property line of the NBU Kohlenberg Elevated Storage Tank site.

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

#### **Task 1 - Project Management**

The Professional shall provide the project management services described in this Section.

- 1) **SCHEDULE.** The Professional shall develop a baseline design schedule for the Project within two (2) weeks after notice to proceed (“NTP”) and shall prepare an updated design schedule for the Project on a monthly basis, on or before the twenty-fifth (25<sup>th</sup>) day of each month, for NBU to monitor progress and identify design submittal dates. The Professional shall provide design schedules to the NBU project manager (the “NBU Project Manager”) via email in portable document format (“PDF”).
- 2) **QUALITY CONTROL.** The Professional shall develop a quality assurance/quality control (“QA/QC”) program for the Project. The Professional shall explain the QA/QC program in detail via a written document and provide it to the Project Manager via email in PDF within two (2) weeks after NTP.
- 3) **PROGRESS REPORTS.** The Professional shall provide the Project Manager with electronic monthly Project progress reports and submit written invoices, which shall be submitted on or before the twenty-fifth (25<sup>th</sup>) day of each month for the previous month’s effort. The Professional shall provide progress reports to the NBU Project Manager via email in PDF.
- 4) **MEETING AGENDA/MINUTES.** The Professional shall track and document all action items and decisions made by NBU and the Project team in connection with the Project through meeting minutes for all meetings in accordance with Task 1, Section 6.
- 5) **PROJECT CONTROLS.** The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, subconsultants, communications, risk analysis and management, and procurements as NBU directs, to include the following:
  - a) assigning a senior advisor to oversee the QA/QC program;

- b) developing cost estimates using recent bid tabs from similar projects;
  - c) using Microsoft Project to manage the schedule; and
  - d) coordinating communication with subconsultants through emails and meetings.
- 6) DESIGN COORDINATION MEETINGS. The Professional shall provide a meeting agenda one (1) week before every meeting, and shall submit meeting minutes for all meetings to the NBU Project Manager one (1) week after every meeting via email in PDF. The Professional may combine meetings with design deliverable review meetings as the schedule allows.

## **Task 2 – Preliminary Design Phase**

The Professional shall perform preliminary design phase services as described in this Section.

- 1) MEETINGS. The Professional shall provide a meeting agenda no later than one (1) week before every meeting, and shall submit meeting minutes within one (1) week after every meeting via email in PDF to the Project Manager for the following meetings:
  - a) Project kick-off meeting with NBU (one (1) meeting);
  - b) four (4) monthly progress status meetings for the duration of this Task;
  - c) route study review meeting (one (1) meeting); and
  - d) preliminary engineering report (“PER”) review meeting (one (1) meeting).
- 2) ALTERNATIVE ROUTE EVALUATION.
  - a) The Professional shall perform an alternative route evaluation for up to three (3) routes for the water line. The Professional shall:
    - i) use existing geographic information system (“GIS”) and as-built information to determine locations of existing utilities on the Project site;
    - ii) perform preliminary site visits to gather Project information;
    - iii) coordinate with NBU to gather all available information on the Project;
    - iv) evaluate up to three (3) potential routes and make recommendation of the preferred route based on cost, constructability, right of way (“ROW”)/road requirements, public impact, utility conflicts, etc. The Professional shall produce GIS exhibits showing proposed pipeline alignments and provide maps of up to three (3) potential pipeline routes; and
    - v) provide a Class 4 opinion of probable construction cost (“OPCC”) as specified by the Association for the Advancement of Cost Engineering for each route.
  - b) The Professional shall evaluate the feasibility of trenchless construction in locations that have surface conflicts or require limited surface disturbance in high traffic areas. The Professional shall determine the preferred method of a trenchless construction for up to three (3) crossings or alignments.
- 3) PRELIMINARY ENGINEERING REPORT. The Professional shall prepare the PER as described in this Section, and in accordance with the timeframe described in the 30% preliminary design phase of Table 1.

- a) The Professional shall perform up to one (1) preliminary site visit to gather Project information.
  - b) The Professional shall prepare a report describing the basis for the Project's design and submit in accordance with Task 2, Section 5. The Professional's report shall include an assessment of existing site conditions and engineering recommendations for the Project.
- 4) 30% DESIGN DOCUMENTS. The Professional shall perform 30% design services as described in this Section, and in accordance with the timeframe described in the 30% preliminary design phase of Table 1.
- a) The Professional shall perform existing data collection and analysis using the existing GIS and as-built information to determine locations of existing utilities on the Project site.
  - b) The Professional shall prepare 30% design plans (plan view only) and a preliminary OPCC.
- 5) DELIVERABLES. The Professional shall provide the following preliminary design phase deliverables to NBU during the timeframe described in the 30% preliminary design phase of Table 1:
- a) an environmental memorandum and permitting recommendation via email in PDF;
  - b) alternative route evaluation GIS exhibits, proposed pipeline maps, and OPCC;
  - c) one (1) PDF via e-mail of the PER; and
  - d) one (1) PDF via e-mail of the 30% design plans and an OPCC.

### **Task 3 – Final Design Phase**

Upon NBU's written approval of the PER and 30% design documents, the Professional shall perform the final design phase services described in this Section.

- 1) MEETINGS. The Professional shall provide a meeting agenda no later than one (1) week before the meeting, and shall submit meeting minutes to the NBU Project Manager within one (1) week after every meeting, for the following meetings:
  - a) 60% design review meeting (one (1) meeting);
  - b) 90% design review meeting (one (1) meeting);
  - c) monthly design meetings (fourteen (14) meetings); and
  - d) permitting meeting with the City of New Braunfels ("CoNB") (one (1) meeting).
- 2) 60% DESIGN DOCUMENTS. Upon written approval by NBU of the PER and 30% design documents, the Professional shall prepare 60% plans, draft a storm water downstream impact report, specifications list, and an updated OPCC, and submit in accordance with Task 3, Section 7.
- 3) 90% DESIGN DOCUMENTS. Upon written approval by NBU of the 60% design documents, the Professional shall prepare 90% plans, specifications, bid form, geotechnical data report ("GDR"), and an OPCC in accordance with Task 3, Section 7.
- 4) Upon written approval of the 60% design documents prepared by the Professional, the Professional shall coordinate with the CoNB for overall Project permitting and approval. The Professional shall hold up to three (3) virtual meetings with the CoNB to discuss the joint



bidding of the pipe inside Kohlenberg with the CoNB's proposed road reconstruction and widening project.

- 5) Upon receipt of each of the design package submittals, NBU shall submit to the Professional any comments regarding the submittals within two (2) weeks.
- 6) 100% (FINAL) DESIGN DOCUMENTS. Upon NBU's written approval of 90% drawings and specifications, the Professional shall prepare 100% (final) signed and sealed plans, specifications, bid form, an OPCC, in accordance with Task 3, Section 7.
- 7) DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1:
  - a) 60% design documents, a PDF via e-mail of the plans, specifications list, and an OPCC during the 60% design phase described in Table 1;
  - b) 90% design documents, a PDF via e-mail of the plans, specifications, bid form, an OPCC, and a GDR during the 90% design phase described in Table 1;
  - c) 100% design documents, a PDF via e-mail of the plans, specifications, bid form, and an OPCC during the 100% design phase described in Table 1; and
  - d) a geo-referenced AutoCAD file and geographic information system shapefile in accordance with NBU standards in electronic downloadable format during the 100% design phase described in Table 1.

#### **Task 4 – Field Services**

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

- 1) TOPOGRAPHIC SURVEY. The Professional shall obtain a topographic, utility, and boundary survey as described below.
  - a) The Professional's surveyor shall survey and locate found visible features and structures within the Project site. This shall include, but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures, channels, and drainage ways (tops, toes, and flow line), and visible above-ground utility appurtenances. Visible valves, meters, utility clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, buildings (edges within the survey limits) mailboxes, etc. shall also be included in the survey.
  - b) The Professional's surveyor shall conduct a utility survey and locate existing utilities within the Project site. The Professional's surveyor shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional's surveyor shall request drawings of existing agency and municipal owned utilities and shall include the locations of these utilities in the survey. The Professional's surveyor shall tie in the locations of the existing utilities on the survey. The Professional's surveyor shall bear all costs for the services associated with utility locates. The Professional shall perform subsurface utility engineering ("SUE") to include the following:

- i) perform level A subsurface utility exploration for up to ten (10) pothole locations;
  - ii) provide coordination for all utility locates/clearance and permitting required to conduct SUE potholes;
  - iii) the Professional's surveyor shall set and install control points and/or benchmarks as required for the survey work. The Professional's surveyor shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing;
  - iv) the Professional shall coordinate right of entry ("ROE"). The Professional shall contact private property owners and attempt to obtain permission to enter and perform field services within private properties. If the Professional cannot obtain permission to enter private property, the Professional shall notify NBU and NBU shall coordinate with property owners to assist with ROE. The Professional shall compile a list of property owners which may be impacted by the Project, request current contact information from NBU, develop a notification ROE letter, deliver letters to property owners, follow up with phone contact, and manage receipt and communication regarding response to ROE request; and
  - v) the Professional's surveyor shall research and review adjoining plats and deeds associated with the Project site to develop a Project site boundary.
- 2) EASEMENT DOCUMENTS. The Professional shall prepare metes and bounds descriptions and exhibits for required easements for the Project for up to eighteen (18) parcels based on the following criteria:
- a) the Professional shall perform deed, plat, and courthouse record research, request title reports and obtain copies of deeds and easement documents;
  - b) the Professional shall survey property corners, fences and appurtenant property evidence;
  - c) the 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;
  - d) the exhibit plats and legal descriptions must meet all the rules of the Texas Board of Professional Land Surveying and the Professional Land Surveying Practices Act and the Manual of Practice for Land Surveying in the State of Texas as published by the Texas Society of Professional Surveyors. The latest revision shall be used;
  - e) the 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 should be able to stand alone; and

- f) the Professional shall provide plan view exhibits of proposed temporary and/or permanent easements for up to eighteen (18) parcels to aid in easement acquisition by NBU.
- 3) SUBSURFACE UTILITY ENGINEERING. The Professional shall perform SUE as described below.
- a) The Professional shall perform SUE "Quality Level A" as defined by the American Society for Civil Engineers, for up to ten (10) pothole locations. Level A includes physically locating the actual utility – often by 'potholing.' Once the utility is potholed it is located horizontally and vertically by survey measurements. This location is typically to the top of pipe, which should be noted on the drawing.
  - b) The Professional shall provide coordination for all utility locates/clearance and permitting required to conduct SUE potholes.
- 4) GEOTECHNICAL DATA REPORT. The Professional shall conduct a geotechnical investigation to complete a GDR for the Project as described below.
- a) The Professional shall select appropriate locations for exploratory borings along the proposed discharge line route.
  - b) In accordance with Section 12(I) of this Agreement and pursuant to the requirements defined in Section 10(A)(ix) of this Agreement, the Professional shall seek written permission from NBU, to subcontract with a drilling contractor to drill five (5) exploratory borings along the proposed discharge line route each to a depth of fifteen (15) feet below existing grade. The borings shall be advanced using standard rotary drilling equipment with continuous-flight augers (solid or hollow stem) or rotary wash methods. Subsurface samples shall be collected using 3-inch diameter Shelby tubes for cohesive soils and a 2-inch diameter split-spoon sampler in conjunction with the standard penetration test ("SPT") for intermediate and non-cohesive soils. Rock and rock-like materials shall be cored using an NX core barrel and/or tested *in situ* using the Texas cone penetration test or the SPT, as appropriate for the material. The borings shall be backfilled with auger cuttings upon completion of drilling and sampling.
  - c) The Professional shall record the groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.
  - d) The Professional shall select samples for laboratory testing, assign tests, and review the test results.
  - e) The Professional shall perform a geotechnical analysis and prepare a GDR documenting the analysis, which will be delivered in accordance with Task 3, Section. The GDR shall

include the following:

- i) a summary of the field and laboratory sampling and testing program;
- ii) boring logs and laboratory testing results;
- iii) 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;
- iv) trenchless water main construction feasibility and recommendations of auger boring and horizontal directional drilling;
- v) general discussion of expected construction related issues; and
- vi) earthwork related recommendations for use during development of plans and specifications.

5) ENVIRONMENTAL AND CULTURAL INVESTIGATION COORDINATION. The Professional shall conduct environmental and cultural investigation services described in this Section.

- a) The Professional shall perform up to one (1) site visit to gather Project information.
- b) The Professional shall perform a desktop resource analysis and review.
- c) The Professional shall identify and document the necessary United States Army Corps of Engineers' ("USACE") permitting requirements under Section 404 of the Clean Water Act. No actual permit application development, application submission, or USACE coordination, will occur with this effort.
- d) The Professional shall conduct reconnaissance-level field surveys within the Project area to identify and document any federally-listed threatened and endangered species or potential habitat in the Project area. No presence/absence surveys or coordination with the United States Fish and Wildlife Service will occur with this effort.
- e) The Professional shall perform a desktop cultural resources review and provide a coordination letter to the Texas Historical Commission ("THC") to identify any additional analysis requirements such as archeological pedestrian surveys and/or historical reconnaissance field surveys, or to obtain a concurrence that no further analysis is necessary.
- f) The Professional shall prepare an environmental memo that identifies the Project's USACE

permitting requirements and potential effects to federally-listed threatened and endangered species and provide this memo as a deliverable during the 30% preliminary design phase described in the Time of Completion section.

- 6) **DELIVERABLES.** The Professional shall provide the following deliverables to NBU in the timeframe described in Table 1:
- a) signed and sealed metes and bounds (one (1) PDF electronic submission) during the 60% design phase timeframe in Table 1;
  - b) GDR (one (1) PDF electronic submission) during the 100% final design phase timeframe in Table 1; and
  - c) environmental and cultural documents (one (1) PDF electronic submission) during the 30% preliminary design phase timeframe in Table 1.

### **Task 5 – Permitting & Stakeholders**

The Professional shall coordinate with the following stakeholders/agencies as described in this Section.

- 1) **UNITED STATES ARMY CORPS OF ENGINEERS.** The Professional shall prepare and provide a coordination letter to obtain a United States Army Corps of Engineers (“USACE”) Section 404 of the Clean Water Act permit.
- 2) **TEXAS HISTORICAL COMMISSION.** The Professional shall coordinate with the consultant hired by NBU to prepare and provide a coordination letter and desktop review to THC and to coordinate areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys as described in Task 4.
- 3) **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY.** The Professional shall prepare and submit permit applications to Texas Commission on Environmental Quality (“TCEQ”) for approval of all design documents. The permit applications include the following:
  - a) variance letter (if needed); and
  - b) approval letter for water lines.
- 4) **CITY OF NEW BRAUNFELS.** The Professional shall prepare and submit permit applications to the CoNB to obtain permits for:
  - a) public infrastructure; and
  - b) floodplain (if needed, as determined by NBU).

- 5) TEXAS DEPARTMENT OF TRANSPORTATION. The Professional shall prepare and submit a permit application for all work within Texas Department of Transportation (“TxDot”) ROW.
- 6) DELIVERABLES. The Professional shall provide the following deliverables to NBU during the permitting and stakeholders phase described in Table 1:
  - a) a USACE permit - one (1) PDF electronic copy;
  - b) a THC coordination letter and desktop review – one (1) PDF electronic copy of each;
  - c) a TCEQ permit(s)/ approval(s) - one (1) PDF electronic copy of each;
  - d) a CoNB permit - one (1) PDF electronic copy; and
  - e) a TxDOT permit - one (1) PDF electronic copy.

#### **Task 6 – Bid Phase Services**

The Professional shall perform bid phase services as described in this Section. The Professional shall perform two bid phases – one bid phase for the portion of the line upstream of Kohlenberg Road and one for the portion on Kohlenberg Road. The portion of the pipeline on Kohlenberg Road will be a joint bid with the CoNB.

- 1) PRE-BID CONFERENCE. The Professional shall attend a pre-bid conference administered by NBU. The Professional shall assist NBU with preparation of the agenda, provide NBU with a meeting summary within one (1) week after any meeting, and coordinate conference responses with NBU. The Professional shall provide NBU with written responses to issues identified at the pre-bid conference within three (3) days after the pre-bid conference and shall be in the form of addenda issued after the conference and prior to bid opening.
- 2) INTERPRET BID DOCUMENTS. The Professional shall assist NBU with responding to questions, interpreting bid documents, and in preparing addenda to the bid documents if necessary.
- 3) BID EVALUATION. The Professional shall attend a bid-opening conference administered by NBU. The Professional shall assist NBU in analyzing the bids received for the Project, including evaluating and researching contractor qualifications and references. The Professional shall recommend the award of the contract or recommend other actions for NBU to take by preparing a letter of recommendation and submitting the letter to NBU.
- 4) CONFORMED CONSTRUCTION DOCUMENTS. The Professional shall incorporate all addenda into the plans and specifications and prepare a conformed set in accordance with Task 6, Section 5.
- 5) DELIVERABLES. The Professional shall provide the following deliverables to the NBU Project Manager and construction contractor as specified below:
  - a) to NBU, addenda between advertisement and bid opening - one (1) PDF electronic copy of

each;

- b) to NBU, a letter of recommendation provided within one (1) week after the bid opening - one (1) PDF electronic copy; and
- c) conformed construction documents as described in Task 6, item 4 provided prior to construction NTP:
  - i) at pre-construction meeting:
    - (1) three (3) hard copies and one (1) electronic in PDF via e-mail of the construction documents.
  - ii) for NBU during construction:
    - (1) two (2) 22" x 34" (full-size) hard copies of conformed construction documents;
    - (2) one (1) 11" x 17" (half-size) hard copy of conformed construction documents;
    - (3) three (3) hard copies of the conformed construction documents and Project specifications; and
    - (4) one (1) electronic copy in PDF via e-mail of conformed construction documents.
  - iii) for the construction contractor:
    - (1) two (2) 22" x 34" (full-size) hard copies of the conformed construction documents;
    - (2) two (2) 11" x 17" (half-size) hard copies of the conformed construction documents; and
    - (3) one (1) electronic copy in PDF of the conformed construction documents.

### **Task 7 – Construction Phase Services**

The Professional shall provide construction phase services as described herein.

- 1) MEETINGS AND SITE VISITS. The Professional shall attend the following meetings and site visits as described in this Section.
  - a) The Professional shall assist NBU in conducting one pre-construction conference with the contractor and shall assist NBU with the preparation of agenda, record and provide the Project Manager with meeting notes within one (1) week after the conference, and coordinate conference responses with the Project Manager.
  - b) The Professional shall conduct one construction document control workshop for the contractor. Training shall include hands-on instruction to walk through key requirements of the web based electronic project documentation FNi Manager software.
  - c) The Professional shall attend up to a total of twelve (12) monthly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes

to the NBU Project Manager and the contractor in accordance with Task 7, Section 3.

- d) The Professional shall attend up to a total of twelve (12) 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 plans and specifications. The Professional shall prepare and provide NBU with observation reports in accordance with Task 7, Section 3, for each site visit and notify NBU of any non-conforming work performed by the contractor.
  - e) The Professional shall conduct, with NBU's representatives, a substantial completion inspection and punch list review for the construction package of the Project for conformance with the design concept of the Project and compliance with the plans and specifications. The Professional shall prepare and submit in accordance with Task 7, Section 3, a list of deficiencies to the Project Manager to be corrected by the contractors before recommendation of final payment.
  - f) The Professional shall conduct a final completion inspection for the construction package of the Project, with NBU representatives, for conformance with the design concept of the Project and compliance with the plans and specifications.
  - g) The Professional shall prepare and submit a final completion report and make recommendation of final payment to the NBU Project Manager in accordance with Task 7, Section 3.
- 2) CONSTRUCTION ADMINISTRATION. The Professional shall perform construction administration and resident representation services as described in this Section.
- a) The Professional shall have a full-time (forty (40) hours per week) resident Project representative ("RPR") on the Project site for thirty-four (34) weeks and provide an average of five (5) hours per week of construction management time for fifty-two (52) weeks. The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, shall be performed as described below.
  - b) The Professional shall establish and maintain a document management system consistent with the requirements of the construction contract 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.
  - c) The Professional shall (i) produce monthly reports and submit them within one (1) week after month's end, via email, to the Project Manager, indicating the status of all submittals in the review process and (ii) review all contractor submittals for compliance with the design concepts to include the following:
    - i) shop drawings;



- ii) record data;
  - iii) requests for information;
  - iv) schedules;
  - v) certified test reports;
  - vi) operation and maintenance manuals; and
  - vii) miscellaneous submittals.
- d) The Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project to include the following:
- i) establish procedures for and document construction changes required to implement modifications to the Project;
  - ii) process contract modifications and negotiate with the contractor at NBU's direction to determine the cost and time impacts of these changes;
  - iii) prepare field/change order documentation for up to five (5) field orders for minor alterations and up to five (5) change orders for each contract; and
  - iv) evaluate notices of contractor claims and make initial recommendations to the NBU Project Manager on the merit and value of the claim based on information submitted by the contractor or available Project documentation and negotiate a settlement value with the contractor at NBU's direction.
- e) The Professional shall interpret the plans and specifications for NBU and the contractor during the course of the construction Project.
- f) The Professional shall review and comment on monthly and final estimates for payment to the contractor pursuant to the general conditions of the construction contract during the course of the construction Project.
- g) The Professional shall prepare the record drawings based on the revised redline construction drawings and information furnished by the construction contractor reflecting changes in the Project made during construction. The Professional shall prepare one (1) set of record drawings at the completion of the Project and submit to the NBU Project Manager in accordance with Task 7, Section 3.
- h) The Professional shall abide by the following limitations of authority of the RPR:
- i) The Professional shall not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized by the engineer of record ("EOR").
  - ii) The Professional shall not exceed limitations of the EOR's authority as set forth in this Agreement or the contract documents.
  - iii) The Professional shall not undertake any of the responsibilities of the contractor,

subcontractor, suppliers, or the contractor's superintendent.

- iv) 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.
  - v) 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.
  - vi) The Professional shall not accept shop drawings or sample submittals from anyone other than the contractor.
  - vii) The Professional shall not participate in a specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by the EOR.
- 3) DELIVERABLES. The Professional shall submit the following deliverables to NBU for each meeting:
- a) meeting agendas shall be provided via email in PDF no later than one (1) week before the meeting for the preconstruction conference and construction progress meetings;
  - b) meeting minutes and conference responses shall be provided via email in PDF within one (1) week after the meeting for the preconstruction conference and construction progress meetings;
  - c) site observation reports shall be provided on a monthly basis via email in PDF;
  - d) responses to contractor submittals, requests for information, and other documents will be provided within fourteen (14) days of receipt;
  - e) a substantial completion inspection and punch list report shall be submitted via email in PDF within fourteen (14) days after substantial completion;
  - f) a final completion inspection report shall be submitted via email in PDF within fourteen (14) days after final completion of construction;
  - g) a plan of record drawings and specifications shall be submitted in PDF no later than sixty (60) days after final completion; and
  - h) a geo-referenced AutoCAD file in accordance with NBU standards, with features adjusted to the location of global positioning system points collected in the field by the contractor, shall be provided no later than sixty (60) days after final completion.

### **Supplemental Services**

Pursuant to Section 4(B) of this Agreement, the Professional shall seek prior written approval from NBU before commencing work on any Supplemental Services described in this Section. If NBU requests the Professional to perform the Supplemental Services, NBU and the Professional shall

execute a supplemental services agreement or contract amendment, as appropriate, detailing the Supplemental Services to be performed and the completion date. The Supplemental Services shall only include Project specific professional engineering services contemplated by Chapter 2254 of the Texas Government Code. The Professional acknowledges the contract duration will not increase as a result of engaging the Supplemental Services unless noted in the supplemental services agreement or contract amendment, as appropriate.

### **Time of Completion**

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

**Table 1**

<b>Project Milestones</b>	<b>Start Date</b>	<b>End Date</b>
Notice to Proceed	9/2/2024	-
30% Preliminary Design Phase	9/2/2024	2/19/2025
60% Design Phase	1/30/2025	4/23/2025
90% Design Phase	4/24/2025	7/23/2025
100% Design Phase	7/24/2025	9/3/2025
Permitting and Stakeholders Phase	9/4/2025	12/10/2025
Bid Phase	9/4/2025	4/30/2026
Construction Phase	5/1/2026	4/29/2027
Project Closeout and Record Drawings	4/30/2027	7/8/2027

Exhibit B  
Compensation

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

**Services**

NBU shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$1,305,475, as further described in the table below and made a part of this Agreement.

<b>Cost Breakdown</b>	
<b>Basic Services</b>	<b>Fee</b>
Task 1 – Project Management	\$27,603
Task 2 – Preliminary Design Phase	\$128,226
Task 3 – Final Design Phase	\$328,448
Task 4 – Field Services	\$243,552
Task 5 – Permitting & Stakeholders	\$6,942
Task 6 – Bid Phase Services	\$26,529
Task 7 – Construction Phase Services	\$544,175
<b>Total</b>	<b>\$1,305,475</b>

**Supplemental Services**

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$100,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman      **Approved by:** Ryan Kelso  
 Chief Operations Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Ratify the First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Conrads Elevated Storage Tank (Goodwin Lane) Project, and Authorize the CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Conrads Elevated Storage Tank Project

## BACKGROUND

On September 24, 2020, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Services Agreement (the “Agreement”) with Freese and Nichols, Inc. (“FNI”) for professional engineering services for the Goodwin Lane Elevated Storage Tank (“EST”) Project, and now known as the Conrads EST Project (the “Project”). On August 06, 2021, the First Amendment to the Professional Services Agreement (the “First Amendment”) was executed, which engaged supplemental services for additional design services and extended the time of completion for the services. The First Amendment was not previously presented to the Board, and staff now requests that the Board ratify the First Amendment.

The Project construction schedule was delayed due to developer funding issues. As a result, NBU staff requests that the Board approve the Second Amendment to the Agreement (the “Second Amendment”), which requires additional construction phase services, which requires additional compensation and extends the time of completion for the services.

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

**FINANCIAL IMPACT**

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The total financial impact for the Second Amendment is \$161,726.00. The total contract amount for the Agreement First Amendment and the Second Amendment with FNI for the Project is \$979,652.00. The Project is budgeted within the fiscal year 2024 through fiscal year 2025 NBU Board approved Capital Improvements Projects Budget.

**LINK TO STRATEGIC PLAN**

---

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

---

1. Second Amendment to the Professional Services Agreement with FNI

## AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This **AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **FREASE AND NICHOLS, INC.**, a Texas corporation (the “Professional”) (collectively, “the Parties”).

### RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated September 30, 2020, (the “Agreement”), for project management, preliminary engineering, final design, permitting and coordination with stakeholders, bid phase, and construction phase services (the “Services”) for the Goodwin Elevated Storage Tank (“EST”) Project (the “Project”) to be completed by October 26, 2022;

WHEREAS, NBU and the Professional included miscellaneous project specific engineering supplemental services in the Agreement (the “Supplemental Services”) whereby NBU and the Professional would agree in writing to define and engage such Supplemental Services at a later date, if needed;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to (i) engage the Supplemental Services, (ii) define the Supplemental Services, (iii) authorize the related compensation, and (iv) define a time of completion for the Supplemental Services;

WHEREAS, as a result of the engagement of the Supplemental Services, NBU requires a modification to the Agreement to extend the time of completion for the Services; and

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) define and engage the Supplemental Services, (ii) authorize the related compensation for such Supplemental Services, (iii) define a time of completion for the Supplemental Services, (iv) modify the time of completion for the Services, and (v) extend the completion date of the Agreement to August 1, 2024.

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. Supplemental Services. NBU and the Professional hereby agree (i) to define and engage all of the Supplemental Services described in Exhibit A of this Amendment, as described in the Agreement; (ii) to authorize payment of the Supplemental Services in the amounts described in Exhibit B of this Amendment, as described in the Agreement; and (iii) that the Professional shall complete the Supplemental Services by June 16, 2022.

Section 2. Time of Completion for Services. NBU and the Professional hereby agree to extend the completion date of the Services to August 1, 2024.

Section 3. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this Amendment as of the effective date of this Amendment.

Section 4. Amendment to Exhibit B. Exhibit B to the Agreement is hereby replaced in its entirety by Exhibit B to this Amendment as of the effective date of this Amendment.

Section 5. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 6. Entire Agreement. This Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 7. Binding Effect. This Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 8. 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 9. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

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



**IN WITNESS WHEREOF**, the Parties hereto, upon lawful approval and authority, have executed this Amendment on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

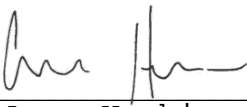
**NBU:**

**NEW BRAUNFELS UTILITIES,**  
a Texas municipal owned utility

By: Ian Taylor Digitally signed by Ian Taylor  
Date: 2021.08.06 11:13:03 -05'00'  
Name: Ian Taylor  
Title: CEO

**THE PROFESSIONAL:**

**FREESE AND NICHOLS, INC.**  
a Texas corporation

By:   
Name: Anne Hoskins  
Title: Associate

## Exhibit A

### Scope of Services

NO CHANGE

#### **Task 1 – Project Management**

NO CHANGE

#### **Task 2 – Preliminary Engineering Phase**

NO CHANGE

#### **Task 3 – Final Design Phase**

NO CHANGE

#### **Task 4 – Field Services**

NO CHANGE

#### **Task 5 – Permitting & Stakeholders**

NO CHANGE

#### **Task 6 – Bid Phase Services**

NO CHANGE

#### **Task 7 - Construction Phase Services**

NO CHANGE

### **SUPPLEMENTAL SERVICES AGREEMENT**

Pursuant to Section 4(B) of the Agreement, the Professional and NBU agree to engage the Supplemental Services. The Supplemental Services shall include the following Project specific services:

- 1) **REPLATTING SERVICES.** The Professional shall perform re-platting services including review of the Title reports for easements of record, completion of Traffic Impact Analysis (“TIA”) Determination Form, Letter of Certification submittals/resubmittals to reviewing agencies, completion of re-plat application checklist, waiver preparation (if necessary), and submittal of re-plat application.
- 2) **CULTURAL DESKTOP EVALUATION:** The Professional shall perform a desktop survey that evaluates the potential for cultural resources to be present in a project area. This effort shall include an establishment of an Area of Potential Effects (“APE”) for archaeological resources defined as the area where construction activities shall cause ground disturbance. The APE is defined in three dimensions, including the project limits, width, acreage, and depth of impacts. The APE encompasses the entirety of the project area to the maximum area of construction. Following the establishment of the APE, the Professional shall review the archeological records available on the Texas Historical Commission (“THC”) Texas Archeological Sites Atlas (“TASA”) is reviewed to determine

if any previously recorded archeological sites or historic properties listed in the National Register of Historic Places (“NHRP”), State Antiquities Landmarks (“SAL”), and Recorded Texas Landmarks (“RTHL”) are located within or adjacent to the proposed APE or within a one-kilometer radius. The Professional shall review the National Resources Conservation Service (“NRCS”) Soils database, Texas Geological Dataset, US Geological Survey (“USGS”) Historical Topographic maps, and Historical aerial imagery to document potential impact to any above ground historic structures and/or surficial or deeply buried cultural material. The professional shall document the results in a report to be included in the Preliminary Engineering Report. The professional shall also submit a letter to THC either to request a concurrence that no effect to historic properties would result from the project, or if further investigations or survey is required.

- 3) DESIGN SERVICES. The Professional shall perform design services related to unforeseen site conditions and subsurface geotechnical conditions, as described herein.
- a) 50% DESIGN DOCUMENTS
    - i. The Professional shall perform up to two (2) preliminary site visit to gather project information.
    - ii. 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.
    - iii. The Professional shall prepare 50% design drawings including plan views of all proposed infrastructure within the Project Site.
    - iv. The Professional shall prepare a Class 4 opinion of probable construction cost
  - b) 90% DESIGN DOCUMENTS. Upon approval of the PER and 50% design documents, the Professional shall prepare 90% plans, specifications and OPCC. 90% design documents shall include:
    - i. a plan view and/or site layout of the proposed facilities;
    - ii. a lighting layout;
    - iii. an electrical site plan, layouts, schematics and one-line diagram;
    - iv. a security layout;
    - v. a plan and profile view of the water line;
    - vi. mechanical drawings to include major design components of the tank;
    - vii. call outs for major design items;
    - viii. stormwater improvements based on City of New Braunfels (“CoNB”) Engineering Design Manual and Texas Commission on Environmental Quality (“TCEQ”) requirements to include sizing and layout of vegetative

- filter strips or similar water quality controls based on TCEQ calculation spreadsheets;
- ix. draft technical specifications that are provided by the Professional with the exception of NBU's standard specifications; and
  - x. a Class 1 OPCC based on 90% design documents.
- c) 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare 100% plans, specifications and OPCC. 100% design documents shall include:
- i. 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;
  - ii. project files in .dwg, .mxd, and .kmz format;
  - iii. preparation of the bid form;
  - iv. Class 1 OPCC based on 100% design documents.

### TIME OF COMPLETION

The Professional is authorized to continue work on the Services and commence work on the Supplemental Services upon execution of this Amendment and agrees to complete the Services in accordance with the schedule below.

<b>Project Milestones</b>	<b>Start Date</b>	<b>End Date</b>
Notice to Proceed	09/07/20	
Task 2: Preliminary Engineering Phase	01/20/21	04/02/21
Task 3: Final Design	04/05/21	08/10/21
Task 4: Field Services	01/20/21	04/02/21
Task 5: Permitting and Stakeholders	08/11/21	11/05/21
Task 6: Bid Phase	09/03/22	11/30/22
Task 7: Construction Phase	12/01/22	08/01/24
Supplemental Services	07/15/21	06/16/2022

The Professional shall complete the Services by August 1, 2024, and Supplemental Services by June 16, 2022.

## 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 agrees to pay the Professional for the Services rendered under this Agreement and in accordance with the table below and made a part of this Agreement. NBU shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$792,872.

<b>Services Cost Breakdown</b>	
<b>Task</b>	<b>Cost</b>
Task 1: Project Management	\$57,272
Task 2: Preliminary Design Phase	\$125,857
Task 3: Final Design Phase	\$243,765
Task 4: Field Services	\$60,099
Task 5: Permitting & Stakeholders	\$4,527
Task 6: Bid Phase	\$11,173
Task 6: Construction Phase	\$290,179
<b>Total</b>	<b>\$792,872</b>

**Supplemental Services**

NBU shall pay the Professional for the Supplemental Services rendered under this Agreement and in accordance with the table below and made a part of this Agreement. NBU shall pay the Professional for the Supplemental Services during the term of this Agreement in an amount not to exceed \$25,054.

<b>Supplemental Services Cost Breakdown</b>	
<b>Task</b>	<b>Cost</b>
Supplemental Task 1: Replatting Services	\$10,750
Supplemental Task 2: Cultural Resource Desktop Evaluation	\$2,038
Supplemental Task 3: Design Services	\$12,266
<b>Total</b>	<b>\$25,054</b>

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(CONRADS ELEVATED STORAGE TANK (GOODWIN LANE) PROJECT)**

This **SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Second Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **FREESE AND NICHOLS, INC.**, a Texas corporation (the “Professional”) (collectively, “the Parties”).

**RECITALS**

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated September 30, 2020, (the “Original Agreement”), for project management, preliminary engineering, final design, field services, permitting and coordination with stakeholders, bid phase, and construction phase services (the “Original Services”) for the Conrads (formerly Goodwin) Elevated Storage Tank (“EST”) Project (the “Project”) to be completed by October 26, 2022;

WHEREAS, NBU and the Professional included Supplemental Services in the Original Agreement for Project-specific professional engineering services contemplated by Chapter 2254 of the Texas Government Code (the “Supplemental Services”), whereby NBU and the Professional could agree in writing to engage such Supplemental Services at a later date, if needed, in an amount not to exceed \$25,054;

WHEREAS, the Parties entered into an Amendment to Professional Services Agreement on August 6, 2021 (i) defining and engaging the Supplemental Services, (ii) authorizing the related compensation for the Supplemental Services, (iii) defining a time of completion for the Supplemental Services, and (iv) extending the completion date of the Agreement to August 1, 2024 (the “First Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, NBU requires additional construction phase services as a result of a delay in construction (the “New Services” and, together with the Original Services, the “Services”);

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

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

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New Services, (ii) authorize the related compensation for the New Services, and (iii) extend the completion date for the Project to June 8, 2025.

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

## AGREEMENT

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

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

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

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

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

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

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

*(The remainder of this page intentionally left blank)*

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

**NBU:**

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

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

**THE PROFESSIONAL:**

**FREESE AND NICHOLS, INC.,**  
a Texas corporation

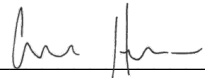
By:  \_\_\_\_\_  
Name: Anne Hoskins  
Title: Principal



Exhibit A

Services

NO CHANGE

**Task 1. Project Management**

NO CHANGE

**Task 2. Preliminary Engineering Phase**

NO CHANGE

**Task 3. Final Design Phase**

NO CHANGE

**Task 4. Field Services**

NO CHANGE

**Task 5. Permitting & Stakeholders**

NO CHANGE

**Task 6. Bid Phase Services**

NO CHANGE

**Task 7. Construction Phase Services**

7. NO CHANGE

7.1 NO CHANGE

7.2 NO CHANGE

7.3 NO CHANGE

7.4 NO CHANGE

7.5 NO CHANGE

7.6 NO CHANGE

7.7 NO CHANGE

7.8 RESIDENT REPRESENTATION. The Professional shall provide a part-time (20 hours per week) Resident Project Representative (“RPR”) on the Site for 13 months and provide an average of five (5) hours per week of construction management time. The duties, responsibilities and the limitations of authority of the RPR, and designated assistants, are as follows:

7.8.1. NO CHANGE

- 7.8.2. NO CHANGE
- 7.8.3. NO CHANGE
- 7.8.4. NO CHANGE
- 7.8.5. NO CHANGE
- 7.8.6. NO CHANGE
- 7.8.7. NO CHANGE
- 7.8.8. NO CHANGE
- 7.8.9. NO CHANGE
- 7.8.10. NO CHANGE
- 7.8.11. NO CHANGE
- 7.9 NO CHANGE
- 7.10 NO CHANGE

**SUPPLEMENTAL SERVICES**

NO CHANGE

**TIME OF COMPLETION**

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

<b>Project Milestones</b>	<b>Start Date</b>	<b>End Date</b>
Notice to Proceed	NO CHANGE	
Task 2: Preliminary Engineering Phase	NO CHANGE	NO CHANGE
Task 3: Final Design	NO CHANGE	NO CHANGE
Task 4: Field Services	NO CHANGE	NO CHANGE
Task 5: Permitting and Stakeholders	NO CHANGE	NO CHANGE
Task 6: Bid Phase	NO CHANGE	NO CHANGE
Task 7: Construction Phase	01/08/24	06/08/25
Supplemental Services	NO CHANGE	NO CHANGE

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.

NBU shall pay the Professional for Services during the term of this Agreement in an amount not to exceed \$954,598.

<b>Task</b>	<b>Cost</b>	<b>First Amendment</b>	<b>Second Amendment</b>	<b>Total Contract</b>
Task 1: Project Management	\$57,272	\$0	\$0	\$57,272
Task 2: Preliminary Design Phase	\$125,857	\$0	\$0	\$125,857
Task 3: Final Design Phase	\$243,765	\$0	\$0	\$243,765
Task 4: Field Services	\$60,099	\$0	\$0	\$60,099
Task 5: Permitting & Stakeholders	\$4,527	\$0	\$0	\$4,527
Task 6: Bid Phase	\$11,173	\$0	\$0	\$11,173
Task 7: Construction Phase	\$290,179	\$0	\$161,726	\$451,905
<b>Total</b>	\$792,872	\$0	\$161,726	\$954,598

### Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$25,054 as modified below; provided, however, that NBU must provide written approval in the form of a supplemental agreement prior to the Professional performing the Supplemental Services.

<b>Supplemental Services Cost Breakdown</b>		<b>First Amendment</b>	<b>Total Funds Remaining</b>
<b>Task</b>	<b>Cost</b>		
Supplemental Task 1: Replatting Services	\$10,750	(\$10,750)	\$0
Supplemental Task 2: Cultural Resource Desktop Evaluation	\$2,038	(\$2,038)	\$0
Supplemental Task 3: Design Services	\$12,266	(\$12,266)	\$0
<b>Total</b>	\$25,054	(\$25,054)	\$0



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman.      **Approved by:** Ryan Kelso  
 Chief Operations Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Third Amendment to the Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Interstate Highway 35 24-inch Water Line Downtown Project

## **BACKGROUND**

On September 26, 2019, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Services Agreement (the “Agreement”) with Kimley-Horn and Associates, Inc. (“Kimley-Horn”) for professional engineering services for the Interstate Highway 35 24-inch Water Line Downtown Project (the “Project”). On January 28, 2021, the Board approved a Professional Services Contract Amendment (the “First Amendment”) for additional design services, subsurface utility engineering services, geotechnical engineering services, and completion time modification. On April 27, 2023, the Board approved a Professional Services Contract Amendment (the “Second Amendment”) for additional final design services, bid phase services, and permitting services.

During the course of construction, NBU and the Professional identified a need to add additional construction phase services. As a result, NBU staff requests that the Board approve the Third Amendment to the Agreement (the “Third Amendment”), which includes adding additional construction phase services for progress meetings, submittal reviews, monthly review of survey data, and record drawing CAD deliverables and overlay.

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

**FINANCIAL IMPACT**

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The total financial impact for the Third Amendment is \$30,000.00. The total contract amount for the Agreement and the Third Amendment with Kimley-Horn for the Project is \$646,000.00, including Supplemental Services. The Project is budgeted within the fiscal year 2024 through fiscal year 2025 NBU Board approved Capital Improvements Projects Budget.

**LINK TO STRATEGIC PLAN**

---

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

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1. Third Amendment to the Professional Services Agreement with Kimley-Horn

**THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(INTERSTATE HIGHWAY 35 24-INCH WATER LINE DOWNTOWN PROJECT)**

This **THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Third Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation authorized to transact business in the State of Texas (the “Professional”) (collectively, “the Parties”).

**RECITALS**

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated October 10, 2019 (the “Original Agreement”), for project management, routing and alignment study, preliminary design phase services, final design phase services, bid phase services, construction phase services, and permitting services (the “Original Services”) for construction of the Interstate Highway 35 24-inch Water Line Downtown Project (“Project”) to be completed by December 31, 2022;

WHEREAS, NBU and the Professional included professional supplemental services, subsurface utility engineering services, and easement survey services in the Agreement as Supplemental Services (the “Original Supplemental Services”) whereby NBU and the Professional would agree in writing to engage such Original Supplemental Services at a later date, if needed;

WHEREAS, NBU and the Professional entered into a First Amendment to the Original Agreement dated February 8, 2021 (the “First Amendment”), to do the following: (i) define the professional supplemental services described in the Original Supplemental Services to include preliminary and final construction plans and specifications for the 2,000 linear feet (“LF”) of 8-inch water and sewer lines; (ii) modify the subsurface utility engineering services described in the Original Supplemental Services; (iii) modify the easement survey services described in the Original Supplemental Services; (iv) add Geotech Supplemental Services in the Agreement; (v) define the completion time for the Original Supplemental Services as modified by the First Amendment (the “Modified Supplemental Services” and, together with the Original Supplemental Services, the “Supplemental Services”); and (vi) adjust the allocation of related compensation among the Supplemental Services;

WHEREAS, NBU and the Professional entered into a Second Amendment to the Original Agreement dated April 28, 2023 (the “Second Amendment” and, together with the First Amendment and the Original Agreement, the “Agreement”), to do the following: (i) add additional final design services, bid phase services, and permitting services, (ii) add additional compensation, and (iii) extend the time of completion to December 29, 2024;

WHEREAS, during the course of construction, NBU and the Professional identified a need to add additional construction phase services to include (i) twelve (12) additional progress meetings, (ii) submittal reviews, (iii) monthly review of survey data, and (iv) record drawing CAD deliverables and overlay, all as more fully described in Exhibit “A” attached hereto (the “New Services” and, together with the Original Services, the “Services”) that were not contemplated in the Agreement;

WHEREAS, the addition of the New Services requires an increase in compensation to the Professional;

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

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New Services and (ii) increase compensation to be paid to the Professional.

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

#### **AGREEMENT**

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

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

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

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

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

Section 6. Severability. If any term or provision of this Third 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 Third Amendment shall not be affected thereby, and this Third Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

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



IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this Third Amendment on this the \_\_\_\_ day of \_\_\_\_\_, 2024.

**NBU:**

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

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

**THE PROFESSIONAL:**

**KIMLEY-HORN AND ASSOCIATES, INC.,**  
a North Carolina corporation  
authorized to transact business in the State of Texas

By: SEAN MASON  
Name: [Signature]  
Title: VICE PRESIDENT

Exhibit A  
Scope of Services

NO CHANGE

**Task 1 – Project Management**

NO CHANGE

**Task 2 – Routing and Alignment Study**

NO CHANGE

**Task 3 – Preliminary Design**

NO CHANGE

**Task 4 – Final Design**

NO CHANGE

**Task 5 – Bid Phase Services**

NO CHANGE

**Task 6 – Construction Phase Services**

The Professional shall perform the general construction contract administration services as described herein.

1. Meetings and site visits
  - a. NO CHANGE
  - b. The Professional shall attend up to a total of twenty-eight (28), bi-weekly or monthly progress meetings during construction and prepare agenda at least one (1) day prior to meetings, record meeting minutes, and distribute meeting minutes to all attendees within one (1) week after meetings.
  - c. NO CHANGE
  - d. NO CHANGE
  - e. NO CHANGE
  - f. NO CHANGE
2. Construction Administration
  - a. The Professional shall produce monthly reports indicating the status of submittals in the review process and shall review the following contractor submittals for compliance with the design concepts:

- i) NO CHANGE
- ii) NO CHANGE
- iii) NO CHANGE
- iv) NO CHANGE
- v) NO CHANGE
- vi) NO CHANGE
- vii) NO CHANGE

viii) miscellaneous submittals, including up to twenty (20) shop drawing resubmittals.

b. The Professional shall manage the RFI, field/change order, and contractor claim process by performing the following services:

- i) NO CHANGE
- ii) NO CHANGE
- iii) NO CHANGE
- iv) NO CHANGE

v) The Professional shall prepare the record drawing CAD deliverables as outlined in the NBU Water and Wastewater Record Drawing/CAD/GPS Deliverables Submission Standards and Requirements document within thirty (30) days after final completion of construction. The Professional shall coordinate with NBU GIS staff on specific formatting preference.

vi) The Professional shall overlay in CAD and plot on the design the surveyed points of the installed water and wastewater lines, provided by the contractor monthly. The Professional will review the plotted data, consult the project inspector on accuracy, and provide comments to the NBU Project Manager via email.

- c. NO CHANGE
- d. NO CHANGE
- e. NO CHANGE

### 3. Deliverables:

- a. NO CHANGE
- b. NO CHANGE
- c. NO CHANGE
- d. NO CHANGE

- e. NO CHANGE
- f. NO CHANGE
- g. eight (8) electronic PDF copies of the surveyed water and wastewater line progress collected in the field by the contractor.

**Task 7 – Permitting Services**

NO CHANGE

**Supplemental Services**

NO CHANGE

**TIME OF COMPLETION:** The Professional is authorized to commence work on the Services upon execution of this Agreement and agrees to complete the Services in accordance with the following schedule.

Task	Beginning Date	Ending Date
Notice to Proceed	NO CHANGE	
Task 1 – Project Management	NO CHANGE	NO CHANGE
Task 2 – Routing and Alignment Study	NO CHANGE	NO CHANGE
Task 3 – Preliminary Design	NO CHANGE	NO CHANGE
Task 7 – Permitting Services	NO CHANGE	NO CHANGE
Task 4 – Final Design	NO CHANGE	NO CHANGE
Task 5 – Bid Phase Services	NO CHANGE	NO CHANGE
Task 6 – Construction Phase Services	NO CHANGE	NO CHANGE

Exhibit B  
Compensation

**Fee and Expenses**

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

**Services:**

NBU agrees to pay the Professional for the Services during the term of this Agreement in accordance with the table below in an amount not to exceed \$551,000.

<b>Cost Breakdown</b>	<b>Original Agreement</b>	<b>First Amendment</b>	<b>Second Amendment</b>	<b>Third Amendment</b>	<b>Contract Amount</b>
<b>Task 1 – Project Management</b>	\$29,000	\$0	\$0	\$0	\$29,000
<b>Task 2 – Routing and Alignment Study</b>	\$39,000	\$0	\$0	\$0	\$39,000
<b>Task 3 – Preliminary Design</b>	\$261,000	\$0	\$0	\$0	\$261,000
<b>Task 4 – Final Design</b>	\$64,000	\$0	\$10,000	\$0	\$74,000
<b>Task 5 – Bid Phase Services</b>	\$13,000	\$0	\$13,000	\$0	\$26,000
<b>Task 6 – Construction Phase Services</b>	\$79,000	\$0	\$0	\$30,000	\$109,000
<b>Task 7 – Permitting Services</b>	\$9,000	\$0	\$4,000	\$0	\$13,000
<b>Sub-Total</b>	<b>\$494,000</b>	<b>\$0</b>	<b>\$27,000</b>	<b>\$30,000</b>	<b>\$551,000</b>

**Supplemental Services:**

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$95,000; provided, however, that NBU shall provide written approval in the form of a supplemental agreement or contract amendment prior to the Professional performing the Supplemental Services.

<b>Supplemental Cost Breakdown</b>	<b>Original Agreement</b>	<b>First Amendment</b>	<b>Second Amendment</b>	<b>Third Amendment</b>	<b>Contract Amount</b>
<b>Task 1 - Professional Supplemental Services</b>	\$30,000	\$18,000	\$0	\$0	\$48,000
<b>Task 2 - Subsurface Utility Engineering</b>	\$25,000	\$0	\$0	\$0	\$25,000
<b>Task 3 -Easement Survey</b>	\$40,000	(\$28,000)	\$0	\$0	\$12,000
<b>Task 4 - Geotech</b>	N/A	\$10,000	\$0	\$0	\$10,000
<b>Total Supplemental Services</b>	<b>\$95,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$95,000</b>



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman  
Chief Operations Officer      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Quiddity Engineering, LLC for the FM 1101 Pump Station and Ground Storage Tank Project

## **BACKGROUND**

This Professional Services Agreement (the “Agreement”) with Quiddity Engineering, LLC (“Quiddity”) provides project management services, preliminary engineering phase services, final design phase services, field services, permitting services and coordination with stakeholders, bid phase services, and construction phase services for the New Braunfels Utilities (“NBU”) FM 1101 Pump Station and Ground Storage Tank Project (the “Project”). The FM 1101 Pump Station and GST Project will consist of a new pump station and a ground storage tank for potable water storage and transmission located at Barbarosa Road between the intersections of FM 1101 and Alves Lane. The Project will facilitate additional distribution pumping capacity in the Kohlenberg PZ to serve projected growth. The Project is tied to the Mayfair Cost Sharing Agreement.

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

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

Upon completion of the final design, NBU staff will solicit a construction contract and anticipates bringing the construction contract to the Board for approval in June 2026. NBU staff plans to begin construction in July 2026 and complete construction by July 2028.

## **FINANCIAL IMPACT**

The total financial impact for the Agreement with Quiddity for the Project is \$2,970,000.00, including supplemental services. The Project is budgeted within the fiscal year 2025 through fiscal year 2028 NBU Board approved Capital Improvements Projects Budget.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Infrastructure and Technology**

**Stewardship**

**EXHIBITS**

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1. Professional Services Agreement with Quiddity



## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **QUIDDITY ENGINEERING, LLC**, a Texas limited liability company (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

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

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

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

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

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

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

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

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

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

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

Section 9. Indemnification.

**(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:**

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

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

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

Section 10. Insurance.

(A) General.

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

The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

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

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

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

officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

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

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

#### Section 11. Termination.

(A) For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms

of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

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

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of



NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

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

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

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

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

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

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

(G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any

of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

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

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

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

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

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

(M) Offset.

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

- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.

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

If to NBU:

New Braunfels Utilities  
 Attn: Chief Operations Office  
 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:

Quiddity Engineering, LLC  
 206 E 9<sup>th</sup> St  
 Suite 1300  
 Austin, TX 78701-4411

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

(O) Confidentiality of Records. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under

this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

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

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

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

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

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

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

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

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

relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

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

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

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

Section 16. Information Technology

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

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

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

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

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

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

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

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

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

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

(A) it is not owned by or the majority of stock or other ownership interest in the Professional is not held or controlled by:

- i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
- ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

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

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

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

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

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

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



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

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

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

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

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

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

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

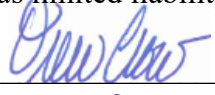
**NBU:**

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

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

**PROFESSIONAL:**

**QUIDDITY ENGINEERING, LLC,**  
a Texas limited liability company

By:   
Name: Drew Crow  
Title: Senior Vice President

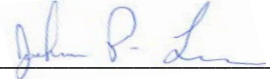
Attest: 

Exhibit A  
Services

The Professional shall provide all labor, material, and equipment necessary to provide project management services, preliminary engineering phase services, final design phase services, field services, permitting services and coordination with stakeholders, bid phase services, and construction phase services (collectively the “Services”) for the FM 1101 Pump Station and Ground Storage Tank (“GST”) Project. The FM 1101 Pump Station and GST Project shall consist of a new pump station and a ground storage tank for potable water storage and transmission (the “Project”) located at Barbarosa Road between the intersections of FM 1101 and Alves Lane in New Braunfels, Texas (the “Project Site”).

## I. SUMMARY OF PROJECT SERVICES

### A. Water Pump Station

1. The Services relate to a new 7.5 million gallon per day (“MGD”) pump station, including pumps, motors, variable frequency drives (“VFD”), piping, valves, electrical equipment, electrical equipment room, and control/supervisory control and data acquisition (“SCADA”) room. The pump station will include structural, electrical, instrumentation, and controls as required. The pump station will be designed to be expandable to 10 MGD in the future.
  - a) There will be no toilet facilities in the electrical building.
  - b) The pumps will be constructed outdoors and not inside a climate-controlled building. All electrical power and control equipment will be constructed inside a climate controlled concrete masonry unit (“CMU”) building.
2. One chemical analyzer shall be included to display the chlorine residual from either the tank or the incoming water. No chemical disinfection, boosting, or storage facilities will be included in this scope of work.
3. Site improvements shall include site piping, valves, site power distribution, site lighting, fencing, grading and drainage, detention ponds, one single access road entrance, on-site paving and parking, site water utilities, fire protection water lines, telecommunication utility connections, and field instrumentation.
4. The pump station shall include back-up electric generating facilities with natural gas fuel storage and containment structures and an automatic transfer switch.
5. The pump station shall include communication facilities, including fiber optic lines and web-based communications. The design will be for the on-site facilities communication only and will connect to the existing fiber system at the boundary of the pump station site. Any extension of the fiber system outside of the pump station property line will be completed by NBU. The pump station site will connect to the existing SCADA system software.
6. The pump station shall include security facilities, including fencing, gates, access control, cameras, and cybersecurity.

## B. Water Storage Tank

1. The Project includes one new 2.5 million gallon (“MG”) pre-stressed concrete above-ground storage tank including tank and yard piping.
  - a) No mixers are being installed with this Project.

## C. Water Pipeline

1. The Project includes on-site incoming water pipeline to convey treated potable water from the off-site connection point to the proposed GST. The incoming waterline will be designed to connect with the existing 18-inch waterline on the north side of Barbarosa Road, and constructed underneath Barbarosa Road utilizing trenchless construction methods towards the proposed pump station site. The waterline will continue on-site to a metering and flow control station and discharge directly into the GST. The proposed pipe from the existing waterline will be constructed to be the diameter of the ultimate size requirement for the ultimate phase of the pump station as specified by NBU.
  - a) There will be no off-site waterline design for the incoming waterline, other than that required to connect to the existing 18-inch waterline.
2. The Project includes on-site discharge water pipeline to convey the pumped potable water from the proposed pump station to a termination point at the property line of the pump station site. The conveyance waterline will be continued beyond the site boundary under a separate design and construction contract, and this Project scope will resume construction from that point. The discharge waterline of unknown diameter will not include any metering or flow control equipment. NBU will determine the sizing requirements from its overall water system plan.
  - a) There will be no off-site waterline design for the discharge waterline.
  - b) The conveyance pipeline will ultimately discharge into the Kohlenberg GST but will serve as a replacement of the existing water transmission main between the 1101 Pump Station and the Kohlenberg GST. The existing subdivisions served by NBU will be connected to the discharge line, designed under separate contract.

## II. SERVICES BY TASK

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

### Task 1. Project Management

1. The Professional shall provide the project management services described in this Section.
  - 1.1. SCHEDULE. The Professional shall develop a baseline design schedule for the Project and prepare updated design schedules for the Project on a monthly basis on or before the 25<sup>th</sup> day of each month, for NBU to monitor progress and identify design submittal dates.

Schedules shall be provided to the NBU project manager (“Project Manager”) in PDF format via email.

- 1.2. **QUALITY CONTROL.** The Professional shall develop a quality assurance/quality control program for the Project, which shall be explained in detail via a written document and provided to NBU’s Project Manager via email within thirty (30) days of notice to proceed (“NTP”).
- 1.3. **PROGRESS REPORTS.** The Professional shall provide NBU with electronic monthly Project progress reports and submit written invoices on or before the 25<sup>th</sup> day of each month for the previous month’s effort. Progress reports shall be provided to the NBU Project Manager via email.
- 1.4. **MEETING AGENDA/MINUTES.** The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the documented meeting minutes and action item logs to NBU’s Project Manager within one (1) week after meetings.
- 1.5. **PROJECT CONTROLS.** The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, the following:
  - 1.5.1. assigning a senior advisor to oversee quality assurance;
  - 1.5.2. developing cost estimates using recent bid tabs from similar projects or vendor prices;
  - 1.5.3. using Microsoft Project or similar to manage the schedule; and
  - 1.5.4. coordinating communication with sub-consultants through emails and meetings.
- 1.6. **DESIGN COORDINATION MEETINGS.** The Professional shall lead up to four (4) design coordination meetings. Each meeting shall be up to two (2) hours in length, either at NBU offices or virtual, as determined by NBU, and the Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the summary meeting minutes and action item log to NBU’s Project Manager within one (1) week after the meeting. The meetings may occur at any point during the preliminary engineering or final design phases, as requested by NBU’s Project Manager. The meetings are intended to cover major design decisions during each respective phase of work prior to submittal to ensure major topics are addressed with NBU prior to submittal.

## Task 2. Preliminary Engineering Phase

2. Upon NBU providing NTP to the Professional, the Professional shall perform the preliminary engineering phase services described in this Section.
  - 2.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and summary meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
    - 2.1.1. Project kick-off meeting with NBU (one (1) meeting); and
    - 2.1.2. one (1) preliminary engineering report (“PER”) review meeting.
  - 2.2. PUMP STATION ANALYSIS. The Professional shall analyze the pump station design requirements as described in this Section.
    - 2.2.1. The Professional shall determine pump station system capacity and head requirements, determine system operations protocols in conjunction with NBU, and prepare a hydraulic analysis of the pump station, pipeline, and related facilities. The existing hydraulic model of the NBU water distribution system will be used to develop system head curves for the Project under minimum, typical, and maximum head conditions for both the years 2030 and 2045 projected system conditions. The projected system conditions will utilize the scenarios developed as a part of the 2021 Water Master Plan and will not revise or update the current NBU model other than for items identified and confirmed by NBU during the development of this Project.
    - 2.2.2. The Professional shall determine the preferred location of facilities based upon hydraulic conditions, ease of operations, and site conditions.
    - 2.2.3. The Professional shall determine the electrical equipment required, create a layout of the required equipment, and provide a one-line diagram and overall process diagram for the pump station.
    - 2.2.4. The Professional shall determine the size and capacity of the pump station, pipelines, and related facilities.
    - 2.2.5. The Professional shall prepare a life cycle cost analysis of pipe diameter, number of pumps, parallel lines, and phasing.

2.2.6. The requirements for deliverables in this Section 2.2 are more specifically described in Section 2.6.

2.3. STORAGE TANK ANALYSIS. The Professional shall provide the following analysis for the storage tank:

2.3.1. determine the tank overflow elevation and head range;

2.3.2. determine the length and size of interior piping and valves and include the type of materials;

2.3.3. determine storage tank location;

2.3.4. determine locations of recommended easements;

2.3.5. identify basic site improvements;

2.3.6. identify basic one-line yard piping improvements;

2.3.7. provide electrical, instrumentation, interior lighting, bowl lighting, and security recommendations which include:

2.3.7.1. determining the need for SCADA communications installation or improvements; and

2.3.7.2. determining if the SCADA cabinet and pump control panel must be notified of the signal from the respective equipment.

2.3.8. determine the recommended operational controls for the flow control valve and metering station for the incoming water for the GST using the existing NBU hydraulic model;

2.3.9. perform a storm water and tank overflow analysis to include:

2.3.9.1. evaluating for site drainage for pre-Project and Project conditions runoff rates;

2.3.9.2. preparing preliminary design/sizing of necessary onsite drainage improvements to accommodate increase in discharge due to additional impervious cover;

2.3.9.3. verifying that offsite drainage infrastructure is adequately sized to convey site runoff without adversely impacting adjacent parcels or infrastructure. If offsite improvements are required by NBU, they shall be included in a recommendation for improvements; and

2.3.9.4. analyzing the maximum expected flows if the tank overflows and comparing

that flowrate to the storm water runoff and sizing the infrastructure as necessary.

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

#### 2.4. 30% DESIGN DOCUMENTS

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

2.4.2. The Professional shall collect and review existing data, reports, mapping, 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.

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

2.4.4. The Professional shall prepare a Class 3 opinion of probable construction cost ("OPCC") based on 30% design drawings.

2.4.5. The requirements for deliverables in this Section 2.4 are more specifically described in Section 2.6.

2.5. PRELIMINARY ENGINEERING REPORT. The Professional shall prepare a PER that includes 30% design plans and describes the scope of the Project for final design, right-of-way 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 final NBU comments.

2.6. DELIVERABLES. The Professional shall provide the following preliminary engineering phase deliverables to NBU during the 30% preliminary design phase timeframe described in Table 1:

2.6.1. pump station - a map with the pump station location, facility locations, a basic



- 2.6.2. storage tank - a map with the tank location, facility locations, a lighting layout, and a security layout;
- 2.6.3. draft and final PER and Class 3 OPCC – one (1) PDF electronic file; and
- 2.6.4. 30% design drawings – one (1) PDF electronic file and one (1) electronic Keyhole Markup language Zipped (“KMZ”) or shapefile (“SHP”).

**Task 3. Final Design Phase**

3. Upon NBU’s written approval of the PER and 30% design documents, the Professional shall perform the final design phase services described in this Section.

3.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:

- 3.1.1. 60% design review meeting; this is a meeting to review the comments NBU has after submission of the 60% deliverable;
- 3.1.2. 90% design review meeting; this is a meeting to review the comments NBU has after submission of the 90% deliverable;
- 3.1.3. meetings with franchise utilities (1 meeting);
- 3.1.4. permitting meeting with City of New Braunfels (1 meeting); and
- 3.1.5. meetings with additional stakeholders (up to 2 meetings).

3.2. 60% DESIGN DOCUMENTS. The Professional shall prepare 60% plans, specifications, and OPCC based on decisions made in the preliminary design phase. Design documents shall include:

- 3.2.1. plan view and/or site layout of the proposed facilities;
- 3.2.2. a lighting layout;
- 3.2.3. an electrical one-line diagram;
- 3.2.4. a security layout;
- 3.2.5. a profile view of water pipelines greater than 12 inches in diameter;
- 3.2.6. mechanical drawings to include major design components of the pump station, GST, and electrical control building;
- 3.2.7. call outs for major design items;

- 3.2.8. table of contents for all required specifications provided by the Professional with the exception of NBU's standard specifications; and
- 3.2.9. a Class 2 OPCC based on 60% design documents.
- 3.3. 90% DESIGN DOCUMENTS. Upon NBU's written approval of 60% design documents, the Professional shall prepare 90% drawings, specifications, and an OPCC. 90% design documents shall include:
  - 3.3.1. call outs for all design items on the plan sheets;
  - 3.3.2. complete specifications; and
  - 3.3.3. a Class 2 OPCC based on 90% design documents.
- 3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon NBU's written approval of 90% drawings and specifications, the Professional shall prepare 100% drawings, specifications, and an OPCC. 100% drawings and specifications shall include:
  - 3.4.1. final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase. 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. a Class 1 OPCC based on 100% design documents.
- 3.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1:
  - 3.5.1. 60% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file, and one (1) PDF electronic file of a Class 2 OPCC during the 60% final design phase timeframe in Table 1;
  - 3.5.2. 90% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 2 OPCC during the 90% final design phase timeframe in Table 1; and
  - 3.5.3. 100% design - the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 1 OPCC during the 100% final design phase timeframe in Table 1.

## Task 4. Field Services

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

4.1. TOPOGRAPHIC SURVEY. The Professional shall provide a topographic, utility and boundary survey as described below.

4.1.1. The Professional shall tie in all existing surface topographic features and structures within the survey limits shown in Figure 1. This shall include, but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges and flow line), channels and drainage ways (tops, toes and flow line), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for one upstream and one downstream manhole and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits and 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 specific species in compliance with the City of New Braunfels Tree Preservation Ordinance as defined in the City of New Braunfels Zoning Ordinance 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 Project boundary in Figure 1. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipally 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 nine (9) geotechnical borings and tie them into

the Project survey.

- 4.1.4. The Professional shall set and install one control point and one benchmark for the survey work. The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing.
- 4.1.5. NBU shall coordinate right of entry (“ROE”) to private properties. NBU shall contact private property owners to ascertain permission to enter and perform field services within private properties. NBU shall coordinate with the Professional to provide the acquired ROE before field services begin.
- 4.1.6. The Professional shall research and review adjoining plats and deeds along the survey corridor. The Professional shall locate property corners and identify existing right of way (“ROW”) along the survey corridor, based on found monuments and record documents.

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

4.2.1. Field Exploration

- 4.2.1.1. The Professional shall determine the required boring locations on the Project Site. The Professional shall provide a Project Site boring location map that shows the exploratory borings within the vicinity of the proposed improvements.
- 4.2.1.2. The Professional shall coordinate with NBU, the City of New Braunfels, and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.
- 4.2.1.3. The Professional shall drill exploratory borings for the proposed improvements according to the schedule provided below:
  - 4.2.1.3.1. one (1) boring to a maximum depth of 60 feet below existing grade;
  - 4.2.1.3.2. eight (8) borings to a maximum depth of 30 feet below existing grade; and
  - 4.2.1.3.3. two (2) borings to a maximum depth of 15 feet below existing grade.
- 4.2.1.4. The borings conducted on the Project Site shall be advanced using standard

rotary drilling equipment with continuous-flight augers or rotary wash methods. Subsurface samples shall be collected using a 2-inch diameter split-spoon sampler in conjunction with the standard penetration test (“SPT”). Intermittent 3-inch diameter Shelby tube samples shall be collected in between the SPTs.

- 4.2.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.
  - 4.2.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.
  - 4.2.1.7. The Professional shall patch borings drilled through pavement with like material 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 24 tests);
    - 4.2.2.2.2. percent passing the #200 sieve (up to 24 tests);
    - 4.2.2.2.3. sieve analysis (gradation) tests (up to 24 tests);
    - 4.2.2.2.4. moisture content tests (up to 75 tests); and
    - 4.2.2.2.5. unconfined compressive strength tests with unit weights (up to 10 tests).
- 4.2.3. The Professional shall prepare a GDR that includes the following information and recommendations, as applicable:

- 4.2.3.1. a summary of the field and laboratory sampling and testing program;
  - 4.2.3.2. boring logs and laboratory testing results;
  - 4.2.3.3. a review of general site conditions including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered;
  - 4.2.3.4. general discussion of expected construction-related issues; and
  - 4.2.3.5. earthwork related recommendations for use during development of plans and specifications.
- 4.2.4. The Professional shall provide the final GDR electronically as a 100% design deliverable with the specifications.
- 4.3. SUBSURFACE UTILITY ENGINEERING. The Professional shall conduct Subsurface Utility Engineering (“SUE”) to identify potential utility conflicts of the proposed Barbarosa Road waterline crossing for the Project as described in this Section.
- 4.3.1. Field Exploration
- 4.3.1.1. The Professional will perform SUE services for this Project in general accordance with the recommended practices and procedures described in American Society of Civil Engineers (“ASCE”) publication ASCE/UESI/CI 38-22.
  - 4.3.1.2. The Professional shall coordinate with NBU, City of New Braunfels, and Texas 811 regarding underground utilities within the vicinity of the planned test hole locations prior to commencement of the field exploration activities.
  - 4.3.1.3. The Professional shall include up to three (3) Utility Quality Level A (“QLA”) SUE test holes in the proposed waterline construction area.
  - 4.3.1.4. Traffic control measures will be provided by the Professional to ensure adequate traffic control is provided during the SUE work.
- 4.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU in the timeframe described in Table 1 for the 100% final design phase:
- 4.4.1. GDR (electronic submission with 100% design specifications); and
  - 4.4.2. utility report from the SUE (electronic submission with 100% design specifications) containing test hole reports and excavation summary sheets.

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

5. The Professional shall coordinate with the following stakeholders/agencies as described in this Section.

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

5.1.1. approval for construction letter for water facilities.

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

5.2.1. development planning permit;

5.2.2. Engineering Division approval;

5.2.3. building permit; and

5.2.4. traffic impact analysis determination

5.2.4.1. A traffic impact analysis determination worksheet will be completed to detail the anticipated trip counts for the proposed site development.

5.3. DELIVERABLES.

5.3.1 TCEQ approvals to construct described in Section 5.1 - one (1) PDF electronic copy of each; and

5.3.2 City of New Braunfels permits described in Section 5.2 - 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 described in this Section.

6.1. PREBID CONFERENCE. The Professional shall attend a pre-bid conference administered by NBU. The Professional shall assist NBU with preparation of the agenda, provide NBU with a meeting summary, and coordinate conference responses with NBU. The Professional shall provide NBU with written responses to issues identified at the pre-bid conference and shall be in the form of addenda issued after the conference and prior to bid opening.

- 6.2. INTERPRET BID DOCUMENTS. The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare addenda to the bid documents if necessary.
- 6.3. BID EVALUATION. The Professional shall attend a bid-opening conference if administered by NBU. The Professional shall assist NBU in the opening and analyzing of the bids received for the Project including 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 provided in accordance with Section 6.5.2.
- 6.4. CONFORMED CONSTRUCTION DOCUMENTS. If requested by NBU, the Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications.
- 6.5. DELIVERABLES. The Professional shall deliver the following:
- 6.5.1 up to four (4) addenda between advertisement and bid opening - one (1) PDF electronic copy of each addenda to NBU and bidders;
  - 6.5.2 a letter of recommendation provided within (14) days after the bid opening - one (1) PDF electronic copy to NBU; and
  - 6.5.3 conformed construction documents provided prior to construction notice to proceed - one (1) PDF electronic copy to NBU.

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

7. Upon completion of the bid phase services, the Professional shall proceed with construction phase administration services described in this Section. The Professional shall provide general construction contract administration services described in this Section.
- 7.1. FACILITY INTEGRATION AND OPERATIONS (“FIO”). The Professional shall develop an FIO memorandum that provides specific instructions on how the new facilities should be integrated into the existing water system, as well as special operating instructions. The FIO memorandum shall generally include:
- 7.1.1. description of new facilities – major components and equipment, purpose and intent, and how new facilities tie into existing infrastructure;



- 7.1.2. integration requirements - completion and testing procedures, owner staff requirements, responsibilities, and notifications; and
  - 7.1.3. operational and maintenance requirements - design settings and controls, operating procedures, and maintenance procedures.
- 7.2. MEETINGS AND SITE VISITS. The Professional shall attend the following meetings and provide the following services for meetings and site visits:
- 7.2.1. assist NBU in conducting a pre-construction conference with the construction contractor and prepare agenda one (1) day prior to meetings, and prepare and provide NBU with meeting notes and coordinate conference responses with NBU within one (1) week of the meeting;
  - 7.2.2. conduct one (1) construction document control workshop for the contractor;
  - 7.2.3. attend up to a total of 24 monthly construction progress meetings. The Professional shall prepare agenda one (1) day prior to meetings, and record and distribute meeting minutes to NBU and the contractor within one (1) week of the meeting;
  - 7.2.4. attend up to a total of 48 bi-weekly site visits during construction of the Project, as distinguished from the continuous services of a resident Project representative, 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 within seven (7) days after each site visit and notify NBU of any non-conforming work performed by the contractor, observed on the site visits;
  - 7.2.5. conduct with NBU's representatives, one (1) substantial completion inspection and punch list review of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare a list of deficiencies for correction by the contractor before recommendation of final payment; and
  - 7.2.6. conduct one (1) final completion inspection of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make 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 6);
- 7.3.1.2. record data (up to 15);
- 7.3.1.3. requests for information (up to 20);
- 7.3.1.4. schedules (up to 12);
- 7.3.1.5. operation and maintenance manuals; and
- 7.3.1.6. miscellaneous submittals (up to 120).

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 in this Section.

7.4.1. The Professional shall 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 five (5) field orders for minor alterations and up to six (6) change orders.

7.4.4. The Professional shall evaluate notices of contractor claims and make initial recommendations to NBU on the merit and value of the claim based on information submitted by the contractor or available Project documentation. The Professional shall negotiate a settlement value with the contractor at NBU's direction.

7.5. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for NBU and contractor during the course of construction pursuant to 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 of the Project, pursuant to the schedule set out herein.

7.7. RESIDENT REPRESENTATION. The Professional shall provide a part-time (24 hours per week) resident project representative (“RPR”) on the Project Site for 24 months during the construction phase referenced in Table 1 and provide an average of twenty (20) hours per week of construction management time. The duties, responsibilities and the limitations of authority of the RPR, and designated assistants, are as follows:

7.7.1. Communication

7.7.1.1. The RPR shall establish the communication procedures for all parties involved in the Project. The communication procedures shall detail the amount of time all parties have to respond to questions, submittals, or other documents, and the most efficient transmission of communication (via email, phone, etc.). These procedures shall be provided in writing and reviewed with NBU, engineer of record (“EOR”), and the contractor. NBU shall be entitled to approve all communication procedures.

7.7.1.2. The RPR shall conduct periodic progress meetings with NBU, EOR, and contractor on a level of frequency reasonably determined by NBU, to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any Project related issues.

7.7.1.3. The RPR shall prepare an agenda prior to the progress meetings and record and distribute the meeting minutes to NBU and the contractor as described in Section 1.4.

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

7.7.2. Quality Assurance

- 7.7.2.1. The RPR shall observe the contractor's work to determine if the work is proceeding in accordance with the contract. The RPR shall prepare site visit reports to be submitted electronically to NBU documenting the RPR's observations.
  - 7.7.2.2. The RPR shall document when non-conforming work is observed and submit this documentation via email to NBU and the contractor within seventy-two (72) hours of observation of any non-conforming work. The Professional shall verify and document when the observed non-conforming work has been corrected and submit documentation to that effect to NBU via email.
  - 7.7.2.3. The RPR shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.
  - 7.7.2.4. The RPR shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in accordance with applicable testing and inspection bureaus who set standards for the testing of materials, witness tests, and factory testing.
  - 7.7.2.5. The RPR shall provide specifically qualified personnel to conduct specialty observations for structural, mechanical, electrical, and instrumentation systems as requested by NBU.
- 7.7.3. Document Management
- 7.7.3.1. The RPR shall be responsible for submittal management as described in Section 7.3. The RPR shall perform an initial review of the submittals and electronically send the submittals to the EOR and/or NBU for a detailed review and response.
  - 7.7.3.2. The RPR shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties for documents, and of (ii) the EOR in reviewing and responding to submittals. The RPR shall verify that documentation is being processed according to the schedule.

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

#### 7.7.4. Schedule Management

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

#### 7.7.5. Cost Management

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

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

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

#### 7.7.6. Issues Management

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

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

#### 7.7.7. Change Management

7.7.7.1. The RPR shall be responsible for change management as described in Section 7.4.

- 7.7.7.2. The RPR shall establish and document procedures for administering changes to the construction contract.
- 7.7.7.3. The RPR shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's Texas engineering seal affixed.
- 7.7.8. Project Completion
- 7.7.8.1. The RPR shall coordinate the start-up and commissioning of the facility and all of the process systems with the EOR, the contractor, and NBU. The RPR shall provide engineering and technical assistance to the contractor during the commissioning process.
- 7.7.8.2. When the contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the RPR shall conduct a review of the Project to determine conformance or non-conformance with the Project design and construction documents. The RPR shall determine if a review of the work is required by the EOR, and if so, shall schedule the reviews of the work with the EOR. The RPR shall prepare a list of deficiencies to be corrected by the contractor before substantial completion is granted and any partial release or reduction of retainage is approved. The RPR shall prepare a certificate of substantial completion within thirty (30) days after substantial completion that includes a list of work to be completed prior to issuance of a final completion certificate.
- 7.7.8.3. The RPR shall conduct a final review of the Project for conformance with all of the Project documents within thirty (30) days after final completion of construction. The RPR shall confirm work is complete and in accordance with the Project documents prior to recommending final payment.
- 7.7.8.4. The RPR shall assist NBU in obtaining permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the contractor. The RPR shall review and confirm that the contractor has submitted all required documents to NBU prior to recommending the final payment.
- 7.7.9. Materials Transfer

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

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

#### 7.7.10. Record Drawings

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

#### 7.7.11. Limitations of Authority of RPR

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

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

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

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

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

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

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

#### 7.8. CLOSE-OUT DOCUMENTS

7.8.1. RECORD DRAWINGS. The Professional shall prepare the record drawings based on the revised redline construction drawings and information furnished by the construction contractor reflecting changes in the Project made during construction. The Professional shall prepare one (1) set of record drawings at the completion of the Project and submit to NBU via email within sixty (60) days of final completion.

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

- 7.8.2.1 address;
- 7.8.2.2 year built;
- 7.8.2.3 description;
- 7.8.2.4 square footage of building;
- 7.8.2.5 building value; and
- 7.8.2.6 contents value.

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

- 7.8.3.1 equipment identification;
- 7.8.3.2 location;
- 7.8.3.3 network structure;
- 7.8.3.4 warranty date;
- 7.8.3.5 manufacturer;
- 7.8.3.6 model;
- 7.8.3.7 serial number;
- 7.8.3.8 rated flow (if applicable); and
- 7.8.3.9 diameter (if applicable).



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

- 7.9.1. one (1) PDF electronic copy of FIO memorandum within sixty (60) calendar days of receipt of all contractor submitted operations and maintenance manuals;
- 7.9.2. one (1) Project site visit memo per site visit, which must be submitted (i) in PDF format; (ii) on FNI Manager; and (iii) no later than three (3) days after each site visit;
- 7.9.3. responses to contractor submittals, requests for information, and other documents within fourteen (14) days of receipt;
- 7.9.4. one (1) PDF electronic copy and one (1) georeferenced .dwg file of record drawings in accordance with NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor and provided to NBU within sixty (60) days of receipt of record drawings from the contractor or final completion; and
- 7.9.5. one (1) PDF electronic copy of the asset information memorandum within thirty (30) days after substantial completion.

#### **SUPPLEMENTAL SERVICES**

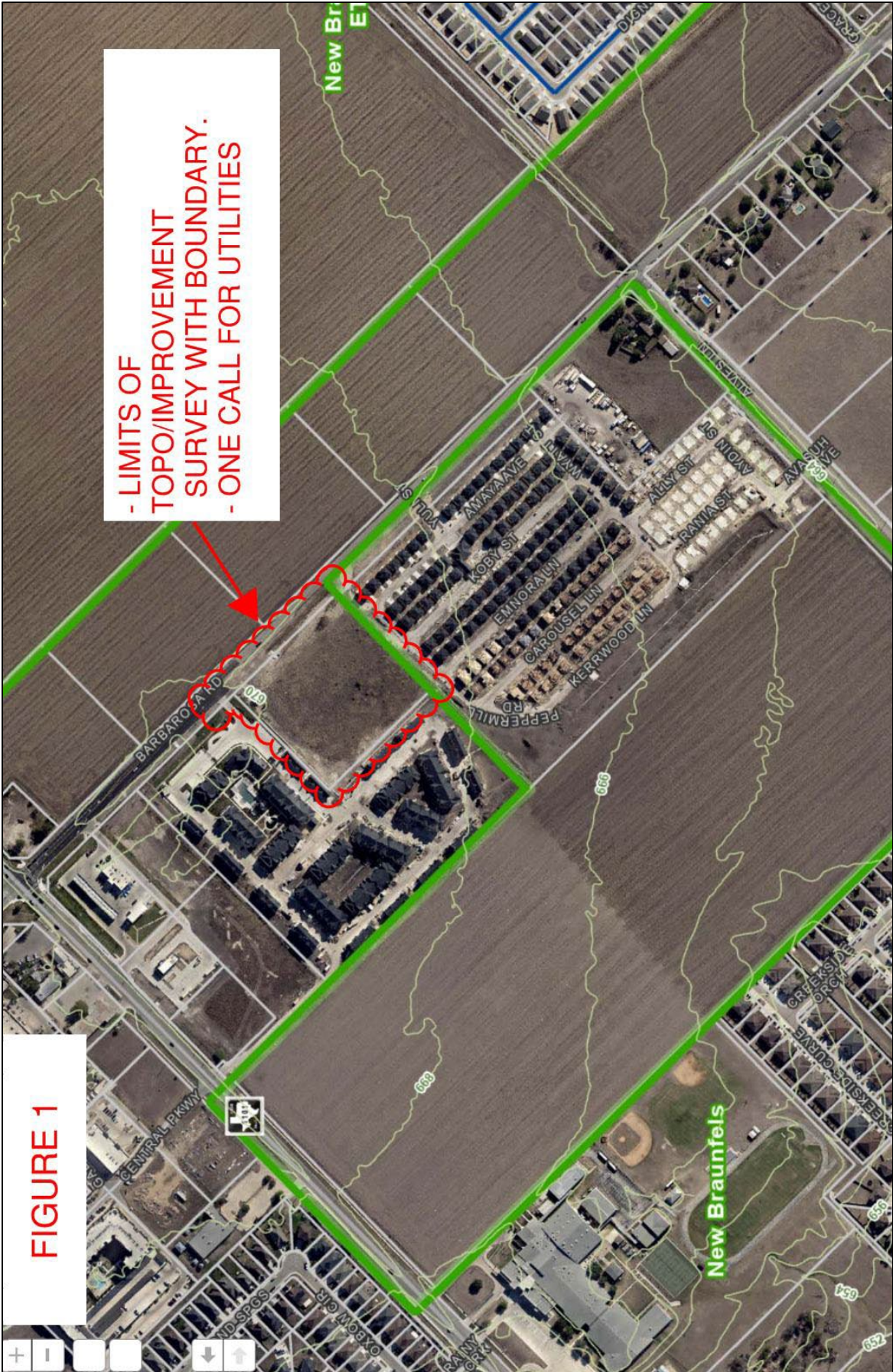
Pursuant to Section 4(B) of this Agreement, the Professional shall seek prior written approval from NBU before commencing work on any Supplemental Services described in this Section. If NBU requests the Professional to perform the Supplemental Services, NBU and the Professional shall execute a supplemental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

#### **TIME OF COMPLETION**

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

**Table 1**

<b>Project Milestones</b>	<b>Start Date</b>	<b>End Date</b>
Notice to Proceed	10/15/24	N/A
30% Preliminary Design Phase	10/15/24	3/15/25
60% Design Phase	3/16/25	6/15/25
90% Final Design Phase	6/16/25	9/15/25
100% Final Design Phase	9/16/25	11/15/25
Permitting Phase	9/15/25	12/15/25
Bid Phase	12/16/25	5/16/26
Construction Phase	7/1/26	7/30/28



## 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 \$2,770,000 as further described in the table below and made a part of this Agreement.

Task	Cost
Task 1: Project Management	\$171,000
Task 2: Preliminary Design Phase	\$539,000
Task 3: Final Design Phase	\$678,000
Task 4: Field Services	\$62,000
Task 5: Permitting & Stakeholders	\$24,000
Task 6: Bid Phase	\$35,000
Task 7: Construction Phase	\$1,261,000
<b>Total</b>	<b>\$2,770,000</b>

#### Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the Term of this Agreement in an amount not to exceed \$200,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement, or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman  
Chief Operations Officer      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with Guido Construction Company for the Construction of the Aquifer Storage and Recovery EAA Interlocal Agreement Monitoring Well Site Improvements Project

## **BACKGROUND**

On April 29, 2024, New Braunfels Utilities (“NBU”) issued a request for bids for the Aquifer Storage and Recovery EAA Interlocal Agreement Monitoring Well Site Improvements Project, which includes (i) construction of site improvements at three (3) EAA monitoring well sites (Girl Scout, LCRA, and Paradise Alley) to include new access platforms, stairwells, fencing, and gates; (ii) structural additions and associated site civil improvements; (iii) site restoration; (iv) stormwater pollution prevention; and (v) all other appurtenances necessary to complete the Project (the “Project”). The Project will replace the existing aged monitoring stands enabling a safer means of data collection for all parties involved.

On May 29, 2024, NBU received two (2) bids for the Project during the public bidding process. The project team evaluated the bids, and recommends the selection of Guido Construction Company (“Guido Construction”) for the Project. Guido Construction was selected as the respondent who provides the best value to NBU based on the selection criteria, the weighted value for those criteria, and the ranking evaluation, including their cost of work, proposed schedule, past performance on similar projects, overall qualifications, available resources, corporate history, and references. Guido Construction’s proposal includes a base bid of \$491,692.00, the lowest base bid out of the two (2) respondents.

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

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

## FINANCIAL IMPACT

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The total financial impact of the Contract with Guido Construction for the Project is \$491,692.00. The Project is budgeted within the fiscal year 2024 through fiscal year 2025 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency of \$50,000.00, which is approximately 10% of the total contract amount, will be added to the project construction budget. The total contract amount plus contingency is \$541,692.00.

## LINK TO STRATEGIC PLAN

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### Customers and Community

### Infrastructure and Technology

### Financial Excellence

### Stewardship

## EXHIBITS

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1. Construction Contract with Guido Construction Company
2. Bid Tab – (RFP 24-0045)

Bid Tab	
<b><u>Bidder</u></b>	<b><u>Total Cost</u></b>
Guido Construction Company	\$491,692.00
Jerdon Enterprises, LP	\$603,800.00

3. Bid Evaluation Matrix – Competitive Sealed Proposal (24-0045)

Bid Evaluation Matrix			
Item	Criteria	Guido Construction	Jerdon Enterprises
1.	<b>Proposed Schedule/Contract Time</b>	7	7
2.	<b>Past Performance on Similar Projects</b>	14	13.3
3.	<b>Overall Qualifications, Reputation, Past Relationship with NBU and Public Owners</b>	10	9
4.	<b>The Contractor's corporate history and stability</b>	1.3	1.3
5.	<b>References</b>	1.5	1.7
6.	<b>Cost</b>	50	40.7
	<b>Total Score</b>	<b>83.8</b>	<b>73</b>

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

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

**ARTICLE 1 - WORK**

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

- Contract Agreement and the related Exhibits;**
- Standard General Conditions of the Contract;**
- Special Conditions;**
- Technical Specifications;**
- Payment Bond;**
- Performance Bond;**
- Design Drawings EAA Interlocal Agreement Monitoring Well Site Improvements Project produced by Arcadis, Inc. dated February 14, 2024; and**
- Technical Specifications EAA Interlocal Agreement Monitoring Well Site Improvements Project produced by Arcadis, Inc. dated November 28, 2023.**

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

**The Project includes the following items within its scope: (i) construction of site improvements at three (3) EAA monitoring well sites (Girl Scout, LCRA, and Paradise Alley) to include new access platforms, stairwells, fencing, and gates; (ii) structural additions and associated site civil improvements; (iii) site restoration; (iv) storm water pollution prevention; 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:

**EAA Interlocal Agreement Monitoring Well Site Improvements Project**

**ARTICLE 3 - ENGINEER**

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

**Paul A. Smith, P.E.**  
**Arcadis US, Inc.**  
**TBPE Firm No. F-533**  
**1777 NE Loop 410, Ste. 600**  
**San Antonio, Texas 78217**  
**210-469-3403**

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

**ARTICLE 4 - CONTRACT TIMES**

**4.01** *Time of the Essence*

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

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

- A. The Work shall be substantially complete within **two hundred and seventy (270) calendar days from the Notice to Proceed date** and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

**4.03** *Damages*

- A. The Contractor shall achieve Substantial Completion of the entire Work within two hundred seventy (270) calendar days from the Notice to Proceed date, subject to and adjustments of the Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between NBU and the Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a material breach of this Agreement.
- B. Should the Contractor default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, NBU may withhold, deduct, or recover from the Contractor all costs and damages for compensable delay caused by the Contractor from the Contract Price. Such costs shall include any professional or consultant's fees (including but not limited to fees for attorneys, architects, engineers, and construction managers), and all other costs, expenses, and damages actually incurred by NBU as a result of such delay. NBU's delay damages may be incidental to and not directly associated with the Project.
- C. Timely final completion is an essential condition of this Agreement. The Contractor agrees to achieve final completion of the Work within 30 days of the designated or extended Substantial Completion date. The date of Substantial Completion shall be fixed by this Agreement, unless modified by Change Order, and memorialized by a Certificate of Substantial Completion as provided in the General Conditions.

**4.04** *Special Damages*

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



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

**ARTICLE 5 - CONTRACT PRICE**

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

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

**ARTICLE 6 - PAYMENT PROCEDURES**

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

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

**6.02** *Progress Payments; Retainage*

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

**6.03** *Final Payment*

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

**ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS**

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

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

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

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

**ARTICLE 8 - MISCELLANEOUS**

**8.01** *Terms*

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

**8.02** *Assignment of Contract*

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

**8.03** *Successors and Assigns*

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

**8.04** *Severability*

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

**8.05** *Governing Law*

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

**8.06** *Venue*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.12** *Texas Public Information Act*

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

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

**8.13** *Electronic Signatures*

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

**ARTICLE 9 - INSURANCE**

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

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

**Exhibit A – Insurance Rider**

**Exhibit B – Contractor's Bid Form**

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

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

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

NBU:

CONTRACTOR:

NEW BRAUNFELS UTILITIES:

GUIDO CONSTRUCTION COMPANY

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

By: [Signature]

Printed Name: Ryan Kelso

Printed Name: Cosmo M. Guido

Title: Chief Executive Officer

Title: PRESIDENT

[CORPORATE SEAL]

[CORPORATE SEAL]



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

Attest: Richard L. Reed Jr.

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

Title: General Counsel

Address for giving notices:

Address for giving notices:

New Braunfels Utilities

8526 Vidor Ave.

Attention: Director of Water Services

San Antonio, Texas 78216

355 FM 306

New Braunfels, Texas 78130

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

License No.: N/A  
(Where Applicable)

Agent for service or process:

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

END OF DOCUMENT

**STANDARD  
GENERAL CONDITIONS  
OF THE  
CONTRACT**

**Prepared by  
NEW BRAUNFELS UTILITIES**

**TABLE OF CONTENTS**

**ARTICLE 1 - DEFINITIONS AND TERMINOLOGY**

- 1.01 Defined Terms
- 1.02 Terminology

**ARTICLE 2 - PRELIMINARY MATTERS**

- 2.01 Delivery of Bonds and Evidence of Insurance
- 2.02 Copies of Documents
- 2.03 Commencement of Contract Times; Notice to Proceed
- 2.04 Commencement of Performance
- 2.05 Before Starting Construction
- 2.06 Preconstruction Conference
- 2.07 Designation of Authorized Representatives
- 2.08 Initial Acceptance of Schedules
- 2.09 Electronic Transmittals

**ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

- 3.01 Intent
- 3.02 Reference Standards
- 3.03 Reporting and Resolving Discrepancies
- 3.04 Requirements of the Contract Documents
- 3.05 Amending and Supplementing Contract Documents
- 3.06 Electronic Data

**ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

- 4.01 Availability of Lands
- 4.02 Subsurface and Physical Conditions
- 4.03 Differing Subsurface or Physical Conditions
- 4.04 Underground Facilities
- 4.05 Reference Points
- 4.06 Hazardous Environmental Condition at Site

**ARTICLE 5 - BONDS AND INSURANCE**

- 5.01 Performance, Payment, and Other Bonds
- 5.02 Licensed Sureties and Insurers
- 5.03 Certificates of Insurance
- 5.04 Waiver of Rights

**ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

- 6.01 Supervision and Superintendence
- 6.02 Labor; Working Hours
- 6.03 Services, Materials, and Equipment



- 6.04 Progress Schedule
- 6.05 Substitutes and “Or-Equals”
- 6.06 Concerning Subcontractors, Suppliers, and Others
- 6.07 Patent Fees and Royalties
- 6.08 Permits
- 6.09 Laws and Regulations
- 6.10 Taxes
- 6.11 Use of Site and Other Areas
- 6.12 Record Documents
- 6.13 Safety and Protection
- 6.14 Safety Representative
- 6.15 Hazard Communication Programs
- 6.16 Emergencies
- 6.17 Shop Drawings and Samples
- 6.18 Continuing the Work
- 6.19 Contractor’s General Warranty and Guarantee
- 6.20 Indemnification
- 6.21 Delegation of Professional Design Services

**ARTICLE 7 - OTHER WORK AT THE SITE**

- 7.01 Related Work at Site
- 7.02 Coordination
- 7.03 Legal Relationships

**ARTICLE 8 - OWNER’S RESPONSIBILITIES**

- 8.01 Communications to Contractor
- 8.02 Replacement of Engineer
- 8.03 Furnish Data
- 8.04 Pay When Due
- 8.05 Lands and Easements; Reports and Tests
- 8.06 Insurance
- 8.07 Change Orders
- 8.08 Inspections, Tests, and Approvals
- 8.09 Limitations on Owner’s Responsibilities
- 8.10 Undisclosed Hazardous Environmental Condition
- 8.11 Evidence of Financial Arrangements

**ARTICLE 9 - ENGINEER’S STATUS DURING CONSTRUCTION**

- 9.01 Owner’s Representative
- 9.02 Visits to Site
- 9.03 Project Representative
- 9.04 Authorized Variations in Work
- 9.05 Rejecting Defective Work
- 9.06 Shop Drawings, Change Orders and Payments
- 9.07 Determinations for Unit Price Work

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

9.09 Limitations on Engineer's Authority and Responsibilities

**ARTICLE 10 - CHANGES IN THE WORK; CLAIMS**

10.01 Authorized Changes in the Work

10.02 Unauthorized Changes in the Work

10.03 Execution of Change Orders

10.04 *Reserved.*

10.05 Claims

**ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

11.01 Cost of the Work

11.02 Allowances

11.03 Unit Price Work

**ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

12.01 Change of Contract Price

12.02 Change of Contract Times

12.03 Delays

**ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

13.01 Notice of Defects

13.02 Access to Work

13.03 Tests and Inspections

13.04 Uncovering Work

13.05 Owner May Stop the Work

13.06 Correction or Removal of Defective Work

13.07 Correction Period

13.08 Acceptance of Defective Work

13.09 Owner May Correct Defective Work

**ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

14.01 Schedule of Values

14.02 Progress Payments

14.03 Contractor's Warranty of Title

14.04 Substantial Completion

14.05 Partial Utilization

14.06 Final Inspection

14.07 Final Payment

14.08 Final Completion Delayed

14.09 Waiver of Claims

**ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

15.01 Owner May Suspend Work

15.02 Owner May Terminate for Cause

- 15.03 Owner May Terminate For Convenience
- 15.04 Contractor May Stop Work or Terminate

**ARTICLE 16 - DISPUTE RESOLUTION**

- 16.01 Methods and Procedures

**ARTICLE 17 - MISCELLANEOUS**

- 17.01 Giving Notice
- 17.02 Computation of Times
- 17.03 Cumulative Remedies
- 17.04 Survival of Obligations
- 17.05 Controlling Law
- 17.06 Headings
- 17.07 Limitation of Damages
- 17.08 No Waiver
- 17.09 Prevailing Wage
- 17.10 Right to Audit
- 17.11 Trust Funds
- 17.12 Severability
- 17.13 Amendments
- 17.14 Assignment
- 17.15 Confidential Information
- 17.16 Open Records Act/Texas Public Information Act Requests
- 17.17 Conflicts

## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

#### **1.01 Defined Terms**

A. Wherever used in the Request for Bids or Proposals (“RFB”), Bidding Requirements, other documents included with the published RFB, and the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids or Proposals that clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement or Contract*--The written instrument that is evidence of the agreement between Owner and Contractor covering the Work.
3. *Application for Payment*--The form acceptable to Engineer that is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
6. *Bidder*--The individual or entity who submits a Bid or response directly to Owner.
7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).
8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.
9. *Change Order*--A document that is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Change Proposal* – A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both.

11. *Claim*--A demand or assertion by the Contractor or Owner duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

12. *Contract or Agreement*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

13. *Contract Documents*--Those items so designated in the Agreement. Contract Documents include the Agreement, the General Conditions, and the Supplemental and the Special Conditions, if any, the Insurance Rider, and the performance and payment bonds, along with any other documents specifically listed in the Agreement as a Contract Document. Only those documents listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The money payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

15. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

16. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

17. *Cost of the Work*--See Paragraph 11.01.A for definition.

18. *Critical Path Method*--The critical path of a schedule is defined as the longest sequence of Project activities that establishes the minimum overall Project duration.

19. *Drawings*--That part of the Contract Documents prepared or approved by Engineer, which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

20. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

21. *Engineer*--The individual or entity named as such in the Agreement.
22. *Field Order*--A written order issued by Engineer or Owner that requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
23. *General Requirements*--The General Requirements pertain to all sections of the Specifications.
24. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
25. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
26. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
27. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
28. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
29. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
30. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
31. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
32. *PCBs*--Polychlorinated biphenyls.
33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
35. *Project*—The total construction of the Work to be performed under the Contract Documents.
36. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
37. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
38. *Related Entity* – An officer, director, partner, employee, agent, consultant, or subcontractor.
39. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
40. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
41. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
42. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
43. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
44. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
45. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to

the Work, and certain administrative requirements and procedural matters applicable thereto.

46. *Special Conditions*- That part of the Contract Documents that contains additional terms or conditions to these General Conditions that are specific to the Project.

47. *Subcontractor*-An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

48. *Substantial Completion*-The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

49. *Successful Bidder*-The Bidder submitting a responsive Bid to whom Owner makes an award.

50. *Supplementary Conditions*-That part of the Contract Documents that amends or supplements these General Conditions.

51. *Supplier*-A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

52. *Underground Facilities*-All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

53. *Unit Price Work*-Work to be paid for on the basis of unit prices.

54. *Work*-The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

55. *Work Change Directive*-A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that



the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

**1.02 Terminology**

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

*B. Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents, or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
  - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

*C. Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

D. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

**ARTICLE 2 – PRELIMINARY MATTERS**

**2.01 Delivery of Bonds and Evidence of Insurance**

A. Contractor shall deliver to Owner such bonds as Contractor may be required to furnish within ten (10) days of the date on which Contractor signs the Agreement. Contractor shall not be permitted to commence performance until the bonds have been delivered even though the Contract time may have commenced.

B. Evidence of Insurance: Before any Work at the Site may commence, Contractor shall deliver to the Owner certificates of insurance and policy endorsements pages for all insurance policies that may be required of Contractor by the Contract Documents evidencing compliance with the Owner's insurance requirement as required in Article 5 and Exhibit A, Owner's Insurance Requirements, to these General Conditions.

**2.02 Copies of Documents**

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

**2.03 Commencement of Contract Times; Notice to Proceed**

A. The Contract Times will commence upon issuance of a Notice to Proceed by the Owner.

**2.04 Commencement of Performance**

A. Contractor may commence performance upon receipt of the Notice to Proceed and in accordance with any terms and dates contained therein.

**2.05 Before Starting Construction**

A. *Preliminary Schedules*: Within ten (10) days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to the Owner and Engineer:

1. a preliminary Critical Path Method Progress Schedule, indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work that includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

B. Contractor represents that Contractor's preliminary Critical Path Method Progress Schedule has been prepared and is based upon Contractor's own knowledge, understanding, and judgment of conditions and hazards, known and anticipated, and does not rely on any representations by Owner.

**2.06 Preconstruction Conference**

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for

handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

**2.07 Designation of Authorized Representatives**

A. Prior to or within three (3) days of the Notice to Proceed, the Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

**2.08 Initial Acceptance of Schedules**

A. At least ten (10) days before submission of the first Application for Payment, Contractor, Engineer, and others as appropriate will attend a conference to review for acceptability to Owner as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Owner.

1. The Critical Path Method Progress Schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within the Contract Times.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

**2.09 Electronic Transmittals**

- A. Except as otherwise stated elsewhere in the Contract Documents, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or accessible digital format, either directly, or through access to a secure Project website.
- B. Contractor and all of Contractor's personnel shall maintain and save in a format producible to Owner, if required for an audit as allowed by section 17.10 or otherwise. Said preservation requirement shall apply to all electronic transmittals allowed by this section 2.09, including all text and electronic mail messages.

**ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

**3.01 Intent**

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.

### **3.02 Reference Standards**

#### **A. Standards, Specifications, Codes, Laws, and Regulations**

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### **3.03 Reporting and Resolving Discrepancies**

#### **A. Reporting Discrepancies**

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor may discover, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an

amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.05.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof. Should Contractors perform the Work after discovery of such a conflict without reporting the conflict or before receipt of a clarification or interpretation by Engineer, Contractor will be solely liable for any correction or other measures that may be required to overcome the conflict or bring the Work into compliance with the Contract Documents.

*B. Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

**3.04 Requirements of the Contract Documents**

A. During the performance of the Work and until final payment, Contractor shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder. Owner shall have sole authority to accept the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 10.

D. If the Work required by a Drawing or Specification identifies or requires a specific piece of equipment, such Drawing or Specification shall indicate the manufacturer's part number or reference data. If specific equipment is required, the Drawings or Specifications shall indicate

the design dimensions and the minimum and maximum allowable operating tolerances for any such equipment, where applicable.

**3.05 Amending and Supplementing Contract Documents**

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

**3.06 Electronic Data**

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the sixty (60)-day acceptance period will be corrected by the transferring party.

- A. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

**ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

**4.01 Availability of Lands**

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any

adjustment in the Contract Times as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Owner shall provide any easements for ingress or egress necessary for access to the Site.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment for which the Site and any Owner-provided easements do not provide. Upon request of Owner, Contractor shall provide copies of any such agreements between Contractor and property owners.

#### **4.02 Subsurface and Physical Conditions**

A. Contractor accepts the responsibility to satisfy itself as to the soil conditions and nature and type of geological formations in and through which this Project will be constructed. Such information as may be obtained from the test borings and accompanying notations shown on the plans is merely for the guidance of the Contractor and is not to be construed in any manner as a guarantee by the Owner that such conditions of sub-surface strata are infallible.

B. Contractor waives any and all rights to make a claim against Owner relating to representations related to geotechnical data provided in the Contract Documents, including the plans and specifications. The locations of the test holes, if applicable, are shown in the Geotechnical Report. Logs of these test holes are included in the Geotechnical Report. Test holes information represents subsurface characteristics to the extent indicated and only for the point location of the test hole and time at which the boring was made. Contractor shall make its own interpretation of the character and condition of the materials, which will be encountered. Contractor may, at its own expense, make additional surveys and investigations as it may deem necessary to determine conditions, which will affect performance of the Work.

C. *Reports and Drawings:* The Supplementary or Special Conditions may identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

D. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data," if any, provided and as contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary or Special Conditions, if any. Except for such reliance on the general accuracy of such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

Contractor waives and expressly acknowledges that it does not possess and may not maintain any claims against Owner due to the inclusion or omission from the bid documents or the Contract Documents any data concerning geotechnical, hydrological or other similar data and studies that may be known to the Owner or its Engineer, regardless of whether such data was considered in the design.

#### **4.03 Differing Subsurface or Physical Conditions**

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

#### **C. Possible Price and Times Adjustments**

1. The Contract Times will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s time required for performance of the Work; however, such condition must meet any one or more of the categories described in Paragraph 4.03.A.
2. Contractor shall not be entitled to any adjustment in the Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or



Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Times, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with the Project, any other projects or anticipated projects.

#### **4.04 *Underground Facilities***

A. *Shown or Indicated*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data,
  - b. locating all Underground Facilities, regardless of whether shown or indicated in the Contract Documents,
  - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

#### **B. *Not Shown or Indicated***

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site that was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the location of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Times, to the extent

that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Times, Contractor may make a Claim therefor as provided in Paragraph 10.05.

**4.05 Reference Points**

A. Owner shall provide engineering surveys to establish reference points for construction that in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

B. Contractor shall note the location of all reference points and controls on a set of red-lined drawings or exhibits to be maintained at all time on the jobsite or the location of Contractor's project management personnel.

**4.06 Hazardous Environmental Condition at Site**

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site that was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer in writing within twenty-four (24) hours of the discovery of such condition. Owner shall promptly consult with Engineer concerning the

necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs and deduct all costs incurred from the contract balance or if no contract balance, may file a claim for costs.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Times, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, Owner may issue a Work Change Directive or notify Contractor of its decision and Contractor may make a Claim as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

**G. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE.**

H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

*4.07. Hazardous Materials and Waste*

A. Where hazardous materials are brought to or otherwise encountered at the site, Contractors shall take necessary precautions and exercise a standard of care sufficient to properly address the hazardous material or waste as may be required. Contractor shall properly containerize, label, and transport such hazardous materials and waste as may be required by Owner or any other

governmental or regulatory body having jurisdiction or control over the handling, storage or disposal of such hazardous materials or waste. Upon request by Owner, Contractor shall furnish copies of all manifests and/or bills of lading identifying the generation and ultimate disposal of all materials that may be the subject of referenced regulations.

**ARTICLE 5 - BONDS AND INSURANCE**

**5.01 *Performance, Payment, and Other Bonds***

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall be in accordance with Texas Government Code Chapters 2253 and 2269.

B. All bonds shall be in the form prescribed by the Owner in the Contract Documents. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements above, Contractor shall promptly notify Owner and Engineer and shall, within twenty (20) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements above.

D. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 15.

**5.02 *Licensed Sureties and Insurers***

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Insurance Rider that is Exhibit A to these General Conditions.

**5.03 *Certificates of Insurance***

A. Contractor shall deliver to Owner, with copies to each additional insured identified in Exhibit A to these General Conditions, certificates of insurance, policy endorsements page (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

**5.04 *Waiver of Rights***

A. Owner and Contractor intend that all policies purchased will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Insurance

Rider to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Upon receipt of payment for any loss or damage covered by an insurance policy required by the Insurance Rider or this Agreement, Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against all other individuals or entities identified in the Insurance Rider to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

**ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES**

**6.01 *Supervision and Superintendence***

A. The Contractor shall prosecute the Work in strict accordance with the Contract Documents, in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards for projects similar to the Project, using qualified, careful, and efficient workers, in conformity with the provisions of the Agreement and in strict compliance with the Contract Documents and with Laws and Regulations.

B. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall perform the Work in strict accordance with the Contract Documents.

C. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written consent of Owner. Such consent shall not be unreasonably withheld. The superintendent will be Contractor’s representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

**6.02 *Labor; Working Hours***

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

**6.03 Services, Materials, and Equipment**

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work, regardless whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

**6.04 Progress Schedule**

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.08 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for Owner's acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

**6.05 Substitutes and "Or-Equals"**

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or

equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *“Or-Equal” Items*: If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item. For the purposes of this sub-Paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
  - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,
  - 3) it has a proven record of performance and availability of responsive service; and
  - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
  - 1) there will be no increase in cost to the Owner or increase in Contract Times, and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

- 1) shall certify that the proposed substitute item will:
  - a) perform adequately the functions and achieve the results called for by the general design,
  - b) be similar in substance to that specified, and
  - c) be suited to the same use as that specified;
- 2) will state:
  - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor’s achievement of Substantial Completion on time;

- b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
  - c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
- a) all variations of the proposed substitute item from that specified, and
  - b) available engineering, sales, maintenance, repair, and replacement services;
- 4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

*B. Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

*C. Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination. Use of an unapproved "or-equal" item will render such Work defective and will be subject to Article 13 provisions.

*D. Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

*E. Engineer's Cost Reimbursement:* Engineer may record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.



F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

G. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

**6.06** *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection.

B. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

**6.07** *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is

subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

**B. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE NOT SPECIFIED IN THE CONTRACT DOCUMENTS.**

**6.08** *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner may assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work that are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Contractor shall pay all charges of utility owners for connections for providing permanent service to the Work.

**6.09** *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, with the specific exception of compliance with all applicable building codes, Contractor has no responsibility or liability for determining whether the Work as described in the Contract Documents complies with applicable Laws or Regulations.

**6.10** *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project that are applicable during the performance of the Work.

B. The Owner enjoys tax-exempt status as a public utility. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. Contractor shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the Owner by the Contractor. Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

### **6.11 Use of Site and Other Areas**

#### **A. Limitation on Use of Site and Other Areas**

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

**3. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, AND ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH OWNER OR OCCUPANT AGAINST OWNER, OR ANY OTHER PARTY INDEMNIFIED HEREUNDER TO THE EXTENT CAUSED BY OR BASED UPON CONTRACTOR'S PERFORMANCE OF THE WORK.**

*B. Removal of Debris During Performance of the Work:* During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

*C. Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and

surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

### 6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Owner. Delivery of a complete set of record documents to Owner is a condition precedent to Final Completion.

### 6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall comply with applicable Laws and Regulations regarding safety, and shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

E. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations or to conduct other tasks arising from the Contract Documents.

**6.14 Safety Representative**

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

**6.15 Hazard Communication Programs**

A. Contractor shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

B. Contractor shall maintain Safety Data Sheets (SDS), where applicable, for any chemical products. The SDS(s) shall be made available to Owner or Engineer upon request.

**6.16 Emergencies**

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

**6.17 Shop Drawings and Samples**

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.08). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. Samples: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.
  - a. Submit number of Samples specified in the Specifications.
  - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:
  - a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
  - c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
  - d. each Shop Drawing or Sample are coordinated with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written

approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.

3. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order. Should Contractor seek and adjustment to the Contract Time due to the failure of Engineer to timely review submittals in accordance with the terms contained in the Contract Documents, Contractor must provide information required by and in accordance with articles 10 and 12 of these general conditions.

4. Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall not result in such item becoming a Contract Document.

5. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 6.17.D.2.

*E. Resubmittal Procedures*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

**6.18** *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

**6.19** *Contractor's General Warranty and Guarantee*

A. Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. Contractor further warrants that the Work will strictly conform to the requirements of the Contract Documents and will be performed in a good and workmanlike manner, and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective.

B. Contractor's warranty and guarantee hereunder excludes remedy for defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
2. normal wear and tear under normal usage.

C. If required by the Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

D. Contractor's obligation to perform and complete the Work in strict accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

E. If the Contract requires Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

F. The Contractor warrants and guarantees for two (2) years from Final Completion, or for a longer period if expressly stated in the Contract Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Contractor must correct any and all defects in material and/or workmanship that may appear during the Warranty and Guarantee period, or any defects that occur within two (2) years of Final Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.

### **6.20 Indemnification**

**A. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS OF EACH AND ANY OF THEM FROM AND AGAINST ALL CLAIMS, COSTS, EXPENSES, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS,**



**ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS REGARDLESS OF WHETHER SUCH FEES, COSTS OR EXPENSES ARE INCURRED PRIOR TO OR DURING THE PENDENCY OF LITIGATION) ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE WORK. SUCH INDEMNITY OBLIGATIONS SHALL INCLUDE, BUT ARE NOT LIMITED TO A CLAIM, COST, EXPENSE, LOSS, OR DAMAGE THAT IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM. ALL INDEMNITY OBLIGATIONS OF CONTRACTOR SHALL BE LIMITED TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY, OR UNDER THE SUPERVISION OF, ANY OF THEM TO PERFORM ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.**

*6.21 Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to Engineer.

C. Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph, Engineer’s review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer’s review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for nor warrant the adequacy of the design, performance criteria, or design criteria required by the Contract Documents, including the Plans and Specifications.

**ARTICLE 7 - OTHER WORK AT THE SITE**

***7.01 Related Work at Site***

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and
2. if Owner and Contractor are unable to agree on entitlement to or extent, if any, of any adjustment in the Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

***7.02 Coordination***

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

**7.03 *Legal Relationships***

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

**ARTICLE 8 - OWNER'S RESPONSIBILITIES**

**8.01 *Communications to Contractor***

A. For all Project and performance of Work matters, Owner will issue all communications to Contractor through Engineer. However, Owner may, at its discretion, issue communications related to the Project directly to Contractor. In all such direct communications, Owner will endeavor to copy Engineer.

**8.02 *Replacement of Engineer***

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer, whose status under the Contract Documents shall be that of the former Engineer.

**8.03 *Furnish Data***

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

**8.04 *Pay When Due***

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

**8.05 *Lands and Easements; Reports and Tests***

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

**8.06 Insurance**

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

**8.07 Change Orders**

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

**8.08 Inspections, Tests, and Approvals**

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

**8.09 Limitations on Owner's Responsibilities**

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

**8.10 Undisclosed Hazardous Environmental Condition**

A. Owner's responsibility with respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

**8.11 Evidence of Financial Arrangements**

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

**ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION**

**9.01 Owner's Representative**

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer. Engineer shall not have the authority to bind the Owner as that authority lies with the Owner's representative designated in Paragraph 2.07, but Engineer may communicate on behalf of Owner in all Project matters.

**9.02 Visits to Site**

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

**9.03 Project Representative**

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary or Special Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary or Special Conditions.

**9.04 Authorized Variations in Work**

A. Owner and Engineer may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

**9.05 Rejecting Defective Work**

A. Engineer or Owner will have authority to reject Work that Engineer or Owner believes to be defective, or that Engineer or Owner believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer or Owner will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.03, whether or not the Work is fabricated, installed, or completed.

**9.06 Shop Drawings, Change Orders and Payments**

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

**9.07 Determinations for Unit Price Work**

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Contractor, subject to the provisions of Paragraph 10.05. Engineer will make a recommendation to Owner for payment of such Unit Price Work, but Owner shall make the final determination thereof.

**9.08 Decisions on Requirements of Contract Documents and Acceptability of Work**

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. For all matters in question and other matters arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, the Contract shall refer any such matters initially to Engineer in writing within thirty (30) days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's

decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph, Engineer will not show partiality to Owner or Contractor.

**9.09** *Limitations on Engineer's Authority and Responsibilities*

A. Engineer's authority, responsibility, or actions as Owner's representative shall not give rise to any liability to Contractor. Contractor expressly waives any claims it has against Engineer for the performance of its responsibilities as Owner's representative.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto.

C. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

D. The limitations upon authority and responsibility set forth in this Paragraph shall also apply to, the Resident Project Representative, if any, and assistants, if any.

**ARTICLE 10 - CHANGES IN THE WORK; CLAIMS**

**10.01** *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

**10.02** *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.05, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

**10.03** *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work that are: (i) ordered by Owner pursuant to Paragraph 10.01.A, or (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09;
2. changes in the Contract Price or Contract Times that are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times that embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

**10.04** *Contractor Change Requests*

A. Whenever it determines the Work depicted in or required by the Contract Documents should be modified, altered or changed to address unforeseen conflicts, changed conditions, or if, in the Contractor's opinion and evaluation, the change would benefit and improve the Project or reduce costs to the Owner, the Contractor may submit a Change Order request to the Engineer in any format the Contractor deems appropriate. The Engineer will consider such change and issue a recommendation to the Owner. The Contractor shall not delay or prevent continuation of other Work during the pendency of a Change Order request submitted by Contractor. Contractor shall not be entitled to any adjustment of the Contract Time or Contract Price due the submission of a Change Order request.

**10.05** *Claims*

A. *Claims Process*: The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Paragraph:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
2. Contractor demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and



3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.

B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly, but in no event later than thirty (30) days, after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within thirty (30) days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim.

C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation:*

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after sixty (60) days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within ninety (90) days, or specifically reserve rights to pursue the claim, subject to controlling Laws and Regulations, then the party asserting the Claim shall be deemed to have expressly waived such Claim.

F. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

**ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

**11.01 *Cost of the Work***

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be

reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph.
4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations, subject to Paragraph 6.10.
  - e. The cost of utilities, fuel, and sanitary facilities at the Site.
  - f. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded*: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's employees, agents and other personnel not included in Paragraph 11.01.A.1 whether at the Site or in Contractor's principal or branch office for general administration of the Work, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee*: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## **11.02 Allowances**

### **A. Contingency Allowance**

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

B. Prior to final payment, to the extent prior Change Orders have not been executed allocated contingency allowances, an appropriate Change Order will be issued to reflect actual amounts due Contractor on account of Work covered by allowances, and the balance of any unused contingency shall revert to Owner unless allocated differently elsewhere in the Contract Documents.

## **11.03 Unit Price Work**

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the

actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect any other item of Work; and
3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

**ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

***12.01 Change of Contract Price***

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

- b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change that results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

### **12.02** *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

### **12.03** *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor as set forth in paragraphs 12.03.B through J, the Contractor may be entitled to an extension in Contract Times in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Contractor's entitlement to an adjustment of the Contract Times for any such delay is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times and Contractor's ability to demonstrate effect on Contractor's then established critical path. Contractor must provide with its delay claim substantiating information and data to support its claim for delay and the effect on the critical path. Such an adjustment in Contract Times shall be Contractor's sole and exclusive remedy for the delays described in this section 12.03.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an

equitable adjustment in the Contract Times. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times and Contractor’s ability to demonstrate effect on Contractor’s then established critical path. Such an adjustment in Contract Times shall be Contractor’s sole and exclusive remedy for the delays described in this sub-Paragraph.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, pandemic, unusually severe and abnormal weather conditions such as tropical storms, hurricanes, or tornados, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor’s ability to complete the Work within the Contract Times and Contractor’s ability to demonstrate effect on Contractor’s then established critical path. Such an adjustment in Contract Times shall be Contractor’s sole and exclusive remedy for the delays described in this sub-paragraph. The occurrence of flooding or other effects of storms or severe weather such as thunderstorms or ordinarily experienced rain events shall not trigger an adjustment of the Contract Time pursuant to this section. Rain events and other anticipated weather that may result in delays to Contractor’s performance are addressed in the following paragraphs D and E.

D. The procedure for the determination of time extensions for unusually severe weather. In order for the Owner to award a time extension under this clause, the following conditions must be satisfied:

1. The weather experienced at the Project site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month; and
2. The unusually severe weather must actually cause a delay to the completion of the Project.

The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the Project location and will constitute the base line for monthly weather time evaluations. The Contractor’s activity durations provided in the progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY  
 WORK DAYS BASED ON FIVE (5) DAY WORK WEEK**

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
(4)	(4)	(4)	(3)	(5)	(6)	(4)	(3)	(4)	(4)	(4)	(4)

E. For the duration of the Contract, the Contractor shall maintain in its daily reports an accurate and contemporaneous record of the occurrence of adverse weather and resultant impact to normally scheduled Work. Delay from adverse weather shall not qualify as an adverse weather delay unless Work on the overall Project’s critical activities is prevented for 50 percent or more

of the Contractor's scheduled work day. The number of actual adverse weather days shall be calculated monthly. If the number of actual adverse weather delay days in a month exceeds the number of days for that month as referenced above, the Owner upon notification by the Contractor, will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and a Modification shall be issued in accordance with the Contract.

F. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

G. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

H. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 4.

I. Contractor must submit any Change Proposal seeking an adjustment in Contract Times under this Paragraph within thirty (30) days of the commencement of the delaying, disrupting, or interfering event.

J. Contractor expressly waives any right to an adjustment in Contract Price for any event of delay. Contractor's sole remedy for any delay shall be limited to an adjustment in Contract Time.

**ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK OR PERFORMANCE**

**13.01** *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article.

**13.02** *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise

them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

**13.03 Tests and Inspections**

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

**13.04 Uncovering Work**

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or



otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

**13.05** *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

**13.06** *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, or, if the Work has been rejected by Engineer or Owner, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

**13.07** *Correction Period*

A. If within a two-year period after the date of Final Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found

to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph are in addition to any other obligation or warranty. The provisions of this Paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

**13.08** *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

**13.09** *Owner May Correct Defective Work, Deficient Performance or Contractor Default*

A. If Contractor fails within a reasonable time after written notice from Engineer or Owner to correct defective Work or to remove and replace rejected Work as required by Owner in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven (7) days written notice to Contractor to cure such default, make demand on Contractor's surety to perform as required in the performance bond issued for the Work, utilize its own forces, or hire a supplemental or replacement contractor to correct or remedy any such deficiency. In electing to exercise any remedy allowed under this Paragraph, Owner is not required to terminate Contractor's rights of continued performance for the entirety of the Work but may eliminate such scope of work from Contractor as may be necessary to exercise its rights under this section.

B. In exercising the rights and remedies under this Paragraph, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and all tools, equipment and materials stored or maintained at the Site, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph.

**ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

**14.01** *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.08 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to

Owner and Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

#### **14.02 Progress Payments**

##### *A. Applications for Payments*

1. If a date is established in the Agreement for each progress payment then (i) at least 20 days before the date established for each progress payment or, (ii) if no date is specified, then not more often than once a month, Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. Contractor shall prepare and update the Critical Path Method construction schedule on a monthly basis, if not more frequently at Contractor's discretion, to be submitted to the Owner with each Application for Payment. Contractor agrees that submission of an updated Critical Path Method construction schedule is a condition precedent to payment for each Application for Payment. Contractor shall also provide with each Application for Payment updated plan of record information.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

##### *B. Review of Applications*

1. Engineer will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents; and

- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment, Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
  - b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
  - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due*

1. Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in sub-Paragraphs 14.02.B.4.a through 14.02.B.4.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

**14.03 Contractor's Warranty of Title**

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

**14.04 Substantial Completion**

A. When Contractor considers the entire Work ready for its intended use, Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. At that inspection, Owner and Engineer will review, supplement, and edit the initial punch list prepared by Contractor or prepare an additional punch list if Contractor has not yet provided a punch list. If Owner or Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Owner and Engineer consider the Work substantially complete; Engineer will deliver to Owner a tentative certificate of Substantial Completion, which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven (7) days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within fourteen (14) days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If Owner does not object to the provisions of the certificate, Engineer will within said fourteen (14) days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. After Substantial Completion, Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

**14.05 Partial Utilization**

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work that has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work that Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work, and follow the procedures of Paragraphs 14.04.A through E for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Owner or Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work.
4. No use or occupancy or separate operation of part of the Work will relieve Contractor of its insurance obligations under these Contract Documents.

**14.06 Final Inspection**

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

**14.07 Final Payment**

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents,

Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

*B. Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten (10) days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

*C. Payment Becomes Due*

1. Thirty (30) days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off will become due and will be paid by Owner to Contractor.

**14.08** *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of



the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**14.09 Waiver of Claims**

A. The making and acceptance of final payment will constitute a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

**ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

**15.01 Owner May Suspend Work**

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to Contractor and Engineer, which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

**15.02 Owner May Terminate for Cause**

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.08 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's disregard of the authority of Owner or Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven (7) days' written notice of its intent to terminate the services of Contractor:

1. declare Contractor to be in default and give Contractor (and any surety) notice that the Contract is terminated; and
2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work and all materials, equipment, and tools maintained or stored at the Site, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem

expedient. Owner shall have the right with respect to Contractor and Contractor's surety to demand performance of said surety within ten (10) days following termination. Further, Owner shall have the right to determine and/or approve any replacement contractor desired by Surety to correct and complete the Work.

D. If Owner proceeds as provided in Paragraph 15.02.C, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed nor shall Owner be required to publicly bid any completion work should Owner exercise its right to complete the Work on its own as completion work shall be deemed by the Owner, Contractor, Contractor's surety, and Engineer to qualify for an exemption to public bidding as found in the Texas Government Code chapter 252.

E. Contractor's services will not be terminated pursuant to Paragraph 15.02.B if Contractor begins within seven (7) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

**15.03 Owner May Terminate for Convenience**

A. Upon seven (7) days' written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for:

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work;
3. demobilization expenses; and
4. overhead and profit on unperformed work.

B. Contractor shall not be paid for any economic loss arising out of or resulting from such termination, except for those costs expressly identified above.

**15.04 Contractor May Stop Work or Terminate**

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or (iii) Owner fails for sixty (60) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within thirty (30) days after it is submitted, or Owner has failed for sixty (60) days to pay Contractor any sum finally determined to be due, Contractor may, seven (7) days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

**ARTICLE 16 - DISPUTE RESOLUTION**

**16.01 Methods and Procedures**

*A Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
3. Reserved claims of Owner or Contractor under these Contract Documents, including Article 10.

*B Final Resolution of Disputes:*

1. For any disputes subject to this Article, Owner and Contractor shall endeavor to resolve their Claims by mediation. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.
2. For any claim not resolved by mediation, the parties agree to submit such claims to the jurisdiction of the District Court of Comal County, Texas for final dispute resolution.

**ARTICLE 17 - MISCELLANEOUS**

**17.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended,
  2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice, or
  3. delivered by electronic means with a corresponding confirmation of delivery or read receipt to the individual or to a member of the firm or to an officer of the corporation for whom it is intended.

**17.02 *Computation of Times***

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

**17.03 *Cumulative Remedies***

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

**17.04 *Survival of Obligations***

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

**17.05 *Controlling Law***

- A. This Contract is to be governed by the law of the State of Texas without regarding to its conflict of laws principles.

**17.06 Headings**

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**17.07 Limitation of Damages**

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

B. The Contractor and Owner waive claims against each other for the following enumerated consequential damages arising out of or relating to this Contract. This mutual waiver includes and is expressly limited to the following:

1. damages incurred by the Owner for lost revenue, profit, financing costs, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, bonding capacity, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

**17.08 No Waiver**

A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

**17.09 Prevailing Wage**

A. Contractor shall comply with Chapter 2258 of the Texas Government Code governing prevailing wage. The Contractor shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage. The Owner has not independently performed a wage determination in accordance with controlling state and federal statutes. Accordingly, the Contractor must utilize the wage determinations and rates published by the U.S. Department of Labor pursuant to the Davis-Bacon Act.

B. Certified payrolls demonstrating compliance with the prevailing wage requirements shall be maintained by the Contractor and all Subcontractors performing the Work. The Contractor is required to submit to the Owner a copy of all certified payrolls for any pay period with each Pay Application. Failure to provide certified payrolls may be grounds for withholding of funds and default.

C. A Contractor or Subcontractor who violates Section 2258.023 of the Texas Government Code shall pay to Owner \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this Agreement.

**17.10 Right to Audit:**

A. Whenever the Owner enters into any type of contractual arrangement with the Contractor, then the Contractor's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. The Owner's representative, or an outside representative engaged by the Owner, may perform such audits. The Contractor shall maintain all records relating to this Agreement for four (4) years from the date of final payment under this Agreement.

B. The Owner shall have the exclusive right to examine the records of the Contractor. The term "records" as referred to herein shall include any and all information, materials and data of every kind and character, including without limitation records, books, papers, documents, contracts, schedules, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in the Owner's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records shall include (hard copy, as well as computer-readable data if it can be made available), written policies and procedures, time sheets, payroll registers, cancelled checks, personnel file data, correspondence, general ledger entries, and any other record in the Contractor's possession that may have a bearing on matters of interest to the Owner in connection with the Contractor's dealings with the Owner (all of the foregoing are hereinafter referred to as "records"). In addition, the Contractor shall permit interviews of employees as well as agents, representatives, vendors, subcontractors and other third parties paid by the Contractor to the extent necessary to adequately permit evaluation and verification of the following:

1. The Contractor's compliance with contract requirements;
2. The Contractor's compliance with the Owner's business ethics policies; and
3. If necessary, the extent of the Work performed by the Contractor at the time of contract termination.

C. The Contractor shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this Article 17.10 by securing the requirements hereof in a written agreement between the Contractor and payee. Such requirements include a flow-down right of audit provision in contracts with payees that also apply to subcontractors and sub-subcontractors, material suppliers, etc. The Contractor shall cooperate fully and shall require Related Parties and all of the Contractor's subcontractors to cooperate fully in furnishing or in making available to the Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials, and data.

D. The Owner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to

discuss matters pertinent to the performance of this Agreement, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article 17.10.

E. If an audit inspection or examination in accordance with this Article 17.10 discloses overpricing or overcharges of any nature by the Contractor to the Owner in excess of one-half of one percent (.5%) of the total contract billings, then the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments, which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records, shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the Owner's findings to the Contractor.

**17.11 Trust Funds**

A. This Project is subject to the Texas Trust Fund Statute, Chapter 162 of the Texas Property Code, and the Parties acknowledge that the payment obligations contained herein for the Contractor to receive funds from the Owner and then use those funds to pay such Subcontractors, Suppliers, Vendors, Consultants, and the like, are subject to the Trust Fund Statute and the Owner's audit rights outline in this article.

**17.12 Severability**

A. If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**17.13 Amendments**

A. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**17.14 Assignment**

A. Contractor shall not, without the written consent of the Owner assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents, other than to an affiliate. An assignment to an affiliate shall not relieve the assignor of its obligations under this Agreement.

**17.15 Confidential Information**

A. Confidential Information is defined as information that is determined by the transmitting party to be of a confidential or proprietary nature and: (a) the transmitting party identifies as either confidential or proprietary; (b) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (c) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

B. A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

**17.16 Texas Public Information Act**

A. The Contractor recognizes that this Project is publicly owned, and the Owner 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 the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights in section 17.10.

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

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

1. provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
2. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner.

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

**17.17 Conflicts**

A. Notwithstanding anything herein to the contrary, if the Technical Specifications conflict with the Standard General Conditions, the Standard General Conditions control.

**END OF DOCUMENT**



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

**1. Specific Insurance Requirements**

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

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

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

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

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

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

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

**B. Policies.**

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

**C. Limits, Deductibles and Retentions**

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

**D. Evidence of Insurance.**

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

Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;

- f. Amount of any deductible or self-insured retention in excess of \$25,000;
  - g. Designated Construction Project(s) General Aggregate Limit;
  - h. Primary and non-contributory status;
  - i. Waivers of subrogation; and
  - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
- a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

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

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance and offset all costs and expenses from the Contract Sum. Owner's exercise of this right shall not relieve or excuse Contractor from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Contract Agreement.

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

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

**G. Use of the Owners Equipment**

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

**H. Release and Waiver**

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required

herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**

New Braunfels Utilities  
355 FM 306  
New Braunfels, TX 78130

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



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

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

DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
Item 1: Paradise Alley Monitoring Well Site Improvements	LS	1	\$93,077.00	\$93,077.00
Item 2: Girl Scout Monitoring Well Site Improvements	LS	1	\$93,160.00	\$93,160.00
Item 3: LCRA Monitoring Well Site Improvements	LS	1	\$153,856.00	\$153,856.00
Item 4: Mobilization and Demobilization (Maximum 10% of Line Items 1-3)	LS	1	\$101,599.00	\$101,599.00

**TOTAL BASE BID** \$ 491,692.00

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to delay damages and special damages in the event of failure to complete the Work on time.
6. The following documents are attached to and made a condition of this Bid:
  - a) Required Bid security of five percent (5%) of the Bidder's maximum base bid price and in the form of approved Bid Bond.
  - b) List of BIDDER's primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
7. Communication concerning this Bid shall be addressed to:  
 New Braunfels Utilities  
 Purchasing Manager  
 355 FM 306  
 New Braunfels, TX 78130  
 Phone: 830-608-8867  
 Email: [Purchasing@NBUTexas.com](mailto:Purchasing@NBUTexas.com)
8. The terms used in this Bid that are defined in the Standard General Conditions of the Contract included as part of the Contract Documents have the meanings assigned to them in the Standard General Conditions of the Contract.
9. The undersigned acknowledges receipt of the following addenda:  
 Addendum No. 1 dated 5/23/2024 Received BT  
 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**

Thomas L. Guido Thomas L. Guido  
Secretary, \*if bidder is a corporation

(Seal)

Guido Construction Company  
Company Name of Bidder

[Signature]



Authorized Signature

May 29, 2024

Date

Cosmo M. Guido  
Printed Name of Authorized Signature

8526 Vidor Ave

San Antonio, Texas 78216  
Address

210-344-8321  
Telephone Number/Fax Number

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

**END OF DOCUMENT**



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

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

**Submitted by:** Mark Steelman      **Approved by:** Ryan Kelso  
 Chief Operations Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Central Downtown to Morningside Pressure Zone Conversion Project

## **BACKGROUND**

This Professional Services Agreement (the “Agreement”) with Kimley-Horn and Associates, Inc. (“Kimley-Horn”) provides project management services, preliminary engineering design services, final design, field services, permitting and coordination with stakeholders, bid phase services, and construction phase services for the New Braunfels Utilities (“NBU”) Central Downtown to Morningside Pressure Zone (“PZ”) Conversion Project (the “Project”). The Project is anticipated to convert all customers currently in the western portion of the Downtown PZ and who are at least 685 feet above sea level to the Morningside PZ, thereby increasing pressure. Collectively, converting the areas identified would allow an additional 1.0 million gallons of existing elevated storage in the Downtown PZ to be counted as effective storage per the TCEQ rules and will ensure compliance with the TCEQ regulations.

NBU staff requests that the Board of Trustees approve the Agreement with Kimley-Horn for the Project.

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

Upon completion of the final design, NBU staff will solicit a construction contract and anticipates bringing the construction contract to the Board for approval in August 2027. NBU staff plans to begin construction in September 2027 and with completion by December 2028.

## **FINANCIAL IMPACT**

The total financial impact for the Agreement with Kimley-Horn for the Project is \$1,121,000.00, including supplemental services. The Project is budgeted within the fiscal year 2025 through fiscal year 2027 NBU Board approved Capital Improvements Projects Budget.

**LINK TO STRATEGIC PLAN**

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**Infrastructure and Technology**

**EXHIBITS**

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1. Professional Services Agreement with Kimley-Horn

## PROFESSIONAL SERVICES AGREEMENT

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

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

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

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

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

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

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

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

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

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

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

Section 9. Indemnification.

**(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:**

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

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

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

Section 10. Insurance.



(A) General.

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

(subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

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

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be

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

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

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

#### Section 11. Termination.

(A) For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services

performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

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

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement.

The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

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

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

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

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

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

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

(G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and

superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

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

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

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

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

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

(M) Offset.

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

- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.

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

If to NBU:

New Braunfels Utilities  
 Attn: Chief Operations Officer  
 263 Main Plaza  
 New Braunfels, TX 78130

With copy to:

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

If to the Professional:

Kimley-Horn and Associates, Inc.  
 421 Fayetteville St.  
 Suite 600  
 Raleigh, NC 27601

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

(O) Confidentiality of Records. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under

this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

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

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

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

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

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

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

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

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



relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

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

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

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

Section 16. Information Technology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 22. Texas Public Information Act. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its

obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU's audit rights in Section 12(P).

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

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

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

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

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


*(The remainder of this page intentionally left blank)*

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

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

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

**PROFESSIONAL:**  
**KIMLEY-HORN AND ASSOCIATES, INC.,**  
a North Carolina corporation authorized  
to transact business in the State of Texas

By:   
Name: SEAN MASON  
Title: VICE PRESIDENT

## Exhibit A

### Services

The Professional shall provide all labor, material, and equipment necessary to provide project management services, preliminary engineering phase services, preliminary design phase services, final design phase services, field services, permitting and coordination with stakeholders, bid phase services, and construction phase services for the Central Downtown to Morningside Pressure Zone Conversion Project (“Project”).

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

##### **A. Preliminary Engineering Report**

As more fully described in Task 2, the Professional shall conduct preliminary engineering services at the start of the Project to develop an alignment for switching identified customers within the existing Central Downtown pressure zone (“PZ”) over to the Walnut PZ via the Morningside PZ. These preliminary engineering services shall include verifying existing water services in the area, evaluating impacts to the existing and planned PZ boundaries, assessing valve closure and flushing effects to the distribution system, and developing routing options for the water main. Preliminary engineering services shall include drafting routing exhibits and issuance of a preliminary engineering report evaluating the different options and resulting system impact.

##### **B. Water Pipeline Design**

1. The Project includes approximately 11,500 linear feet (“LF”) of new 12-inch diameter water transmission main pipeline to be installed by open cut and trenchless methods including all appurtenances, starting at the intersection of South I-35 Frontage Road and South Water Lane and ending at the intersection of South Mesquite Avenue and Old Marion Road.
2. The Project includes three (3) TxDOT highway crossings using trenchless construction:
  - a) approximately 360 LF of new 12-inch water main by trenchless methods starting from North I-35 Frontage Road across the highway to South I-35 Frontage Road near South Water Lane;
  - b) approximately 70 LF of new 12-inch water main by trenchless methods crossing north to south along South Business I-35/Elliot Knox Blvd; and
  - c) approximately 360 LF of new 12-inch water main by trenchless methods starting from South I-35 Frontage Rd across the highway to North I-35 Frontage Road near

South Mesquite Avenue.

### **C. Wastewater Pipeline Design**

1. The Project includes approximately 700 LF of new 8-inch diameter wastewater pipeline to be installed by open-cut methods including manholes, starting at the intersection of South Mesquite Avenue and Elliot Knox Blvd to the intersection of South Mesquite Avenue and South I-35 Frontage Road.

## **II. SERVICES BY TASK**

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

### **Task 1. Project Management**

1. The Professional shall provide the following project management services described in this Section.
  - 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 25<sup>th</sup> day of each month, for NBU to monitor progress and identify design submittal dates. The Professional shall provide schedules to the NBU project manager (“Project Manager”) in PDF format via email.
  - 1.2. QUALITY CONTROL. The Professional shall develop a quality assurance/quality control (“QA/QC”) program for the Project, which shall be explained in detail via a written document and provided to NBU’s Project Manager via email within thirty (30) days of notice to proceed (“NTP”).
  - 1.3. PROGRESS REPORTS. The Professional shall provide NBU with electronic monthly Project progress reports and submit written invoices on or before the 25th day of each month for the previous month’s effort. The Professional shall provide progress reports to NBU’s Project Manager via email. Thirty (30) total progress reports are expected.
  - 1.4. MEETINGS AND AGENDAS/MINUTES. The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the summary meeting minutes and action item log to NBU’s Project Manager within one (1) week after meetings, for the following meetings:
    - 1.4.1. Project kick-off meeting with NBU (one (1) meeting); and
    - 1.4.2. design review meetings (twelve (12) meetings).
  - 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 quality assurance;
  - 1.5.2. developing cost estimates using recent bid tabs from similar projects or vendor prices;
  - 1.5.3. using Microsoft Project or similar to manage the schedule; and
  - 1.5.4. coordinating communication with sub-consultants through emails and meetings.
- 1.6. DATA COLLECTION. The Professional shall request information from the following entities as outlined below:
- 1.6.1. NBU shall provide the Professional the following data and records information upon written request:
    - 1.6.1.1. record drawings and geographical information system (“GIS”) data for the water, wastewater, and electric system along the proposed Project route;
    - 1.6.1.2. design requirements, specifications, and water connection policy information, to include:
      - 1.6.1.2.1. standard water and wastewater pipeline sizes;
      - 1.6.1.2.2. water and wastewater pipeline material;
      - 1.6.1.2.3. water pipeline encasement and bedding;
      - 1.6.1.2.4. thrust blocking and mechanical joint restraint;
      - 1.6.1.2.5. preferred pressure reducing valves;
      - 1.6.1.2.6. spacing of fire hydrants, valves, air release valves, and other appurtenances; and
      - 1.6.1.2.7. horizontal tolerances between water pipeline and other utilities.
    - 1.6.1.3. assist the Professional in identifying and coordinating with other NBU capital improvement projects within the area that are currently under design or construction that may affect the completion of the Project.
  - 1.6.2. The Professional shall request the following information from TxDOT:
    - 1.6.2.1. available record drawings related to improvements within the Project area for completed improvement projects, including roadway, storm sewer, illumination, signage, traffic signals, and communication plans; and
    - 1.6.2.2. information for projects in progress and future projects planned by TXDOT.
  - 1.6.3. The Professional shall request the following information from the City of New Braunfels:
    - 1.6.3.1. available record drawings related to improvements within the Project area for completed improvement projects, including roadway, storm drain, illumination, signage, traffic signals, and communication plans; and
    - 1.6.3.2. projects in progress and future projects planned by the City of New Braunfels, including street restoration projects in the area of the planned alignment.
  - 1.6.4. The Professional shall prepare a data request letter for as-built information from CenterPoint, Atmos Energy, AT&T, and other telecommunication, fiber optic, and cable companies to request:
    - 1.6.4.1. size, horizontal, and vertical location of existing gas, telecommunication, and

fiber optic lines and appurtenances that are located within right of way (“ROW”) and easements of the proposed Project route; and

- 1.6.4.2. schedules and construction plans for gas infrastructure that is proposed to be installed or relocated within the ROW or easements of the proposed Project route.

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

2. Upon NBU providing NTP to the Professional, the Professional shall perform the preliminary engineering phase services described in Section I.A. of this Scope and this Section.
  - 2.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and summary meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
    - 2.1.1. Project kick-off meeting with NBU (one (1) meeting);
    - 2.1.2. meeting with the City of New Braunfels (one (1) meeting);
    - 2.1.3. meeting with the City of New Braunfels Parks Department (one (1) meeting);
    - 2.1.4. meeting with TxDOT (one (1) meeting); and
    - 2.1.5. preliminary engineering report review meeting (one (1) meeting).
  - 2.2. WATER SERVICES AND PRESSURE ZONE IMPACTS. The Professional shall evaluate water service replacements, pressure zone boundary updates, and corresponding system valve impacts as a result of the proposed alignments, as described in this Section.
    - 2.2.1. The Professional shall quantify the amount of services requiring relocation based on the different alignments.
    - 2.2.2. The Professional shall perform one (1) preliminary site visit to gather Project information and verify GIS data of water services in the area.
    - 2.2.3. The Professional shall review the latest NBU Water Master Plan and coordinate with the authoring consultant on pressure zone boundary updates based on routing alternatives.
    - 2.2.4. The Professional shall determine which system valves need closing to successfully make the pressure zone transfer and make recommendations for hydrants or flushing locations.
    - 2.2.5. The requirements for deliverables in this Section 2.2 are more specifically described in Section 2.5.
  - 2.3. ALTERNATIVE ALIGNMENT EVALUATION. The Professional shall perform an alternative alignment evaluation for up to three (3) alignments for the water main, as described in this Section.
    - 2.3.1. The Professional shall use existing GIS and as-built information to determine locations of existing utilities within the Project survey boundary described by Figure 1.
    - 2.3.2. The Professional shall perform one (1) preliminary site visit to review the proposed alignments and constraints. The Professional shall summarize NBU’s comments

- from the site visit and submit this information via email to the NBU Project Manager within two (2) weeks of the site visit.
- 2.3.3. The Professional shall perform one (1) site visit with the NBU Project Manager to review the proposed alignments. The Professional shall summarize NBU's comments from the site visit and submit this information via email to the NBU Project Manager within two (2) weeks of the site visit.
  - 2.3.4. The Professional shall coordinate with appropriate stakeholders to gather all available information on the Project including NBU, the City of New Braunfels, and TxDOT.
  - 2.3.5. The Professional shall evaluate up to three (3) potential alignments and make a recommendation of the preferred alignment based on the following elements:
    - 2.3.5.1. probable construction cost;
    - 2.3.5.2. surface repair;
    - 2.3.5.3. constructability and construction type (open cut, trenchless);
    - 2.3.5.4. coordination, permitting, and stakeholders;
    - 2.3.5.5. non-utility obstructions;
    - 2.3.5.6. conflicts with other utilities;
    - 2.3.5.7. impacts to pressure zone boundaries;
    - 2.3.5.8. service line relocations;
    - 2.3.5.9. age of existing infrastructure;
    - 2.3.5.10. public impact; and
    - 2.3.5.11. Project schedule.
  - 2.3.6. The Professional shall produce exhibits showing the proposed and recommended water pipeline alignments, including approximate property boundaries, and significant routing features, such as trenchless construction, tree/landscaping impacts, obstructions, and other impacts identified during the routing process along the proposed alignments. The exhibit shall be in GIS or CAD with the data received from NBU. Upon receiving comments from NBU, the Professional shall revise the preliminary alignment exhibit to create a final alignment exhibit.
  - 2.3.7. The Professional shall provide a Class 4 opinion of probable construction cost ("OPCC") as specified by the Association for the Advancement of Cost Engineering for each alignment.
  - 2.3.8. The requirements for deliverables in this Section 2.3 are more specifically described in Section 2.5.
- 2.4. PRELIMINARY ENGINEERING REPORT ("PER"). The Professional shall prepare a PER that includes alignment recommendation, flushing locations, service relocations, PZ boundary, and describes the scope of the Project for final design, easement requirements, permitting, constructability, OPCC, and schedule. The PER shall include Project implementation, phasing, and packaging for all portions of the Project. The Professional shall submit a draft PER for NBU review and comment as well as a final PER

incorporating all NBU comments. The final PER shall be submitted to NBU within 30 days of receiving final NBU comments.

2.4.1. The PER shall include the following outline of sheets:

- 2.4.1.1. cover page;
- 2.4.1.2. Project overview and intent;
- 2.4.1.3. existing water system conditions;
- 2.4.1.4. Alignment 1:
  - 2.4.1.4.1. evaluation of route;
  - 2.4.1.4.2. PZ impacts and water service relocations; and
  - 2.4.1.4.3. valve closures and flushing locations.
- 2.4.1.5. Alignment 2:
  - 2.4.1.5.1. evaluation of route;
  - 2.4.1.5.2. PZ impacts and water service relocations; and
  - 2.4.1.5.3. valve closures and flushing locations.
- 2.4.1.6. Alignment 3:
  - 2.4.1.6.1. evaluation of route;
  - 2.4.1.6.2. PZ impacts and water service relocations; and
  - 2.4.1.6.3. valve closures and flushing locations.
- 2.4.1.7. comparison of alignments and recommendation;
- 2.4.1.8. Appendix A: Alignment A;
- 2.4.1.9. Appendix A1: Alignment A OPCC;
- 2.4.1.10. Appendix B: Alignment B;
- 2.4.1.11. Appendix B1: Alignment B OPCC;
- 2.4.1.12. Appendix C: Alignment C; and
- 2.4.1.13. Appendix C1: Alignment C OPCC.

2.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU during the preliminary engineering phase timeframe described in Table 1:

- 2.5.1. PER with Alignment Exhibits and Class 4 OPCC – one (1) PDF electronic file of report and maps of up to three (3) potential pipeline alignments.

### **Task 3. Preliminary Design Phase**

3. Upon NBU providing written approval of the PER to the Professional, the Professional shall perform the preliminary design phase services described below.

3.1. MEETINGS. The Professional shall provide meeting agendas and meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:

- 3.1.1. meeting with the City of New Braunfels (one (1) meeting);
- 3.1.2. meeting with the City of New Braunfels Parks Department (one (1) meeting);
- 3.1.3. meeting with TxDOT (one (1) meeting); and
- 3.1.4. 60% design review meeting (one (1) meeting).

3.2. 60% DESIGN DOCUMENTS

- 3.2.1. The Professional shall perform up to one (1) survey verification site visit.
- 3.2.2. The Professional shall perform a review of existing data, reports, mapping, and records from NBU. The Professional shall review documents associated with the Project.
- 3.2.3. The Professional shall prepare 60% design drawings including plan views and preliminary profiles of all proposed infrastructure within the Project survey boundary described in Figure 1. Construction plans shall be prepared on 22"x34" size sheets and in PDF format and shall consist of the following:
  - 3.2.3.1. cover sheet;
  - 3.2.3.2. general notes;
  - 3.2.3.3. Project control and layout;
  - 3.2.3.4. Project sequencing sheet;
  - 3.2.3.5. contractor staging plan and easement summary (two (2) sheets);
  - 3.2.3.6. overall water map with isolation valves and flushing locations (one (1) sheet);
  - 3.2.3.7. water plan and profiles sheets at 1" = 40' (twelve (12) sheets);
  - 3.2.3.8. water service relocations and flushing locations at 1" = 40' (three (3) sheets);
  - 3.2.3.9. pressure reducing valve vault plan at 1" = 5' (one (1) sheet);
  - 3.2.3.10. water details needed for the Project (five (5) sheets);
  - 3.2.3.11. wastewater plan and profiles sheets at 1" = 40' (one (1) sheet)
  - 3.2.3.12. wastewater details needed for the Project (one (1) sheet)
  - 3.2.3.13. erosion control plans (six (6) sheets);
  - 3.2.3.14. erosion control details (two (2) sheets); and
  - 3.2.3.15. standard traffic control details (three (3) sheets).
- 3.2.4. The Professional shall prepare a Class 3 OPCC based on 60% design drawings.
- 3.3. DELIVERABLES. The Professional shall provide the following deliverables to NBU during the preliminary design phase timeframe described in Table 1:
  - 3.3.1. 60% design drawings – one (1) PDF electronic file; and
  - 3.3.2. Class 3 OPCC based on 60% design – one (1) PDF electronic file.

#### **Task 4. Final Design Phase**

- 4. Upon NBU's written approval of the preliminary design documents, the Professional shall perform the final design phase services described in this Section.
  - 4.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
    - 4.1.1. monthly design meetings (six (6) meetings); and
    - 4.1.2. 90% design review meeting (one (1) meeting).
  - 4.2. 90% DESIGN DOCUMENTS. The Professional shall prepare 90% plans, specifications, and OPCC based on decisions made in the preliminary design phase. Construction plans shall be prepared on 22"x34" size sheets and in PDF format and shall consist of the

following:

- 4.2.1. cover sheet;
  - 4.2.2. general notes;
  - 4.2.3. Project control and layout;
  - 4.2.4. Project sequencing sheet;
  - 4.2.5. contractor staging plan and easement summary (two (2) sheets);
  - 4.2.6. paving repair sheets (three (3) sheets);
  - 4.2.7. over water map with isolation valves and flushing locations (one (1) sheet);
  - 4.2.8. water plan and profiles sheets at 1" = 40' (twelve (12) sheets);
  - 4.2.9. water service relocations and flushing locations at 1" = 40' (three (3) sheets);
  - 4.2.10. pressure reducing valve vault plan at 1" = 5' (one (1) sheet);
  - 4.2.11. water details needed for the Project (five (5) sheets);
  - 4.2.12. wastewater plan and profiles sheets at 1" = 40' (one (1) sheet)
  - 4.2.13. wastewater details needed for the Project (one (1) sheet)
  - 4.2.14. erosion control plans (six (6) sheets);
  - 4.2.15. erosion control details (two (2) sheets); and
  - 4.2.16. standard traffic control details (three (3) sheets).
- 4.3. 100% (FINAL) DESIGN DOCUMENTS. Upon NBU's written approval of 90% design documents, the Professional shall prepare 100% plans, specifications, and OPCC. 100% design documents shall include:
- 4.3.1. 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;
  - 4.3.2. Project files to include .dwg file;
  - 4.3.3. preparation of the bid form; and
  - 4.3.4. Class 1 OPCC based on 100% design documents.
- 4.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU:
- 4.4.1. 90% design drawings and specifications – one (1) PDF electronic file and one (1) PDF electronic file of a Class 1 OPCC to be provided to NBU during the 90% final design phase timeframe described in Table 1; and
  - 4.4.2. 100% final design drawings and specifications - one (1) PDF electronic file and one (1) PDF electronic file of a Class 1 OPCC to be provided to NBU during the 100% final design phase timeframe described in Table 1.

## **Task 5. Field Services**

5. The Professional shall perform the field services described below.
  - 5.1. TOPOGRAPHIC SURVEY. The Professional shall prepare a topographic, utility, and boundary survey as described below.
    - 5.1.1. The Professional shall tie in all existing surface topographic features and structures within the survey limits shown in Figure 1, which shall include, but not be 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, and 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. The Professional shall tag and tabulate trees by size and specific species in compliance with the City of New Braunfels Tree Preservation Ordinance as defined in the City of New Braunfels Zoning Ordinance 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.

- 5.1.2. The Professional shall conduct a utility survey and locate existing utilities within the Project survey boundary in Figure 1. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipally 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.
  - 5.1.3. The Professional shall locate up to fifteen (15) geotechnical borings and tie them into the Project survey.
  - 5.1.4. 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.
  - 5.1.5. NBU shall coordinate right of entry (“ROE”). NBU shall contact private property owners to ascertain permission to enter and perform field services within private properties. NBU shall coordinate with the Professional to provide the acquired ROE before field services begin.
  - 5.1.6. The Professional shall research and review adjoining plats and deeds along the survey corridor. The Professional shall locate property corners and identify existing ROW along the survey corridor based on found monuments and record documents.
- 5.2. EASEMENT ACQUISITION COORDINATION. The Professional shall coordinate and provide support to NBU and/or NBU hired consultant to obtain easements for up to twenty-five (25) parcels. The Professional shall provide the following easement acquisition coordination support services:

- 5.2.1. attend up to ten (10) total meetings with NBU, the hired consultant, and/or the property owner;
  - 5.2.2. provide digital linework (CAD files) with boundaries for temporary and permanent construction easements for up to twenty-five (25) properties to the surveyor;
  - 5.2.3. provide property owner easement exhibits with aerial overlay for up to twenty-five (25) parcels; and
  - 5.2.4. coordinate with NBU Real Estate Services on property owner easements and exhibit updates.
- 5.3. EASEMENT DOCUMENTS. The Professional shall prepare a metes and bounds description and exhibits for required easements for the Project for up to twenty-five (25) parcels based on the following criteria:
- 5.3.1. The Professional shall perform deed, plat, and courthouse record research, request title reports, and obtain copies of deeds and easement documents;
  - 5.3.2. The Professional shall survey property corners, fences, and appurtenant property evidence;
  - 5.3.3. 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;
  - 5.3.4. The exhibit plat and legal description will meet all 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 and utilizing the latest version;
  - 5.3.5. 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 documents provided by the Professional must be legible. The exhibit plat or legal description should be able to stand alone; and
  - 5.3.6. The Professional shall perform one (1) staking of final easement boundaries.
- 5.4. SUBSURFACE UTILITY ENGINEERING. The Professional shall perform subsurface utility engineering ("SUE") as described below.
- 5.4.1. The Professional shall perform SUE "Quality Level A" as defined by the American



Society for Civil Engineers, for up to ten (10) pothole locations. Level A includes physically locating the actual utility – often by ‘potholing.’ Once the utility is potholed, it is located horizontally and vertically by survey measurements. This location is typically to the top of pipe, which will be noted on the drawing.

- 5.4.1.1. The Professional shall provide coordination for all utility locates/clearance and permitting required to conduct SUE potholes.
- 5.4.2. The Professional shall provide SUE “Quality Level B” as defined by the American Society for Civil Engineers, for utility locates at roadway crossings and intersections. Level B includes two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods providing horizontal positioning of subsurface utilities to within approximately one (1) foot.
- 5.4.3. The Professional shall provide SUE “Quality Level C” as defined by the American Society for Civil Engineers, for utility locates along the entire alignment of the pipeline. Level C involves surveying visible utility facilities (e.g., manholes, valve boxes, etc.) and correlating this information with existing utility records.
- 5.4.4. The Professional shall provide SUE “Quality Level D” as defined by the American Society for Civil Engineers, for utility locates along the entire alignment of the pipeline. Level D includes investigation solely from existing utility records or verbal recollections.
- 5.5. GEOTECHNICAL DATA REPORT. The Professional shall conduct a geotechnical investigation to complete a Geotechnical Data Report (“GDR”) for the Project as described below.
  - 5.5.1. The Professional shall perform a geotechnical analysis of the proposed water line alignment to determine subsurface conditions and make recommendations regarding embedment, backfill, and excavation parameters. The recommendations for embedment and backfill shall be in accordance with NBU standards for backfill and embedment. The geotechnical analysis shall include the following:
    - 5.5.1.1. subsurface exploration including up to nine (9) sample bores at various locations and depths along the proposed line, including bores on each side of the following location: Interstate Highway 35;
    - 5.5.1.2. laboratory tests for classification purposes and strength characteristics;
    - 5.5.1.3. soil and groundwater conditions for open cut and proposed trenchless crossing locations; and
    - 5.5.1.4. a geotechnical report that presents the results of the field and laboratory data, as well as analysis and recommendations. The geotechnical report shall be provided to NBU’s Project Manager via email within six (6) weeks of the conclusion of Task 3.
- 5.6. DELIVERABLES. The Professional shall provide the following deliverables to NBU:
  - 5.6.1. one (1) PDF electronic file of signed and sealed metes and bounds for each

property, up to twenty-five (25) properties, during the preliminary design phase timeframe described in Table 1; and

- 5.6.2. Geotechnical Data Report – one (1) PDF electronic file according to the timeframe described in Section 5.5.1.4.

## **Task 6. Permitting & Stakeholders**

6. The Professional shall coordinate with the following stakeholders/agencies as described in this Section.
- 6.1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”). The Professional shall prepare and submit permit applications to TCEQ for approval of all design documents. The permit applications include the following:
- 6.1.1. approval letter for water lines.
- 6.2. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit permit applications to the City of New Braunfels to obtain permits for:
- 6.2.1. Public Infrastructure (PI) permit.
- 6.3. TEXAS DEPARTMENT OF TRANSPORTATION (“TxDOT”). The Professional shall prepare and submit a permit application for all work within TxDOT ROW including:
- 6.3.1. up to three (3) Right of Way Utility and Leasing Information System (RULIS) permits.
- 6.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU during the 100% final design phase timeframe described in Table 1:
- 6.4.1. TCEQ permit/ approval letter described in Section 6.1.1 – one (1) PDF electronic copy;
- 6.4.2. City of New Braunfels permit described in Section 6.2.1 – one (1) PDF electronic copy; and
- 6.4.3. TxDOT RULIS permit/approval letter described in Section 6.3.1 – up to three (3) PDF electronic copies.

## **Task 7. Bid Phase Services**

7. Upon completion of the final design, the Professional shall proceed with the bid phase services described in this Section.
- 7.1. PREBID CONFERENCE. The Professional shall attend a pre-bid conference to be administered by NBU. The Professional shall assist NBU with preparation of agenda, provide NBU with meeting notes, and coordinate conference responses with NBU. The Professional shall provide NBU with written responses to issues identified at the pre-bid conference and shall be in the form of addenda issued after the conference and prior to bid opening.
- 7.2. INTERPRET BID DOCUMENTS. The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare up to three (3) addenda to the bid

documents if necessary.

- 7.3. **BID EVALUATION.** The Professional shall attend a bid opening conference if administered by NBU. The Professional shall assist NBU in the opening and analyzing of the bids received for the Project, including researching contractor qualifications and references. The Professional shall recommend award of contract or other actions, as appropriate, to be taken by NBU in the form of a letter of recommendation as specified in Section 7.5.2.
- 7.4. **CONFORMED CONSTRUCTION DOCUMENTS.** The Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications.
- 7.5. **DELIVERABLES.** The Professional shall deliver the following:
  - 7.5.1. up to three (3) addenda between advertisement and bid opening - one (1) PDF electronic copy of each addenda to NBU and bidders;
  - 7.5.2. a letter of recommendation provided within (14) days after the bid opening - one (1) PDF electronic copy to NBU; and
  - 7.5.3. conformed construction documents provided prior to construction NTP - one (1) PDF electronic copy to NBU.

### **Task 8. Construction Phase Services**

8. Upon completion of the bid phase services, the Professional shall proceed with construction phase administration services. The Professional shall provide general construction contract administration services as described in this Section.
  - 8.1. **MEETINGS AND SITE VISITS.** The Professional shall attend the following meetings and provide the following services for meetings and site visits:
    - 8.1.1. assist NBU in conducting a pre-construction conference with the construction contractor and prepare agenda, prepare and provide NBU with meeting notes and coordinate conference responses with NBU;
    - 8.1.2. conduct one construction document control workshop for the contractor;
    - 8.1.3. attend up to a total of twelve (12) virtual bi-weekly or monthly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor in accordance with the requirements listed in Section 1.4;
    - 8.1.4. attend up to a total of twelve (12) in-person bi-weekly or monthly construction progress meetings with a site visit. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor in accordance with the requirements listed in Section 1.4;
    - 8.1.5. attend up to a total of six (6) 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. The requirements for deliverables in Section 8.1.5 are more specifically described in Section 8.7;

- 8.1.6. conduct, with NBU's representatives, two (2) 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; and
- 8.1.7. conduct one (1) final completion inspection of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make recommendation of final payment;
- 8.2. 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
  - 8.2.1. SUBMITTAL REVIEW. The Professional shall review all contractor submittals for compliance with the design concepts to include the following:
    - 8.2.1.1. shop drawings (up to twenty (20));
    - 8.2.1.2. contractor survey verification data (up to twelve (12));
    - 8.2.1.3. requests for information (up to six (6));
    - 8.2.1.4. schedules (up to twelve (12));
    - 8.2.1.5. certified test reports (up to four (4)); and
    - 8.2.1.6. operation and maintenance manuals (up to two (2)).
- 8.3. CHANGE ORDERS. The Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project as described in this Section.
  - 8.3.1. The Professional shall establish procedures and document construction changes required to implement modifications to the Project.
  - 8.3.2. 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.
  - 8.3.3. The Professional shall prepare field/change order documentation for up to six (6) field orders for minor alterations and up to two (2) change orders.
  - 8.3.4. 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.

- 8.4. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for NBU and contractor during the course of construction per the schedule assumed herein.
- 8.5. 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 of the Project per the schedule assumed herein. Twelve (12) pay estimate reviews are expected.
- 8.6. CLOSE-OUT DOCUMENTS
- 8.6.1. 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 sixty (60) days of final completion.
- 8.6.2. NBU CAD RECORD DRAWINGS: The Professional shall prepare the record drawing CAD deliverables as outlined in the NBU Water and Wastewater Record Drawing/CAD/GPS Deliverables Submission Standards and Requirements document.
- 8.6.3. The Professional shall prepare individual addition and retirement sheets for each piece of above-ground equipment, and one sheet each for below-ground water and/or wastewater piping. The Professional shall provide up to a total of (10) addition and retirement sheets within thirty (30) days after substantial completion by the contractor. Information on each sheet includes, but is not limited to, the following:
- 8.6.3.1. equipment identification;
  - 8.6.3.2. location;
  - 8.6.3.3. network structure;
  - 8.6.3.4. warranty date;
  - 8.6.3.5. manufacturer;
  - 8.6.3.6. model;
  - 8.6.3.7. serial number;
  - 8.6.3.8. rated flow (if applicable); and
  - 8.6.3.9. diameter (if applicable).
- 8.7. DELIVERABLES. The Professional shall provide the following deliverables to NBU:
- 8.7.1. one (1) Project site visit memo per site visit, which must be submitted (i) in PDF format; (ii) on FNI Manager; and (iii) no later than three (3) days after each site visit;
  - 8.7.2. responses to contractor submittals, requests for information, and other documents within fourteen (14) days of receipt;

- 8.7.3. one (1) PDF electronic copy and one (1) georeferenced .dwg file of record drawings in accordance with NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor and provided to NBU within sixty (60) days of receipt of record drawings from the contractor or final completion; and
- 8.7.4. one (1) PDF electronic copy of addition and retirement sheets as described in section 8.6.3.

**SUPPLEMENTAL SERVICES**

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

**TIME OF COMPLETION**

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

**Table 1**

<b>Project Milestones</b>	<b>Start Date</b>	<b>End Date</b>
Notice to Proceed	9/16/24	
Preliminary Engineering Phase	9/16/24	12/13/24
Preliminary Design Phase	12/14/24	3/27/25
90% Final Design Phase	3/28/25	6/30/25
100% Final Design Phase	7/1/25	10/1/25
Bid Phase	10/2/25	2/2/26
Construction Phase	4/1/26	3/31/27

## 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 agrees to pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$1,021,000 as further described in the table below and made a part of this Agreement.

Task	Cost
Task 1: Project Management	\$89,000
Task 2: Preliminary Engineering Phase	\$112,000
Task 3: Preliminary Design Phase	\$133,000
Task 4: Final Design Phase	\$129,000
Task 5: Field Services	\$377,000
Task 6: Permitting & Stakeholders	\$38,000
Task 7: Bid Phase	\$18,000
Task 8: Construction Phase	\$125,000
<b>Total</b>	<b>\$1,021,000</b>

#### Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$100,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.







**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

**From:** Brent Lundmark      **Reviewed by:** Michael Short, P.E.  
 Water Treatment and      Director of Water Services and  
 Compliance Manager      Compliance

**Submitted by:** Mark Steelman      **Approved by:** Ryan Kelso  
 Chief Operations Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Materials Agreement with Chemtrade Chemicals US LLC for the Purchase of Water and Wastewater Chemicals

## **BACKGROUND**

On March 18, 2024, New Braunfels Utilities (“NBU”) issued a request for proposals (“RFP”) for the purchase and delivery of select water and wastewater chemicals to NBU facilities. The RFP allows NBU to award to one or more respondents for select water and wastewater chemicals.

On April 16, 2024, NBU received nine (9) responses to the RFP during the public bidding process. The Water Treatment and Compliance Division of NBU evaluated the bids and determined that Chemtrade Chemicals US, LLC was the lowest responsible bidder for the purchase and delivery of liquid aluminum sulfate with copper sulfate and liquid aluminum sulfate.

NBU staff requests that the Board of Trustees approve a Materials Agreement with Chemtrade Chemicals US LLC. for the purchase and delivery of the chemicals listed below (the “Agreement”):

1. Liquid Aluminum Sulfate with Copper Sulfate
2. Liquid Aluminum Sulfate

The initial term of the Agreement will be for a period of one (1) year from September 1, 2024, to August 31, 2025. After the expiration of the initial term, the Agreement will automatically renew for four (4) consecutive one-year terms.

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

## **FINANCIAL IMPACT**

The total contract amount for the Agreement with Chemtrade Chemicals US, LLC is \$1,606,950.00 with a not to exceed amount of \$321,390.00 for the initial contract term and \$321,390.00 for each of the additional one-year terms. The Agreement is budgeted with the Water Treatment & Compliance

Operations and Maintenance Budget (“O&M Budget”) for fiscal year 2025 and will be budgeted in the O&M Budgets of fiscal year 2026 through fiscal year 2029.

## **LINK TO STRATEGIC PLAN**

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### **Infrastructure and Technology**

## **EXHIBITS**

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1. Contract with Chemtrade Chemicals US, LLC
2. Summary of Recommendation
3. Bid Tabulation

## MATERIALS AGREEMENT

This **MATERIALS AGREEMENT** (the “Agreement”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **CHEMTRADE CHEMICALS US LLC**, a Delaware limited liability company authorized to transact business in the State of Texas (the “Supplier”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below (the “Effective Date”), and will remain in full force and effect for a period of one (1) year from September 1, 2024, to August 31, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond August 31, 2029.
  
2. **Scope of Services.** NBU desires to purchase certain Utility Products (defined below) from the Supplier in accordance with the provisions of this Agreement. The Supplier shall sell the Utility Products to NBU in accordance with the provisions of this Agreement.
  - A. **Utility Products Defined.** The Utility Products shall mean the present and future goods described in Exhibit A of this Agreement.
  
  - B. **Non-Exclusive Supplier.** The parties agree that this Agreement is nonexclusive and neither restricts NBU’s ability to procure the same or similar materials and services from a different supplier nor limits NBU’s sole discretion to contract for any materials or services with other vendors.
  
  - C. **Subcontractors.** The Supplier is prohibited from utilizing subcontractors to perform its obligations under this Agreement, unless NBU, in its sole discretion, expressly agrees in writing beforehand to allow such named subcontractor to perform the specified work.
  
  - D. **Shipment and Delivery.** During the term of this Agreement, the Supplier will deliver and/or ship the Utility Products to NBU from time to time as requested by NBU according to the following provisions:
    - I. **General.**
      - a. **Place of Delivery.** The Supplier shall deliver the Utility Products to the sites listed in Exhibit A, located in New Braunfels, Texas 78130 (individually a “Facility”) within five (5) business days of NBU’s written request or as otherwise requested by NBU in writing from time to time.

- b. Supplier to Package Utility Products. The Supplier shall prepare and package all Utility Products in accordance with good commercial practice so that they are delivered free of damage and in original condition. Each shipping container shall be clearly and permanently marked as follows:
1. the Supplier's name and address;
  2. container number and total number of containers (e.g., box 1 of 4 boxes); and
  3. container number bearing the packing slip.
- c. No Packing, Crating Charges. No charges will be allowed for packing, crating, or carriage unless agreed to in writing by NBU prior to shipment and/or delivery of the Utility Products. NBU's inventory of the Utility Products at the time of delivery, including without limitation, count or weight, shall be conclusive on shipments that are not marked as described in Section 2.D.I.b.
- d. Title, Risk of Loss, and Returns. Title and risk of loss of the Utility Products shall not pass to NBU until NBU actually receives and takes possession of the Utility Products. All deliveries shall be F.O.B. destination. Cost of all return shipments, for whatever reason returned, shall be borne by the Supplier with title and risk of loss passing at NBU's time of shipment, unless otherwise specified by NBU at the time of return.
- e. Inspection. NBU shall have a reasonable time after delivery to inspect the Utility Products. All such items must conform to the specifications described in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. NBU, in its sole discretion, may reject and refuse acceptance of any Utility Products that do not conform to such specifications. NBU shall notify the Supplier of such rejection either by (i) providing notice in writing or (ii) returning the Utility Products to the Supplier at the Supplier's expense and risk. All returned Utility Products shall be F.O.B. NBU's place of shipment. NBU shall not incur any charges for such rejected Utility Products.
- f. Storage. The Supplier shall not utilize the Facility for the storage of any goods that are not intended for the exclusive use of NBU.

## II. Deliveries.

- a. Unloading Utility Products. The Supplier shall deliver and unload the Utility Products without the assistance of any NBU employees or agents at

the Facility in a manner that is safe and does not result in any harm or damage to the Utility Products, the Facility, or any NBU personnel. In the event NBU, rather than the Supplier, unloads any portion of the Utility Products, the Supplier bears the sole risk of liability for damages to property and personnel arising from such unloading and placement in NBU's point of delivery. NBU employees shall at all times be acting within the course and scope of their employment during such unloading and placement of Utility Products.

- b. Cost of Delivery. The Supplier agrees to load, move, and unload the Utility Products safely on the Supplier trucks as needed at no cost to NBU.
- c. Notification of Delivery. The Supplier shall notify NBU in writing no less than twenty-four (24) hours in advance of all Utility Products to be delivered to the Facility, unless a shipment is to be made on a Monday, in which case the Supplier shall make such notification no later than the preceding Friday. Further, such notification shall also include information regarding any Utility Products that are back ordered and will not be delivered to NBU. The Supplier shall schedule its shipments to arrive on weekdays that are not national or religious holidays between the times of 8:00 a.m. and 3:00 p.m. or as otherwise provided by NBU in writing to the Supplier. NBU may choose, in its sole discretion, to refuse to receive a shipment that does not arrive during the business hours specified herein. The Supplier shall incur all costs associated with delays due to failure of the Supplier to provide the notice required herein, or due to a failure of the shipment to arrive during the business hours specified herein.

III. Urgent Shipments. The Supplier shall deliver all Utility Products identified by NBU as an "Urgent Shipment" to the Facility or other jobsite designated by NBU within five (5) business days of NBU's request. In the event of an Urgent Shipment, the Supplier may use a common carrier to deliver the Utility Products if necessary. To the extent the Supplier is capable of complying with the five (5) business day requirement with no additional cost to it, NBU shall not be charged any additional fee for an Urgent Shipment. If the Supplier is only capable of delivering an Urgent Shipment within the required five (5) business days by incurring additional costs for expedited delivery, then the Supplier shall have the right to reimbursement from NBU for the limited additional actual cost of Supplier's freight or delivery. NBU may agree to accept an Urgent Shipment at times other than weekdays during normal business hours, but the Supplier shall provide NBU as much advance notice of projected time of arrival and the projected additional cost, if any, as may be possible under the circumstances.

IV. Failure to Deliver/Ship Utility Products.

- a. Inability to Meet Contractual Obligations. In the event that the Supplier is unable to deliver Utility Products as requested by NBU pursuant to this

Agreement and within the time required by NBU for any reason whatsoever, NBU may purchase said Utility Products from a third party(s) without any further payment or other obligation to the Supplier for such Utility Products and said purchase shall not be deemed to be a breach of the terms of this Agreement. In the event that Utility Products are needed for an emergency or in a manner that is not in the normal course of business, NBU shall inform the Supplier of that fact as soon as reasonably practicable.

- b. Force Majeure. The Supplier shall not be liable for delay or default in delivery resulting from any unforeseeable cause beyond the Supplier's reasonable control, including, but not limited to, governmental action, epidemic, pandemic, fire, damage or destruction of goods, wars (declared or undeclared), acts of terrorism, and acts of God (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the time for the Supplier's performance shall be extended reasonably and NBU and the Supplier shall adjust all affected dates accordingly. If NBU finds the affected dates unsatisfactory, NBU may purchase Utility Products from a third party(s) until the Supplier is able to perform its obligations hereunder. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement.

### 3. Compensation.

- A. Amount. NBU shall pay the amount set forth in Exhibit B to the Supplier for the Utility Products provided that NBU accepts such items after inspection pursuant to Section 2.D.I.e.
- B. Billing Period. NBU shall pay the Supplier within thirty (30) days after receipt and NBU approval of invoices. All invoices shall document the Utility Products delivered to, and accepted by, NBU, the date of delivery, and other details necessary to justify payment.
- C. Taxes. NBU is exempt from all city, state, and federal excise taxes. The Supplier shall not include taxes on its invoice. The NBU tax identification number is 1-74-6001783-7.

### 4. Warranties.

- A. With respect to the Utility Products manufactured by Supplier, the Supplier expressly warrants that the Utility Products covered hereunder shall be free of defects in workmanship and shall strictly conform to the standards articulated in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. These warranties shall be in addition to all warranties, express, implied, or statutory. All warranties shall inure to the benefit of NBU, its customers, and subsequent owners of items or services covered hereunder. A failure of NBU to discover or reject Utility Products that are not supplied in accordance with this

Agreement shall neither be deemed an acceptance thereof nor a waiver of a claim of a defect therein. No payment or use of goods provided by the Supplier shall be construed as an acceptance of the Utility Products that are not strictly in accordance with the specifications in this Agreement.

- B. With respect to the Utility Products manufactured by a party other than the Supplier, the Supplier hereby assigns to NBU all product warranties received from manufacturers and suppliers with respect to the Utility Products the Supplier sells to NBU pursuant to this Agreement. The Supplier further warrants that it will transfer good and marketable title to the Utility Products to NBU free and clear of all liens, claims, and encumbrances.
- I. Quality. For purposes of this Section, the Supplier is a reseller of the Utility Products (“Supplier-Reseller”) and as such does not provide a warranty for the Utility Products it supplies hereunder. Notwithstanding the foregoing, the Supplier-Reseller shall pass through to NBU any transferable manufacturer’s standard warranties with respect to the Utility Products purchased hereunder. The Supplier-Reseller makes no warranty on any item provided/sold to NBU beyond the warranties of the manufacturer of said item, except that Supplier-Reseller warrants that it will transfer good and marketable title to the Utility Products to NBU free and clear of all liens, claims, and encumbrances in the same condition as the Utility Products were in when they came into the possession of Supplier-Reseller.
  - II. Infringement. The Supplier-Reseller is a reseller of Utility Products and as such does not provide a warranty against infringement for the Utility Products it supplies hereunder. Notwithstanding the foregoing, the Supplier-Reseller shall pass through to NBU any transferable manufacturer’s warranties against infringement with respect to the Utility Products purchased hereunder and shall cooperate with NBU in connection with any such infringement claim arising from the Utility Products.
  - III. Compliance. The Supplier-Reseller hereby passes on to NBU any manufacturer’s warranties that Utility Products shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Utility Products are subject. The Supplier-Reseller shall execute and deliver to NBU any documents as may be required to effectuate or to provide evidence of such compliance.
  - IV. Disclaimer. **EXCEPT AS PROVIDED HEREIN, THE SUPPLIER-RESELLER EXCLUDES AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

## 5. Insurance.

### A. General.

- I. Insurer Qualifications. Without limiting any obligations or liabilities of the Supplier, the Supplier shall purchase and maintain, at its own expense, the insurance type and coverage specified herein with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A-VII or better 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.
  - a. Coverage Term. All insurance required herein shall be maintained in full force and effect until this Agreement is terminated.
  - b. Additional Insured. The Supplier shall add NBU, its agents, representatives, officers, directors, officials, and employees as an additional insured (CG 2010 1001 or an equivalent on the general liability policy) on all required insurance policies, except Worker's Compensation insurance, for claims arising out of the performance of this Agreement. Any coverage afforded to the additional insured shall be primary and non-contributory.
  - c. Waiver of Subrogation. All policies shall contain a waiver of right of recovery (subrogation) against NBU, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the performance of any services under this Agreement. The Supplier shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
  - d. 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, nor reduce the required amounts of, the policy limits provided to NBU. The Supplier shall be solely responsible for any such deductible or self-insured retention amount.
  - e. Subcontractors. If NBU authorizes any work under this Agreement to be performed by a subcontractor of the Supplier in any way, such authorization shall not reduce or limit the Supplier's liability, indemnifications, warranties, insurance requirements, or any other obligation, term or condition arising from this Agreement. If NBU authorizes any such work under this Agreement to be performed by a subcontractor of the Supplier, the Supplier 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 Supplier. The Supplier shall be responsible for executing any agreements with its



subcontractors and obtaining certificates of insurance verifying the insurance requirements.

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

a. Workers' Compensation and Employer's Liability Insurance. The Supplier shall maintain Worker's Compensation and Employers' Liability insurance to cover all of its own personnel engaged in performing services for NBU under this Agreement in not less than the following amounts:

1. Workmen's Compensation – Texas Statutory Minimum Limit; and
2. Employers' Liability – \$1,000,000, each accident, policy limit and each employee.

b. Commercial General Liability. The Supplier also agrees to maintain Commercial General Liability insurance to cover claims for damages resulting from bodily injury, death, or property damage from accidents arising in the course of work performed under this Agreement in not less than the following amounts:

1. \$1,000,000 each occurrence; and
2. \$2,000,000 aggregate.

The Commercial General Liability Policy shall be of an "occurrence" type policy. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded.

c. Auto Liability. The Supplier shall maintain Automobile Liability insurance on its owned, hired, and non-owned vehicles assigned to or used in the course of work performed under this Agreement in not less \$2,000,000 combined single.

III. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Supplier shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance

requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Supplier's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

IV. Cancelation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed except upon a minimum of thirty (30) days' prior written notice to NBU.

6. **Term and Termination.** Either party may terminate this Agreement at any time to the limited extent described in this Section.

A. **60-day Termination.** Either party may terminate this Agreement, with or without cause, upon at least sixty (60) days advance written notice of termination (a "60-day Termination"). Upon delivering a notice for a 60-day Termination to the Supplier, NBU shall use commercially reasonable efforts to purchase and pay for all Utility Products that NBU accepts as of the date of such termination in the normal course of business under this Agreement. Further, NBU shall use commercially reasonable efforts to purchase all Utility Products that the Supplier has in its inventory at such date of termination that (i) are exclusively used by or designed for NBU and (ii) the Supplier acquired as a consequence of a written notice from NBU indicating that NBU would need a specific number of such Utility Products in the future (items meeting both such criteria being referred to herein as the "Inventory Items"). NBU shall only be obligated to purchase a maximum of the specific number of such Inventory Items indicated in such written notice that NBU has accepted after inspection of the Utility Products in connection with Section 2.D.I.e. The purchase price for any such items shall be no greater than the price set forth herein. In the event the Supplier has failed to provide the Utility Products to NBU within the time periods specified by NBU, NBU may purchase the Utility Products from other suppliers and sources without any liability to the Supplier and without any obligation to purchase the Utility Products from the Supplier as described in this Section.

B. **Insolvency or Bankruptcy.** NBU may immediately terminate this Agreement upon written notice to the Supplier if the Supplier becomes insolvent, makes an assignment for the benefit of creditors, or files or is the subject of a petition in bankruptcy. In the event of such termination, NBU shall have no liability to the Supplier.

C. **Annual Appropriations.** NBU may terminate this Agreement pursuant to Section 7 of this Agreement.

7. **Annual Appropriations.** Notwithstanding the five-year term listed above, the Supplier agrees and understands that NBU is a governmental entity and it has projected costs under the terms of this Agreement. NBU expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of NBU are subject to annual appropriation by the NBU Board of Trustees in future years. Accordingly, the above provisions notwithstanding, in the event that NBU fails to appropriate sums to pay any of the Supplier's obligations under this Agreement, and due to such failure to appropriate, fails to pay such obligations, the Supplier's

sole option will be to terminate this Agreement. NBU agrees to give the Supplier a minimum of thirty (30) days' written notice if NBU must terminate the Agreement because of any non-appropriation. In the event of such termination, NBU shall have no liability to the Supplier.

8. **Indemnification.** THE SUPPLIER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU, ITS BOARD MEMBERS, OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, AND LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF THE SUPPLIER, ITS REPRESENTATIVES, AGENTS, OR EMPLOYEES IN ANY MANNER RELATED TO THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH IN THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.

9. **Miscellaneous.**

A. **Assignment.** This Agreement shall not be assignable by either party without the prior written consent of the other party. If consent to an assignment is required, NBU reserves the right to refuse, in its sole discretion, to consent to the assignment by the Supplier.

B. **Notice.** Any notice or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by certified mail, postage prepaid, return receipt requested, or overnight courier addressed as herein below provided, until another address or addresses shall be furnished in writing to the other party.

**If to NBU:**

New Braunfels Utilities  
Attn: Water Treatment and Compliance Manager  
1922 Kuehler  
New Braunfels, Texas 78130

With a copy to:

New Braunfels Utilities  
355 FM 306  
New Braunfels, Texas 78130  
Attention: Purchasing Manager

**If to the Supplier:**

Chemtrade Chemicals US LLC  
90 East Halsey Road Suite 200  
Parsippany, NJ 07054

- C. Entire Agreement; Conflicting Terms. This Agreement sets forth the entire understanding between the parties regarding the subject matter hereof and shall not be altered or modified in any way other than by a written document executed by both parties. All Exhibits referred to in this Agreement and attached hereto are essential provisions of this Agreement, are to be construed in harmony with each to give purpose and effect to the fulfillment of the obligations and responsibilities of the parties and are incorporated herein by this reference as if set out herein verbatim. 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.
- D. No Waiver. Failure of NBU or the Supplier to insist on any one or more instances on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of that covenant or any other covenant.
- E. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- F. Governing Law and Venue. This Agreement shall be governed and controlled by the laws of the State of Texas, considered without regard to choice of law rules. Venue of any claim, cause of action, or lawsuit based in whole or in part upon this Agreement shall be in Comal County, Texas.
- G. State or Federal Laws. This Agreement is subject to all applicable federal and state laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. Each provision and clause required by state and federal law to be inserted into this Agreement shall be deemed to be included herein and the Agreement shall be read and enforced as though each were included herein.
- H. No Third Party Beneficiary. The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.
- I. 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 five (5) business 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.

- J. **Immunity not Waived or Limited.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OR LIMITATION IN ANY MANNER BY NBU OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT NBU MAY HAVE BY OPERATION OF LAW.
- K. **Acknowledgement and Authority.** The Supplier acknowledges that it has read this Agreement and is familiar with and fully understands the terms and obligations set out in this Agreement and the Supplier's obligations and responsibilities for performance. The Supplier further acknowledges that any questions concerning the terms and conditions of this Agreement have been satisfactorily explained to the Supplier. The person or persons executing and signing this Agreement on behalf of the Supplier represent and guarantee that they have been fully authorized by the Supplier to execute this Agreement and to legally bind the Supplier to all the terms and provisions of this Agreement.
- L. **Multiple Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- M. **Disclosure of Business Relationships/Affiliations: Conflict of Interest Questionnaire.** The Supplier represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.
- N. **Independent Contractor.** The Supplier acknowledges that the Supplier is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Supplier shall not represent, either expressly or through implication, that the Supplier 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 Supplier.
- O. **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 Supplier.
- P. **Confidentiality of Records.** The Supplier 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 Supplier's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Supplier's duties under this Agreement. Persons requesting such information should be referred to NBU. The Supplier also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Supplier as needed for the performance of duties under this Agreement.

- Q. Right to Audit. NBU shall have the right to examine and audit the books and records of the Supplier with regard to the Utility Products, 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.
- R. 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.
- S. 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.
- T. Prohibition on Contracts with Companies Boycotting Israel. The Supplier hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended.

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

- U. Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited. The Supplier 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 Supplier 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 Supplier understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Supplier and exists to make a profit.

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

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

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

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

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as

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

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

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

- Y. Texas Public Information Act. The Supplier 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 Supplier agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU’s audit rights in Section 9(Q).

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 Supplier 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 Supplier 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 Supplier; 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 Supplier agrees that the Agreement can be terminated if the Supplier knowingly or intentionally fails to comply with a requirement of that subchapter.



- Z. 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 is intentionally left blank.]*

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

**NBU:**

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

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

**SUPPLIER:**

**CHEMTRADE CHEMICALS US LLC,**  
a Delaware limited liability company authorized  
to transact business in the State of Texas

By: Elizabeth Ryno  
Name: Elizabeth Ryno  
Title: Marketing Specialist

## Exhibit A

### A. UTILITY PRODUCTS

The Supplier shall provide the following Utility Products to NBU at the times specified by NBU in the Agreement:

Description	Container Size	Estimated Annual # of Containers
Liquid, Aluminum Sulfate Liquid Aluminum, Papermakers Aluminum Inorganic Salt A12 (SO <sub>4</sub> ) <sub>3</sub> (14H <sub>2</sub> O) with 2% Copper Sulfate American Water Works Association ("AWWA") Spec. B703-89	Approx. 47,000 lb/Load	6 Truck Loads
Liquid Aluminum Sulfate Hydrate 16828-12-9	Approx 23,000 lb /Load	60 Truck Loads

### B. GENERAL CONDITIONS

1. The quantities of chemicals listed are estimates only. NBU does not guarantee specific quantities.
2. The Supplier shall provide analysis sheets with each delivery.
3. All chemicals shall conform to the standards of the American National Standards Institute/National Science Foundation Standard 60 for direct additives and Standard 61 for indirect additives, as applicable to each Utility Product.
4. The Supplier shall off-load all materials at the designated delivery sites as directed by NBU.
5. The Utility Products supplied to NBU under the Agreement shall be made from the raw product Alumina Trihydrate and be of a quality suitable to NBU.

### C. DELIVERY SITES

1. The Utility Products will be delivered to the following Facilities, or as otherwise specified by NBU:
  - a) **Aluminum with Copper Sulfate Drop Sites**
    - i) Surface Water Treatment Facilities 2356 Gruene Road
  - b) **Aluminum Sulfate Hydrate Drop Sites**
    - i) South Kuehler Wastewater Treatment Facilities 2055 Coco Lane
    - ii) North Kuehler Wastewater Treatment Facilities 1922 Kuehler Rd
    - iii) Sam C. McKenzie Water Reclamation Facility 400 Elley Lane
    - iv) Gruene Road Water Reclamation Facility 1322 Loop 337

**EXHIBIT B**

NBU shall pay the Supplier for Utility Products not to exceed \$321,390 per year and not to exceed \$1,606,950 for the duration of this Agreement.

Pricing for awarded treatment chemicals is provided for informational purposes.

<b>Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Cost</b>	<b>Extended Price</b>
1	Liquid, Aluminum Sulfate Liquid Aluminum, Papermakers Aluminum Inorganic Salt A12 (SO <sub>4</sub> ) <sub>3</sub> (14H <sub>2</sub> O) with 2% Copper Sulfate AWWA Spec. B703-89	LB	282,000	\$0.147	\$41,454.00
2	Liquid Aluminum Sulfate Hydrate 16828-12-9	LB	2,880,000	\$.0972	\$279,936.00
	TOAL PRICE				\$321,390.00

**EVALUATION REPORT**  
**WATER & WASTEWATER TREATMENT CHEMICALS**

**EXECUTIVE SUMMARY**

**MAY 06, 2024**

The Evaluation Committee (EC) evaluated the qualification proposals by nine (9) firms in response to the Request for Proposals (“RFP”) for Water & Wastewater Treatment Chemicals in accordance with pre-established evaluation procedures. These firms are:

Brenntag Southwest Inc.  
Chemrite, Inc.  
Chemtrade Chemicals US LLC  
DPC Industries  
Hawkins Inc.  
Penco, Inc.  
Shannon Chemicals Corp.  
Univar USA Inc.  
USALCO, LLC

There were no vendors that bid on all items in the bid; therefore the RFP was evaluated by line item and each line item will be awarded separately.

**Process Followed**

The EC is comprised of NBU voting members. The EC has reviewed and evaluated the firms' responses and qualifications in accordance with the Evaluation Documents, which define policies and procedures to be followed in evaluating each proposal. The evaluation is based upon the following criteria:

- Firm’s Overall Experience and Experience with Similar Projects – 40 points
- Proposal Pricing – 35 points
- Project Approach and Response Time – 25 points

As indicated in the RFP, it is NBU’s intent to award this contract to multiple respondents.

The Summary of Findings will detail the rankings of each item.

## SUMMARY OF FINDINGS

The evaluation resulted in the following highest ranked firm for each item:

Item 1: The highest ranked firm was Chemtrade Chemicals US LLC. For this item, both Univar USA and USALCO LLC were lower in price; however, Univar USA scored low in the Firms Overall Experience and Project Approach because they did not provide sufficient information as requested in the evaluation criteria. USALCO scored slightly lower than Chemtrade in experience and approach, one evaluator also noted some past problems with deliveries.

Item 2: The highest ranked firm was Pencco Inc. They were also the lowest priced for this item.

Item 3: The highest ranked firm was Chemtrade Chemicals US LLC. They were also the lowest priced for this item.

Item 4: The highest ranked firm was Brenntag Southwest. They were also the lowest priced for this item.

Item 5: The highest ranked firm was Brenntag Southwest. Univar USA was the lowest price for this item; however, Univar USA scored low in the Firms Overall Experience and Project Approach because they did not provide sufficient information as requested in the evaluation criteria.

Item 6: The highest ranked firm was Brenntag Southwest. They were also the lowest priced for this item.

Item 7: The highest ranked firm was Brenntag Southwest. Univar USA was the lowest price for this item; however, Univar USA scored low in the Firms Overall Experience and Project Approach because they did not provide sufficient information as requested in the evaluation criteria.

Based on the evaluation above, the EC recommends award to the following items:

Item 1: Chemtrade Chemicals US LLC

Item 2: Pencco Inc.

Item 3: Chemtrade Chemicals US LLC

Item 4: Brenntag Southwest

Item 5: Brenntag Southwest

Item 6: Brenntag Southwest

Item 7: Brenntag Southwest

RFP 24-0055

New Braunfels Utilities Water and Wastewater Treatment Chemicals

Description	Quantity	Unit	Unit Cost/Et. Amt.	Brenntag Southwest Inc.	Chemrite, Inc.
Liquid, Aluminum Sulfate Liquid Aluminum, Papermakers Aluminum Inorganic Salt A12 (SO4) 3 (14H20) with 2% Copper Sulfate AWWA Spec. B703-89	282,000	EA	Unit Cost	No Bid	No Bid
			Ext. Amt		



**Meeting Date:** August 29, 2024      **Agenda Type:** Consent Items for Action

**From:** Brent Lundmark      **Reviewed by:** Michael Short, P.E.  
 Water Treatment and      Director of Water Services and  
 Compliance Manager      Compliance

**Submitted by:** Mark Steelman      **Approved by:** Ryan Kelso  
 Chief Operations Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Authorize the CEO or His Designee to Negotiate and Execute a Materials Agreement with Pencco Inc. for the Purchase of Water and Wastewater Chemicals

## **BACKGROUND**

On March 18, 2024, New Braunfels Utilities (“NBU”) issued a request for proposals (“RFP”) for the purchase and delivery of select water and wastewater chemicals to NBU facilities. The RFP allows NBU to award to one or more respondents for select water and wastewater chemicals.

On April 16, 2024, NBU received nine (9) responses to the RFP during the public bidding process. The Water Treatment and Compliance Division of NBU evaluated the bids and determined that Pencco, Inc. was the lowest responsible bidder for the purchase and delivery of liquid ammonium sulfate.

NBU staff requests that the Board of Trustees approve a Materials Agreement with Pencco, Inc. for the purchase and delivery of the chemicals listed below (the “Agreement”):

### 1. Liquid Ammonium Sulfate

The initial term of the Agreement will be for a period of one (1) year from September 1, 2024, to August 31, 2025. After the expiration of the initial term, the Agreement will automatically renew for four (4) consecutive one-year terms.

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

## **FINANCIAL IMPACT**

The total contract amount for the Agreement with Pencco, Inc. is \$445,912.50, with a not-to-exceed amount of \$89,182.50 for the initial contract term and \$89,182.50 for each of the additional one-year terms. The Agreement is budgeted with the Water Treatment & Compliance Operations and Maintenance Budget (“O&M Budget”) for fiscal year 2025 and will be budgeted in the O&M Budgets of fiscal year 2026 through fiscal year 2029.



**LINK TO STRATEGIC PLAN**

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**Infrastructure and Technology**

**EXHIBITS**

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1. Contract with Pencco, Inc.
2. Summary of Recommendation
3. Bid Tabulation

## MATERIALS AGREEMENT

This **MATERIALS AGREEMENT** (the “Agreement”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **PENCCO INC.**, a Texas corporation (the “Supplier”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below (the “Effective Date”), and will remain in full force and effect for a period of one (1) year from September 1, 2024, to August 31, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond August 31, 2029.
  
2. **Scope of Services.** NBU desires to purchase certain Utility Products (defined below) from the Supplier in accordance with the provisions of this Agreement. The Supplier shall sell the Utility Products to NBU in accordance with the provisions of this Agreement.
  - A. **Utility Products Defined.** The Utility Products shall mean the present and future goods described in Exhibit A of this Agreement.
  
  - B. **Non-Exclusive Supplier.** The parties agree that this Agreement is nonexclusive and neither restricts NBU’s ability to procure the same or similar materials and services from a different supplier nor limits NBU’s sole discretion to contract for any materials or services with other vendors.
  
  - C. **Subcontractors.** The Supplier is prohibited from utilizing subcontractors to perform its obligations under this Agreement, unless NBU, in its sole discretion, expressly agrees in writing beforehand to allow such named subcontractor to perform the specified work.
  
  - D. **Shipment and Delivery.** During the term of this Agreement, the Supplier will deliver and/or ship the Utility Products to NBU from time to time as requested by NBU according to the following provisions:
    - I. **General.**
      - a. **Place of Delivery.** The Supplier shall deliver the Utility Products to the sites listed in Exhibit A, located in New Braunfels, Texas 78130 (individually a “Facility”) within fourteen (14) business days of NBU’s written request or as otherwise requested by NBU in writing from time to time.

- b. Supplier to Package Utility Products. The Supplier shall prepare and package all Utility Products in accordance with good commercial practice so that they are delivered free of damage and in original condition. Each shipping container shall be clearly and permanently marked as follows:
1. the Supplier's name and address;
  2. container number and total number of containers (e.g., box 1 of 4 boxes); and
  3. container number bearing the packing slip.
- c. No Packing, Crating Charges. No charges will be allowed for packing, crating, or carriage unless agreed to in writing by NBU prior to shipment and/or delivery of the Utility Products. NBU's inventory of the Utility Products at the time of delivery, including without limitation, count or weight, shall be conclusive on shipments that are not marked as described in Section 2.D.I.b.
- d. Title, Risk of Loss, and Returns. Title and risk of loss of the Utility Products shall not pass to NBU until NBU actually receives and takes possession of the Utility Products. All deliveries shall be F.O.B. destination. Cost of all return shipments, for whatever reason returned, shall be borne by the Supplier with title and risk of loss passing at NBU's time of shipment, unless otherwise specified by NBU at the time of return.
- e. Inspection. NBU shall have a reasonable time after delivery to inspect the Utility Products. All such items must conform to the specifications described in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. NBU, in its sole discretion, may reject and refuse acceptance of any Utility Products that do not conform to such specifications. NBU shall notify the Supplier of such rejection either by (i) providing notice in writing or (ii) returning the Utility Products to the Supplier at the Supplier's expense and risk. All returned Utility Products shall be F.O.B. NBU's place of shipment. NBU shall not incur any charges for such rejected Utility Products.
- f. Storage. The Supplier shall not utilize the Facility for the storage of any goods that are not intended for the exclusive use of NBU.

## II. Deliveries.

- a. Unloading Utility Products. The Supplier shall deliver and unload the Utility Products without the assistance of any NBU employees or agents at the Facility in a manner that is safe and does not result in any harm or

damage to the Utility Products, the Facility, or any NBU personnel. In the event NBU, rather than the Supplier, unloads any portion of the Utility Products, the Supplier bears the sole risk of liability for damages to property and personnel arising from such unloading and placement in NBU's point of delivery. NBU employees shall at all times be acting within the course and scope of their employment during such unloading and placement of Utility Products.

- b. Cost of Delivery. The Supplier agrees to load, move, and unload the Utility Products safely on the Supplier trucks as needed at no cost to NBU.
- c. Notification of Delivery. The Supplier shall notify NBU in writing no less than twenty-four (24) hours in advance of all Utility Products to be delivered to the Facility, unless a shipment is to be made on a Monday, in which case the Supplier shall make such notification no later than the preceding Friday. Further, such notification shall also include information regarding any Utility Products that are back ordered and will not be delivered to NBU. The Supplier shall schedule its shipments to arrive on weekdays that are not national or religious holidays between the times of 8:00 a.m. and 3:00 p.m. or as otherwise provided by NBU in writing to the Supplier. NBU may choose, in its sole discretion, to refuse to receive a shipment that does not arrive during the business hours specified herein. The Supplier shall incur all costs associated with delays due to failure of the Supplier to provide the notice required herein, or due to a failure of the shipment to arrive during the business hours specified herein.

III. Urgent Shipments. The Supplier shall deliver all Utility Products identified by NBU as an "Urgent Shipment" to the Facility or other jobsite designated by NBU within five (5) business days of NBU's request. In the event of an Urgent Shipment, the Supplier may use a common carrier to deliver the Utility Products if necessary. To the extent the Supplier is capable of complying with the five (5) business day requirement with no additional cost to it, NBU shall not be charged any additional fee for an Urgent Shipment. If the Supplier is only capable of delivering an Urgent Shipment within the required five (5) business days by incurring additional costs for expedited delivery, then the Supplier shall have the right to reimbursement from NBU for the limited additional actual cost of Supplier's freight or delivery. NBU may agree to accept an Urgent Shipment at times other than weekdays during normal business hours, but the Supplier shall provide NBU as much advance notice of projected time of arrival and the projected additional cost, if any, as may be possible under the circumstances.

IV. Failure to Deliver/Ship Utility Products.

- a. Inability to Meet Contractual Obligations. In the event that the Supplier is unable to deliver Utility Products as requested by NBU pursuant to this Agreement and within the time required by NBU for any reason whatsoever,

NBU may purchase said Utility Products from a third party(s) without any further payment or other obligation to the Supplier for such Utility Products and said purchase shall not be deemed to be a breach of the terms of this Agreement. In the event that Utility Products are needed for an emergency or in a manner that is not in the normal course of business, NBU shall inform the Supplier of that fact as soon as reasonably practicable.

- b. **Force Majeure.** The Supplier shall not be liable for delay or default in delivery resulting from any unforeseeable cause beyond the Supplier's reasonable control, including, but not limited to, governmental action, epidemic, pandemic, fire, damage or destruction of goods, wars (declared or undeclared), acts of terrorism, and acts of God (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the time for the Supplier's performance shall be extended reasonably and NBU and the Supplier shall adjust all affected dates accordingly. If NBU finds the affected dates unsatisfactory, NBU may purchase Utility Products from a third party(s) until the Supplier is able to perform its obligations hereunder. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement.

### 3. **Compensation.**

- A. **Amount.** NBU shall pay the amount set forth in Exhibit B to the Supplier for the Utility Products provided that NBU accepts such items after inspection pursuant to Section 2.D.I.e.
- B. **Billing Period.** NBU shall pay the Supplier within thirty (30) days after receipt and NBU approval of invoices. All invoices shall document the Utility Products delivered to, and accepted by, NBU, the date of delivery, and other details necessary to justify payment.
- C. **Taxes.** NBU is exempt from all city, state, and federal excise taxes. The Supplier shall not include taxes on its invoice. The NBU tax identification number is 1-74-6001783-7.

### 4. **Warranties.**

- A. With respect to the Utility Products manufactured by Supplier, the Supplier expressly warrants that the Utility Products covered hereunder shall be free of defects in workmanship and shall strictly conform to the standards articulated in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. These warranties shall be in addition to all warranties, express, implied, or statutory. All warranties shall inure to the benefit of NBU, its customers, and subsequent owners of items or services covered hereunder. A failure of NBU to discover or reject Utility Products that are not supplied in accordance with this Agreement shall neither be deemed an acceptance thereof nor a waiver of a claim of a

defect therein. No payment or use of goods provided by the Supplier shall be construed as an acceptance of the Utility Products that are not strictly in accordance with the specifications in this Agreement.

- B. With respect to the Utility Products manufactured by a party other than the Supplier, the Supplier hereby assigns to NBU all product warranties received from manufacturers and suppliers with respect to the Utility Products the Supplier sells to NBU pursuant to this Agreement. The Supplier further warrants that it will transfer good and marketable title to the Utility Products to NBU free and clear of all liens, claims, and encumbrances.
- I. **Quality.** For purposes of this Section, the Supplier is a reseller of the Utility Products (“Supplier-Reseller”) and as such does not provide a warranty for the Utility Products it supplies hereunder. Notwithstanding the foregoing, the Supplier-Reseller shall pass through to NBU any transferable manufacturer’s standard warranties with respect to the Utility Products purchased hereunder. The Supplier-Reseller makes no warranty on any item provided/sold to NBU beyond the warranties of the manufacturer of said item, except that Supplier-Reseller warrants that it will transfer good and marketable title to the Utility Products to NBU free and clear of all liens, claims, and encumbrances in the same condition as the Utility Products were in when they came into the possession of Supplier-Reseller.
  - II. **Infringement.** The Supplier-Reseller is a reseller of Utility Products and as such does not provide a warranty against infringement for the Utility Products it supplies hereunder. Notwithstanding the foregoing, the Supplier-Reseller shall pass through to NBU any transferable manufacturer’s warranties against infringement with respect to the Utility Products purchased hereunder and shall cooperate with NBU in connection with any such infringement claim arising from the Utility Products.
  - III. **Compliance.** The Supplier-Reseller hereby passes on to NBU any manufacturer’s warranties that Utility Products shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Utility Products are subject. The Supplier-Reseller shall execute and deliver to NBU any documents as may be required to effectuate or to provide evidence of such compliance.
  - IV. **Disclaimer.** EXCEPT AS PROVIDED HEREIN, THE SUPPLIER-RESELLER EXCLUDES AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.]

## 5. **Insurance.**

### A. **General.**

- I. **Insurer Qualifications.** Without limiting any obligations or liabilities of the Supplier, the Supplier shall purchase and maintain, at its own expense, the insurance type and coverage specified herein with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A-VII or better 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.
  - a. **Coverage Term.** All insurance required herein shall be maintained in full force and effect until this Agreement is terminated.
  - b. **Additional Insured.** The Supplier shall add NBU, its agents, representatives, officers, directors, officials, and employees as an additional insured (CG 2010 1001 or an equivalent on the general liability policy) on all required insurance policies, except Worker's Compensation insurance, for claims arising out of the performance of this Agreement. Any coverage afforded to the additional insured shall be primary and non-contributory.
  - c. **Waiver of Subrogation.** All policies shall contain a waiver of right of recovery (subrogation) against NBU, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the performance of any services under this Agreement. The Supplier shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
  - d. **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, nor reduce the required amounts of, the policy limits provided to NBU. The Supplier shall be solely responsible for any such deductible or self-insured retention amount.
  - e. **Subcontractors.** If NBU authorizes any work under this Agreement to be performed by a subcontractor of the Supplier in any way, such authorization shall not reduce or limit the Supplier's liability, indemnifications, warranties, insurance requirements, or any other obligation, term or condition arising from this Agreement. If NBU authorizes any such work under this Agreement to be performed by a subcontractor of the Supplier, the Supplier 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 Supplier. The Supplier shall be responsible for executing any agreements with its

subcontractors and obtaining certificates of insurance verifying the insurance requirements.

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

a. **Workers' Compensation and Employer's Liability Insurance.** The Supplier shall maintain Worker's Compensation and Employers' Liability insurance to cover all of its own personnel engaged in performing services for NBU under this Agreement in not less than the following amounts:

1. Workmen's Compensation – Texas Statutory Minimum Limit; and
2. Employers' Liability – \$1,000,000, each accident, policy limit and each employee.

b. **Commercial General Liability.** The Supplier also agrees to maintain Commercial General Liability insurance to cover claims for damages resulting from bodily injury, death, or property damage from accidents arising in the course of work performed under this Agreement in not less than the following amounts:

1. \$1,000,000 each occurrence; and
2. \$2,000,000 aggregate.

The Commercial General Liability Policy shall be of an "occurrence" type policy. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded.

c. **Auto Liability.** The Supplier shall maintain Automobile Liability insurance on its owned, hired, and non-owned vehicles assigned to or used in the course of work performed under this Agreement in not less \$2,000,000 combined single.

III. **Evidence of Insurance.** Prior to the Effective Date of this Agreement, the Supplier shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance



requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Supplier's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

- IV. Cancelation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed except upon a minimum of thirty (30) days' prior written notice to NBU.

6. Term and Termination. Either party may terminate this Agreement at any time to the limited extent described in this Section.
- A. 60-day Termination. Either party may terminate this Agreement, with or without cause, upon at least sixty (60) days advance written notice of termination (a "60-day Termination"). Upon delivering a notice for a 60-day Termination to the Supplier, NBU shall use commercially reasonable efforts to purchase and pay for all Utility Products that NBU accepts as of the date of such termination in the normal course of business under this Agreement. Further, NBU shall use commercially reasonable efforts to purchase all Utility Products that the Supplier has in its inventory at such date of termination that (i) are exclusively used by or designed for NBU and (ii) the Supplier acquired as a consequence of a written notice from NBU indicating that NBU would need a specific number of such Utility Products in the future (items meeting both such criteria being referred to herein as the "Inventory Items"). NBU shall only be obligated to purchase a maximum of the specific number of such Inventory Items indicated in such written notice that NBU has accepted after inspection of the Utility Products in connection with Section 2.D.I.e. The purchase price for any such items shall be no greater than the price set forth herein. In the event the Supplier has failed to provide the Utility Products to NBU within the time periods specified by NBU, NBU may purchase the Utility Products from other suppliers and sources without any liability to the Supplier and without any obligation to purchase the Utility Products from the Supplier as described in this Section.
- B. Insolvency or Bankruptcy. NBU may immediately terminate this Agreement upon written notice to the Supplier if the Supplier becomes insolvent, makes an assignment for the benefit of creditors, or files or is the subject of a petition in bankruptcy. In the event of such termination, NBU shall have no liability to the Supplier.
- C. Annual Appropriations. NBU may terminate this Agreement pursuant to Section 7 of this Agreement.
7. Annual Appropriations. Notwithstanding the five-year term listed above, the Supplier agrees and understands that NBU is a governmental entity and it has projected costs under the terms of this Agreement. NBU expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of NBU are subject to annual appropriation by the NBU Board of Trustees in future years. Accordingly, the above provisions notwithstanding, in the event that NBU fails to appropriate sums to pay any of the Supplier's obligations under this Agreement, and due to such failure to appropriate, fails to pay such obligations, the Supplier's

sole option will be to terminate this Agreement. NBU agrees to give the Supplier a minimum of thirty (30) days' written notice if NBU must terminate the Agreement because of any non-appropriation. In the event of such termination, NBU shall have no liability to the Supplier.

8. **Indemnification.** THE SUPPLIER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU, ITS BOARD MEMBERS, OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, AND LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF THE SUPPLIER, ITS REPRESENTATIVES, AGENTS, OR EMPLOYEES IN ANY MANNER RELATED TO THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH IN THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.

9. **Miscellaneous.**

A. **Assignment.** This Agreement shall not be assignable by either party without the prior written consent of the other party. If consent to an assignment is required, NBU reserves the right to refuse, in its sole discretion, to consent to the assignment by the Supplier.

B. **Notice.** Any notice or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by certified mail, postage prepaid, return receipt requested, or overnight courier addressed as herein below provided, until another address or addresses shall be furnished in writing to the other party.

**If to NBU:**

New Braunfels Utilities  
Attn: Water Treatment and Compliance Manager  
1922 Kuehler  
New Braunfels, Texas 78130

With a copy to:

New Braunfels Utilities  
355 FM 306  
New Braunfels, Texas 78130  
Attention: Purchasing Manager

**If to the Supplier:**

Pencco, Inc.  
PO Box 600  
San Felipe, TX 77473

- C. Entire Agreement; Conflicting Terms. This Agreement sets forth the entire understanding between the parties regarding the subject matter hereof and shall not be altered or modified in any way other than by a written document executed by both parties. All Exhibits referred to in this Agreement and attached hereto are essential provisions of this Agreement, are to be construed in harmony with each to give purpose and effect to the fulfillment of the obligations and responsibilities of the parties and are incorporated herein by this reference as if set out herein verbatim. 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.
- D. No Waiver. Failure of NBU or the Supplier to insist on any one or more instances on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of that covenant or any other covenant.
- E. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- F. Governing Law and Venue. This Agreement shall be governed and controlled by the laws of the State of Texas, considered without regard to choice of law rules. Venue of any claim, cause of action, or lawsuit based in whole or in part upon this Agreement shall be in Comal County, Texas.
- G. State or Federal Laws. This Agreement is subject to all applicable federal and state laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. Each provision and clause required by state and federal law to be inserted into this Agreement shall be deemed to be included herein and the Agreement shall be read and enforced as though each were included herein.
- H. No Third Party Beneficiary. The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.
- I. 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 five (5) business 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.

- J. **Immunity not Waived or Limited.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OR LIMITATION IN ANY MANNER BY NBU OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT NBU MAY HAVE BY OPERATION OF LAW.
- K. **Acknowledgement and Authority.** The Supplier acknowledges that it has read this Agreement and is familiar with and fully understands the terms and obligations set out in this Agreement and the Supplier's obligations and responsibilities for performance. The Supplier further acknowledges that any questions concerning the terms and conditions of this Agreement have been satisfactorily explained to the Supplier. The person or persons executing and signing this Agreement on behalf of the Supplier represent and guarantee that they have been fully authorized by the Supplier to execute this Agreement and to legally bind the Supplier to all the terms and provisions of this Agreement.
- L. **Multiple Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- M. **Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire.** The Supplier represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.
- N. **Independent Contractor.** The Supplier acknowledges that the Supplier is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Supplier shall not represent, either expressly or through implication, that the Supplier 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 Supplier.
- O. **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 Supplier.
- P. **Confidentiality of Records.** The Supplier 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 Supplier's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Supplier's duties under this Agreement. Persons requesting such information should be referred to NBU. The Supplier also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Supplier as needed for the performance of duties under this Agreement.

- Q. **Right to Audit.** NBU shall have the right to examine and audit the books and records of the Supplier with regard to the Utility Products, 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.
- R. **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.
- S. **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.
- T. **Prohibition on Contracts with Companies Boycotting Israel.** The Supplier hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended.

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

- U. **Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited.** The Supplier 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 Supplier 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 Supplier understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Supplier and exists to make a profit.

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

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

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

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

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as

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

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

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

- Y. Texas Public Information Act. The Supplier 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 Supplier agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU’s audit rights in Section 9(Q).

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 Supplier 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 Supplier 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 Supplier; 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 Supplier agrees that the Agreement can be terminated if the Supplier knowingly or intentionally fails to comply with a requirement of that subchapter.

- Z. 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 is intentionally left blank.]*



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

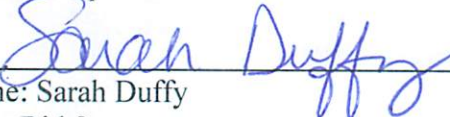
**NBU:**

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

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

**SUPPLIER:**

**PENCCO, INC.,**  
a Texas corporation

By:  \_\_\_\_\_  
Name: Sarah Duffy  
Title: Bid Sec.

**Exhibit A**

**A. UTILITY PRODUCTS**

The Supplier shall provide the following Utility Products to NBU at the times specified by NBU in the Agreement:

Description	Container Size	Estimated Annual # of Containers
Liquid, Ammonium Sulfate See product data section below	Approx. 47,000 lb/Load	15 Truck Loads

**B. SPECIFICATIONS**

**CHARACTERISTICS**

Liquid Ammonium Sulfate is an odorless, clear, faint yellow to amber colored liquid. It is an advanced inorganic product suitable for industrial and municipal water and wastewater treatment applications.

**NSF/ANSI Standard 60: Drinking Water Chemicals – Health Effects; Certified**

**TYPICAL PROPERTIES**

- Formula: Aqueous solution of ammonium sulfate
- C.A.S 7783-20-2 (Ammonium sulfate)
- pH (neat) 3.0 – 5.0
- Specific Gravity @ 70°F (21°C) 1.216 – 1.228
- Freezing Point Less than 10°F (-12°C)
- Density, lbs/gal., U.S. 10.15 – 10.25
- (NH<sub>4</sub>)<sub>2</sub>SO<sub>4</sub>, % 38 - 40
- NH<sub>3</sub> Equivalent, % 9.8 – 10.3

**PRODUCT USES**

Municipal and industrial water and wastewater treatment for disinfection as a source of ammonia in chloramination. Disinfection byproduct control.

**SHIPPING CONTAINER**

Truck 45,000 – 48,000 lbs

**SHIPPING REGULATIONS**

DOT Classification: Not Regulated  
RQ: Not Applicable

**PRODUCT SAFETY INFORMATION**

Liquid Ammonium Sulfate may cause irritation to the skin, eyes and respiratory tract. Avoid contact with skin, eyes and clothing. Anyone procuring, using or disposing of these products or their containers must be familiar with the appropriate safety and handling

precautions. Such information may be found in the material safety data sheet for these products.

**C. GENERAL CONDITIONS**

1. The quantities of chemicals listed are estimates only. NBU does not guarantee specific quantities.
2. The Supplier shall provide analysis sheets with each delivery.
3. All chemicals shall conform to the standards of the American National Standards Institute/National Science Foundation Standard 60 for direct additives and Standard 61 for indirect additives, as applicable to each Utility Product.
4. The Supplier shall off-load all materials at the designated delivery sites as directed by NBU.

**D. DELIVERY SITES**

1. The Utility Products will be delivered to the following Facilities or as otherwise specified by NBU:

**a) Ammonium Sulfate Drop Sites**

- |                                       |                                  |
|---------------------------------------|----------------------------------|
| i) Surface Water Treatment Facilities | 2356 Gruene Road                 |
| ii) Wells 2 and 3*                    | 333 Klingemann Road              |
| iii) Well 4*                          | 500 Beverly Lane                 |
| iv) Well 5*                           | Golf Course—180 Golf Course Road |
| v) Well 6*                            | 12 Moss Rock                     |
| vi) Trinity Membrane Facility         | 3295 Westpointe                  |
| vii) Weltner Road Pumpstation         | 1670 Weltner Road                |

\*Requires smaller vehicle for delivery

**EXHIBIT B**

NBU shall pay the Supplier for the Utility Products not to exceed \$89,182.50 per year and not to exceed \$445,912.50 for the duration of this Agreement.

Pricing for awarded treatment chemicals is provided for informational purposes.

<b>Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Cost</b>	<b>Extended Price</b>
1	Liquid, Ammonium Sulfate See product data information	LB	705,000	\$0.1265/lb	\$89,182.50

**EVALUATION REPORT**  
**WATER & WASTEWATER TREATMENT CHEMICALS**

**EXECUTIVE SUMMARY**

**MAY 06, 2024**

The Evaluation Committee (EC) evaluated the qualification proposals by nine (9) firms in response to the Request for Proposals (“RFP”) for Water & Wastewater Treatment Chemicals in accordance with pre-established evaluation procedures. These firms are:

Brenntag Southwest Inc.  
Chemrite, Inc.  
Chemtrade Chemicals US LLC  
DPC Industries  
Hawkins Inc.  
Penco, Inc.  
Shannon Chemicals Corp.  
Univar USA Inc.  
USALCO, LLC

There were no vendors that bid on all items in the bid; therefore the RFP was evaluated by line item and each line item will be awarded separately.

**Process Followed**

The EC is comprised of NBU voting members. The EC has reviewed and evaluated the firms' responses and qualifications in accordance with the Evaluation Documents, which define policies and procedures to be followed in evaluating each proposal. The evaluation is based upon the following criteria:

- Firm’s Overall Experience and Experience with Similar Projects – 40 points
- Proposal Pricing – 35 points
- Project Approach and Response Time – 25 points

As indicated in the RFP, it is NBU’s intent to award this contract to multiple respondents.

The Summary of Findings will detail the rankings of each item.

## SUMMARY OF FINDINGS

The evaluation resulted in the following highest ranked firm for each item:

Item 1: The highest ranked firm was Chemtrade Chemicals US LLC. For this item, both Univar USA and USALCO LLC were lower in price; however, Univar USA scored low in the Firms Overall Experience and Project Approach because they did not provide sufficient information as requested in the evaluation criteria. USALCO scored slightly lower than Chemtrade in experience and approach, one evaluator also noted some past problems with deliveries.

Item 2: The highest ranked firm was Pencco Inc. They were also the lowest priced for this item.

Item 3: The highest ranked firm was Chemtrade Chemicals US LLC. They were also the lowest priced for this item.

Item 4: The highest ranked firm was Brenntag Southwest. They were also the lowest priced for this item.

Item 5: The highest ranked firm was Brenntag Southwest. Univar USA was the lowest price for this item; however, Univar USA scored low in the Firms Overall Experience and Project Approach because they did not provide sufficient information as requested in the evaluation criteria.

Item 6: The highest ranked firm was Brenntag Southwest. They were also the lowest priced for this item.

Item 7: The highest ranked firm was Brenntag Southwest. Univar USA was the lowest price for this item; however, Univar USA scored low in the Firms Overall Experience and Project Approach because they did not provide sufficient information as requested in the evaluation criteria.

Based on the evaluation above, the EC recommends award to the following items:

- Item 1: Chemtrade Chemicals US LLC
- Item 2: Pencco Inc.
- Item 3: Chemtrade Chemicals US LLC
- Item 4: Brenntag Southwest
- Item 5: Brenntag Southwest
- Item 6: Brenntag Southwest
- Item 7: Brenntag Southwest

RFP 24-0055

New Braunfels Utilities Water and Wastewater Treatment Chemicals

Description	Quantity	Unit	Unit Cost/Et. Amt.	Brenntag Southwest Inc.	Chemrite, Inc.
Liquid, Aluminum Sulfate Liquid Aluminum, Papermakers Aluminum Inorganic Salt A12 (SO4) 3 (14H20) with 2% Copper Sulfate AWWA Spec. B703-89	282,000	EA	Unit Cost	No Bid	No Bid
			Ext. Amt		



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**Meeting Date:** August 29, 2024      **Agenda Type:** Presentation Items

**From:** Adriana Sanchez      **Reviewed by:** David Hubbard  
Director of People & Culture      Chief Administrative Officer

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

**RECOMMENDED ACTION:** Presentation on the Gallup Employee Engagement Survey Results

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**Meeting Date:** August 29, 2024      **Agenda Type:** Presentation Items

**From:** Adriana Sanchez      **Reviewed by:** David Hubbard  
Director of People & Culture      Chief Administrative Officer

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

**RECOMMENDED ACTION:** Presentation from the NBU Employee Experience Team on the Proposed NBU Employee Engagement Action Items, Based on the Results from the Gallup Employee Engagement Survey Result

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**Meeting Date:** August 29, 2024      **Agenda Type:** Presentation Items

**From:** Michael G. Short, P.E.  
Director of Water Services  
and Compliance      **Reviewed by:** Michael G. Short, P.E.  
Director of Water Services and  
Compliance

**Submitted by:** Mark Steelman  
Chief Operations Officer      **Approved by:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Presentation on the Guadalupe-Blanco River Authority’s Wholesale Delivery of Gonzales Carrizo Water Supply and Its Impact on NBU

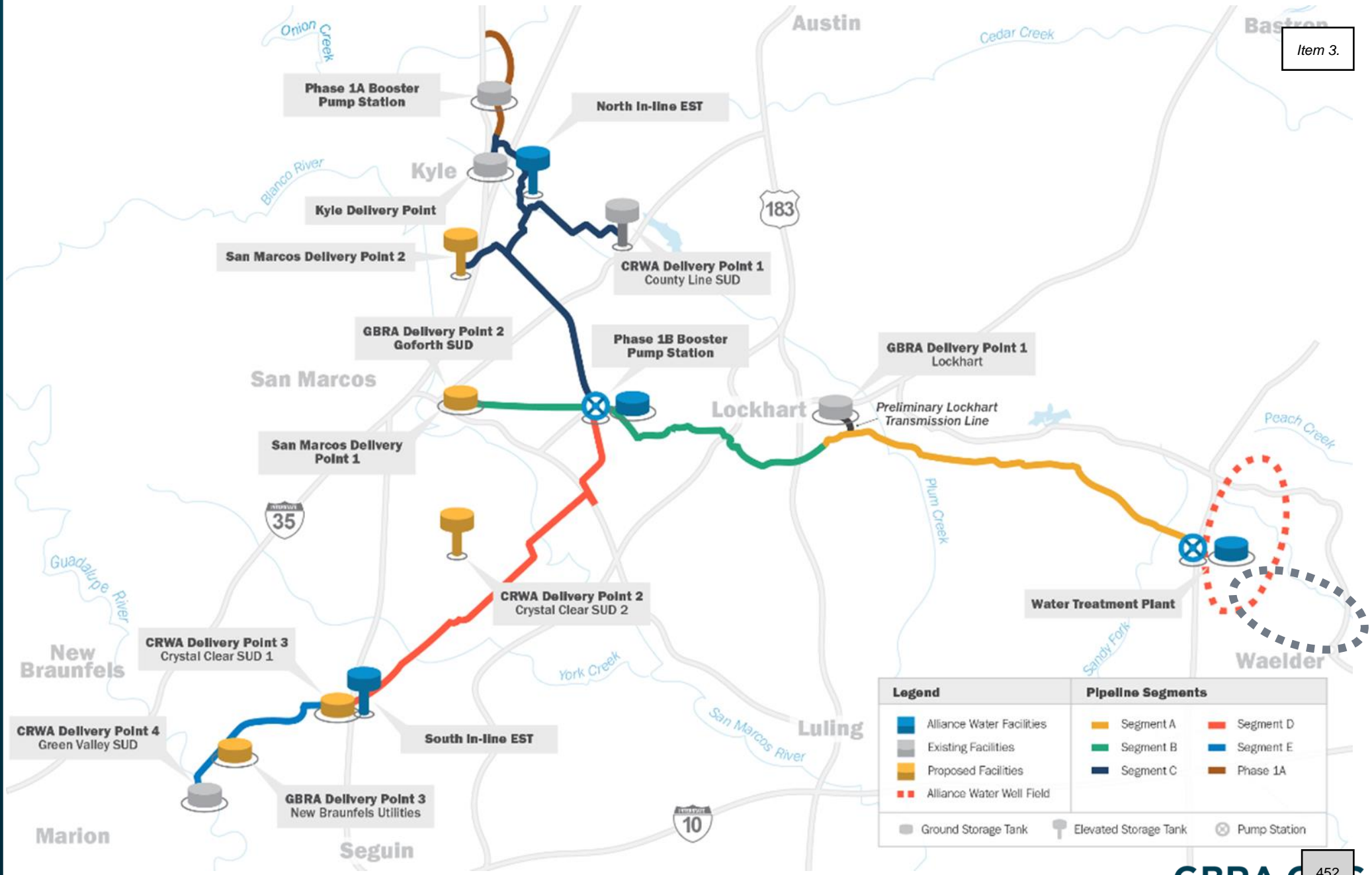


Guadalupe-Blanco River Authority

# Carrizo Groundwater Supply Program



# Carrizo Groundwater Supply Program Overview



Item 3.



# Carrizo Water Supply Program Participants

## GBRA Customers

New Braunfels Utilities (8k AF/yr)

City of Lockhart (3k AF/yr)

Goforth SUD (4k AF/yr)

**TOTAL – 15k AF/yr uniform**

## ARWA Customers

San Marcos

Buda

Kyle

County Line SUD (CRWA)

Crystal Clear SUD (CRWA)

Green Valley SUD (CRWA)

**TOTAL – 15k AF/yr w/ peaking**

# Construction Kickoff

Item 3.



# Raw Water Facilities

Item 3.



# Raw Water Facilities



Item 3.



# Water Treatment Plant

Item 3.



# Water Treatment Plant

Item 3.



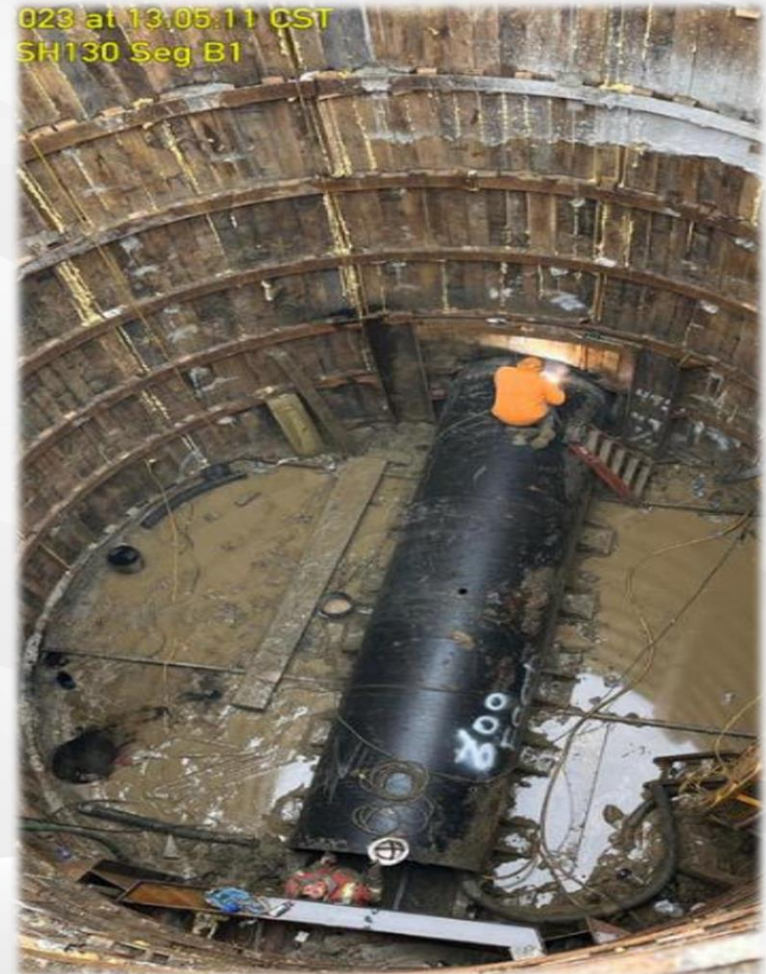
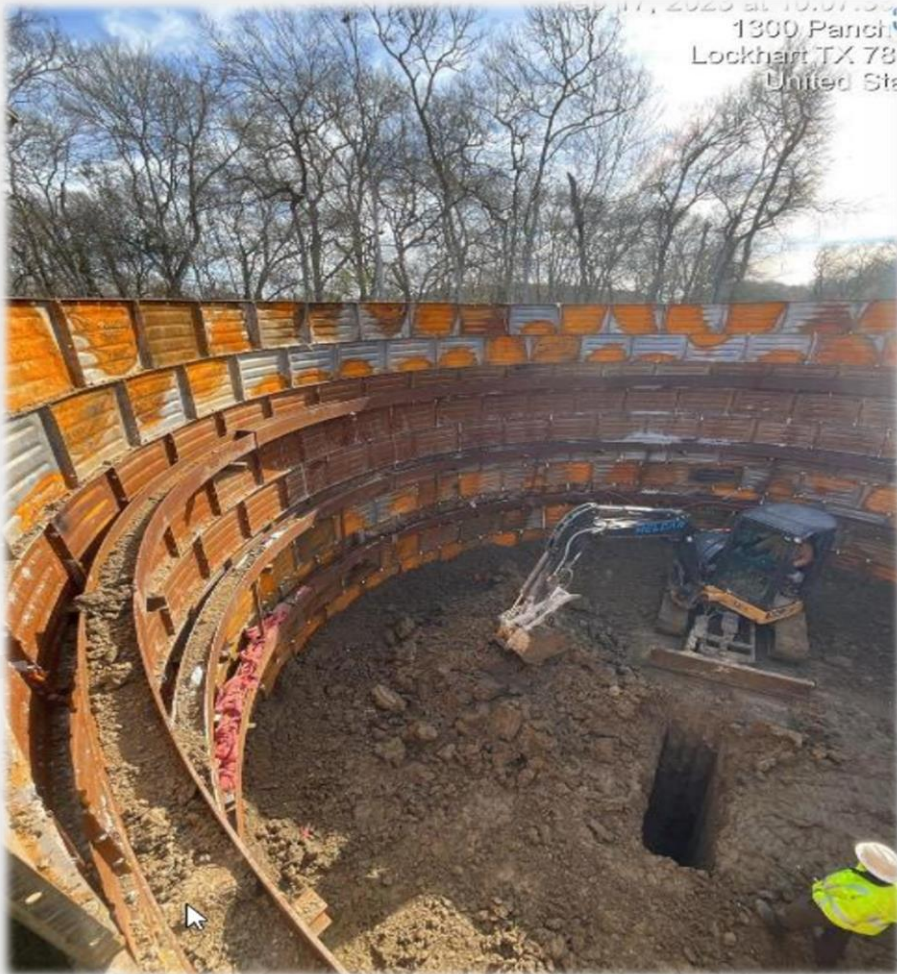
# Transmission Pipelines

Item 3.



# Major Tunneling

Item 3.



# GBRA Operations Team



Item 3.



Guadalupe-Blanco River Authority

Your Trusted  
Water Resource





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**Meeting Date:** August 29, 2024      **Agenda Type:** Presentation Items

**From:** Michael G. Short, P.E.      **Reviewed by:** Michael G. Short, P.E.  
Director of Water Services      Director of Water Services and  
and Compliance      Compliance

**Submitted by:** Mark Steelman      **Approved by:** Ryan Kelso  
Chief Operations Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Presentation on the New Braunfels Utilities Aquifer Storage and Recovery Project

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# New Braunfels Utilities

## Aquifer Storage and Recovery Update

August 29, 2024



# Agenda

1. Background
2. Summary of Cycles 1 and 2 and Issues Encountered
3. Current Cycle 3 Status
4. Pending Improvements Overview
5. Future ASR Planned Improvements/Buildout



## Mission

Strengthening our community by providing resilient essential services



## Vision

Be a trusted community partner dedicated to excellence in service



## Core Values

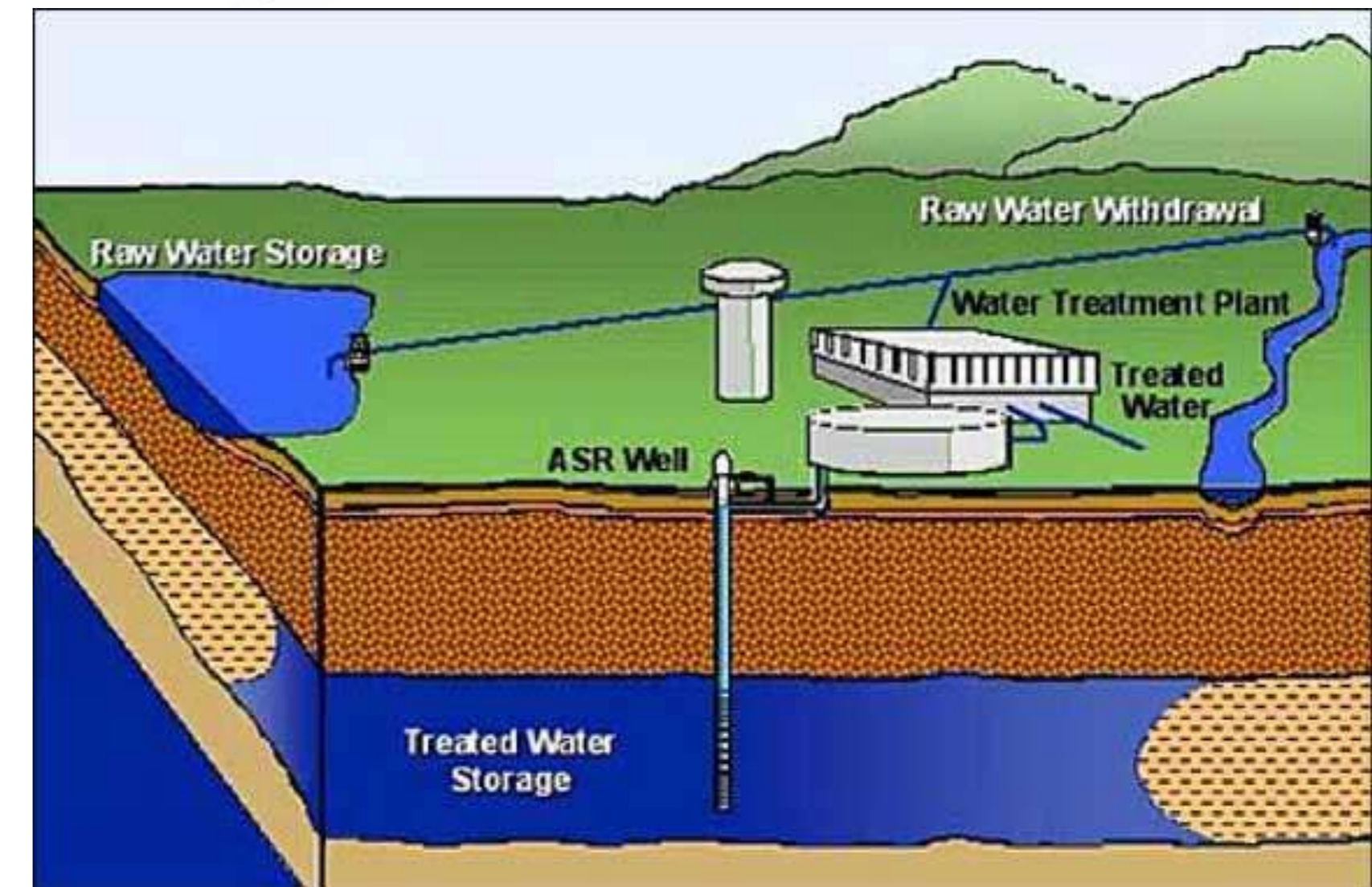
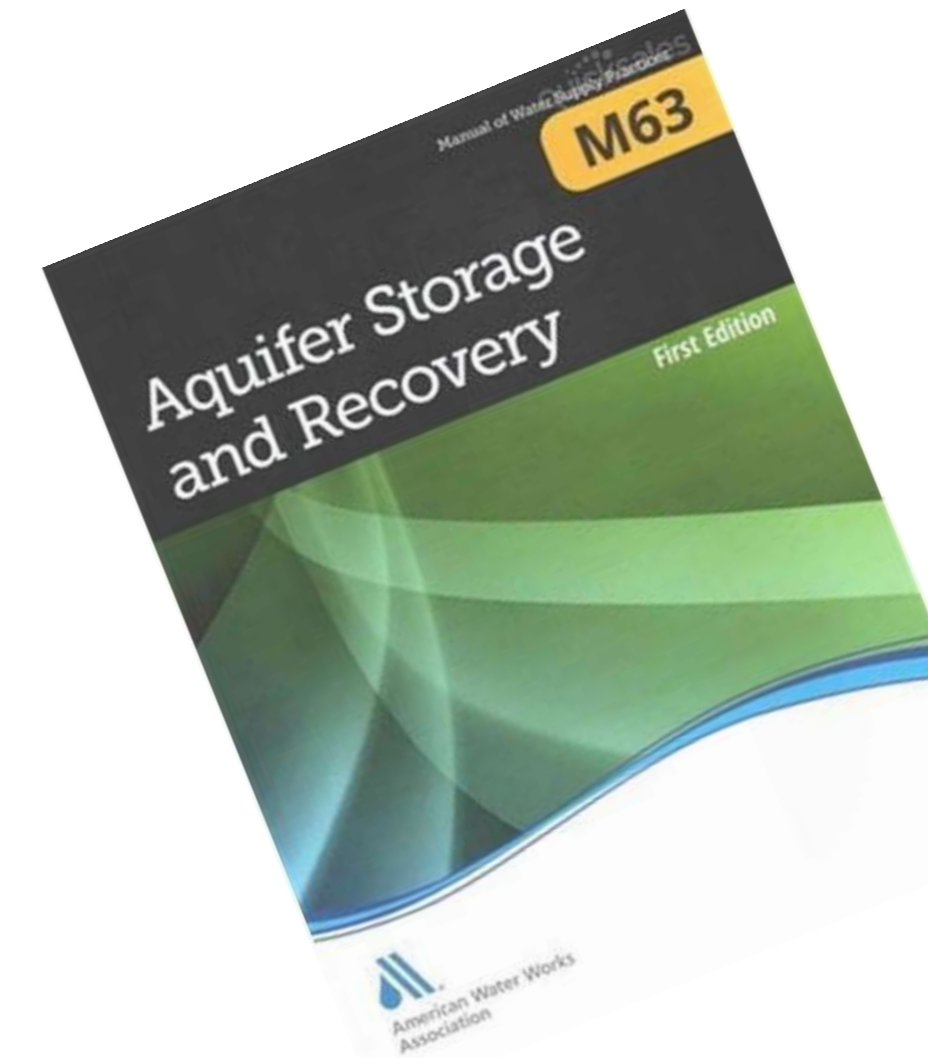
Safety, Team, Integrity, Culture, and Stewardship

# Background

## Aquifer Storage & Recovery (ASR) is:

“...the storage of water in a suitable aquifer ... during times when water is available, and recovery of that water ... during times when it is needed.”

**David Pyne, P.E.**  
ASR Systems, LLC  
Gainesville, FL



### Mission

Strengthening our community by providing resilient essential services



### Vision

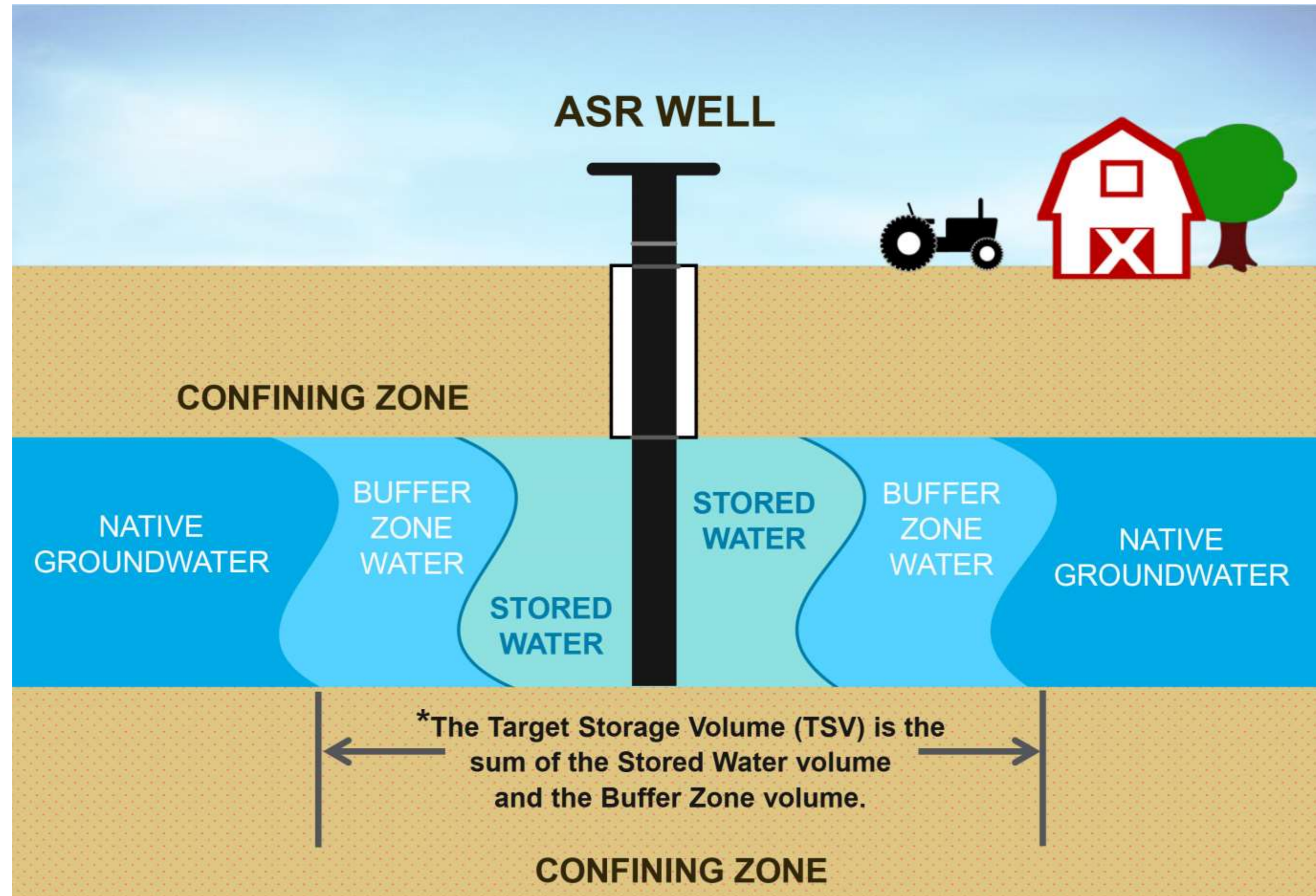
Be a trusted community partner dedicated to excellence in service



### Core Values

Safety, Team, Integrity, Culture, and Stewardship

## ASR Concept and Terminology



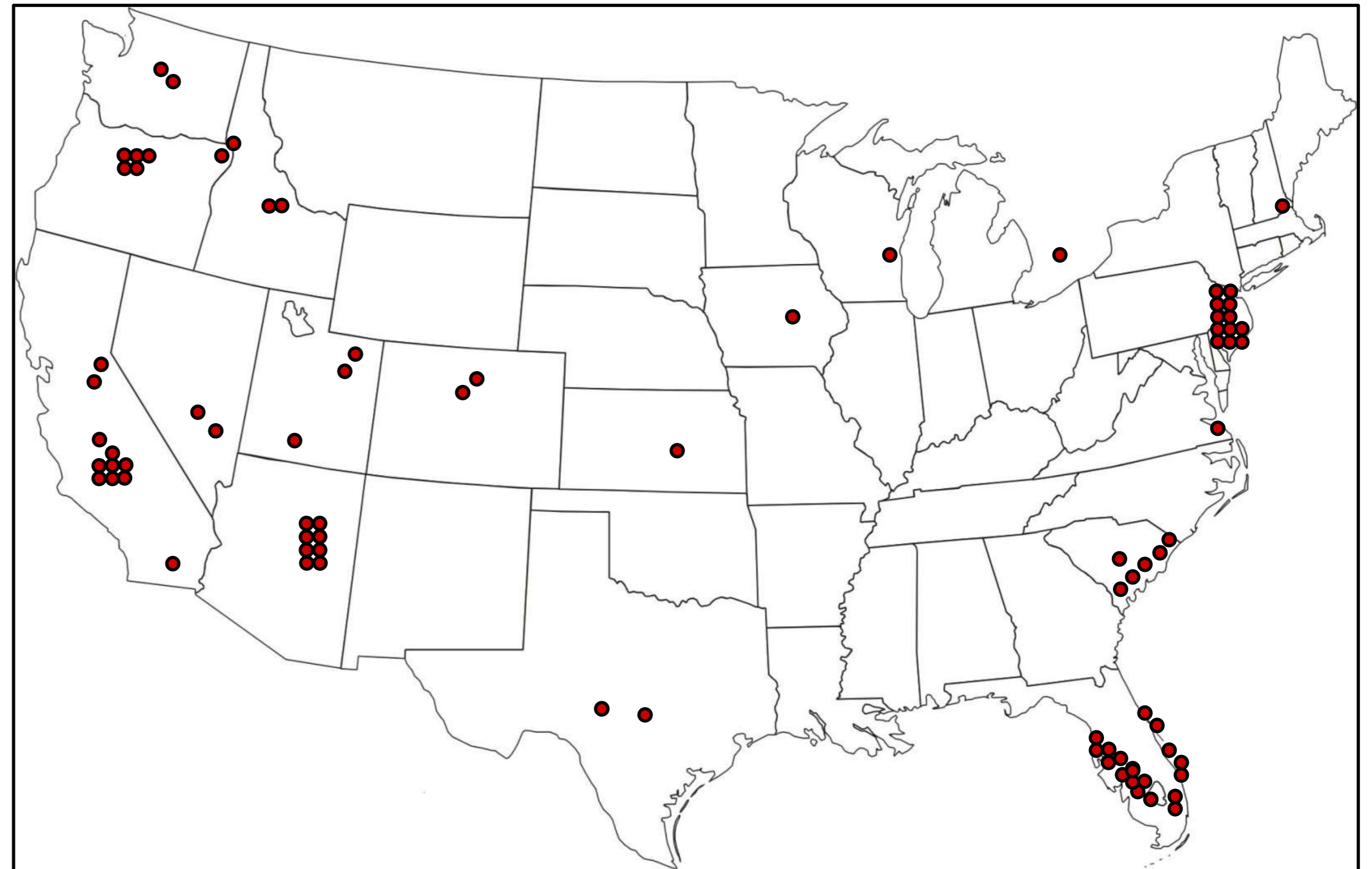
# ASR Development in Texas

## Three in operation:

- El Paso
- San Antonio
- Kerrville

## Others in development:

- City of Victoria
- New Braunfels Utilities
- Guadalupe Blanco River Authority
- Buda



# Why Was ASR Considered?

- Rapid growth in the NBU Service Territory
- Water Supply Availability/Curtailment
- Drought of Record and Max Day Demand
- System Reliability and Resiliency

<http://herald-zeitung.com> > community\_alert

**New Braunfels breaks 90000 in 2020 Census; Comal grows to ...**

Aug 12, 2021 — Population figures for **New Braunfels** and Comal County jumped a significant 56.6% and 48.9%, respectively, over the last 10 years, ...

**New Braunfels eyes 100,000 population milestone**

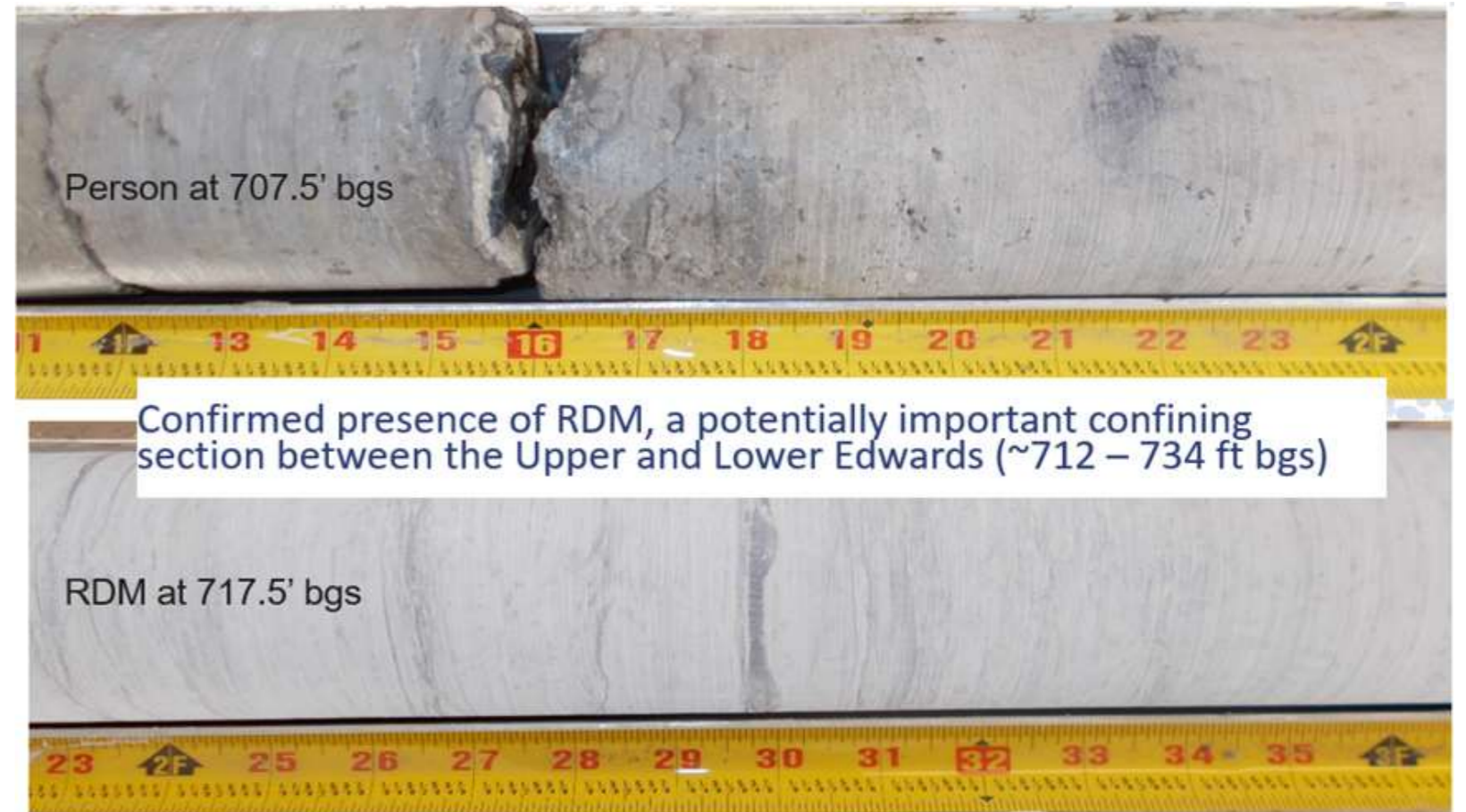
New Braunfels has issued more than 200 permits for new residential starts each in June, July and September

By Steve Knight | The Herald-Zeitung Oct 20, 2020 Updated Oct 21, 2020



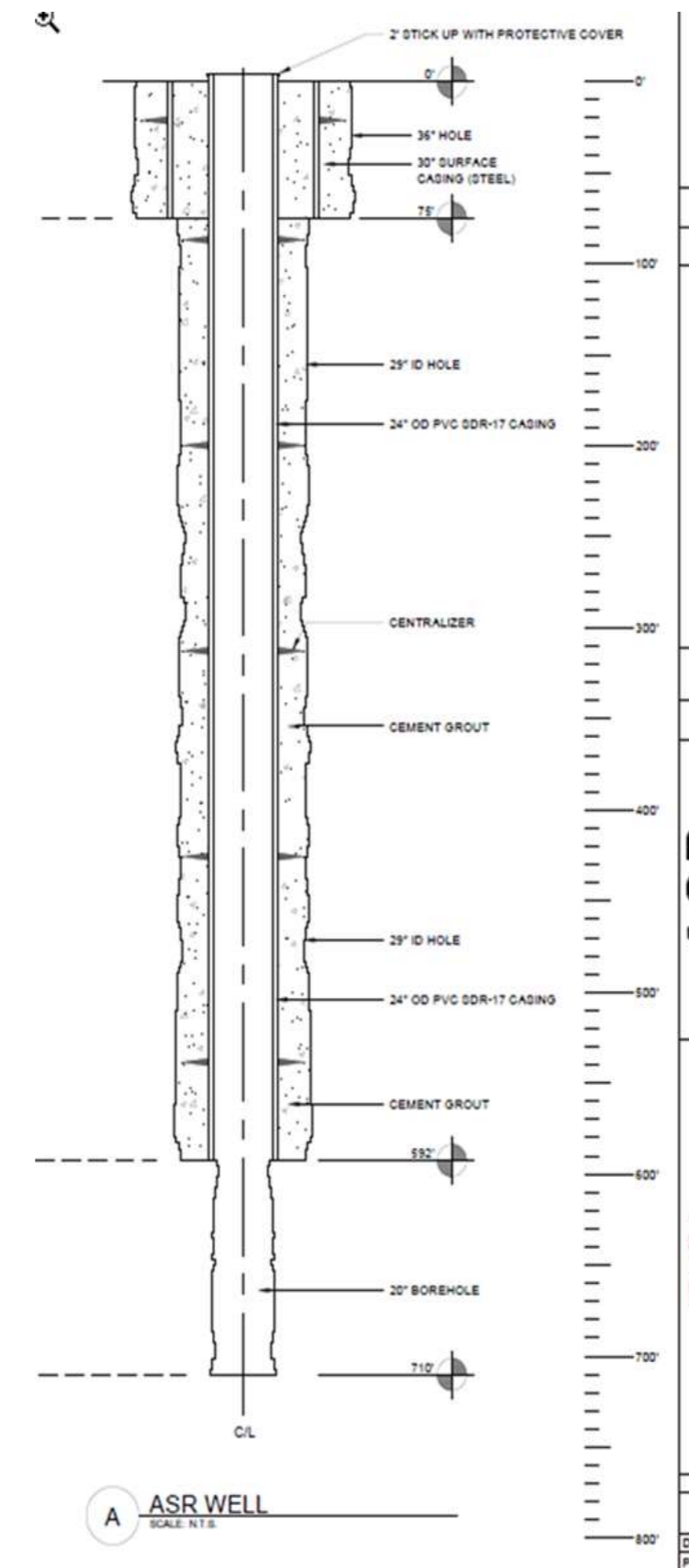
# Background

- Arcadis engaged in 2011
- Preliminary Feasibility Report published with key findings and recommendations
  - Hydrogeology is conducive for ASR
  - 5,156 ac-ft of water needed to meet 2016 needs
  - Recharge rate of 4 mgd
  - Recovery rate of 9 mgd
  - Intended to provide drinking water source during drought of record conditions
  - Up to nine wells – 1 mgd recovery per well



# Demonstration Project and Cycle Testing

- Demonstration Well completed and began injection in 2020
- Cycle 1 Recovery occurred between September 2021 and January 2022
- Warranty repairs and operational modifications were made to enhance recharge and recovery
- Cycle 2 Recovery occurred between November 3 and November 28, 2022



# Status of Cycle 3 Testing

- Cycle 3 Recharge began on December 12, 2022
- As of July 17, 2023, 518 MG stored in the Upper Edwards; 89 MG stored in the Lower Edwards
- System was shut in due to extended drought conditions and water unavailability
- Have not returned to recharge mode as of this date



# Pending Improvements

- Deepen the ASR-D1 well into the lower saline zone
  - Intent is to be able to get more water stored in the Lower Edwards
  - ASR-D1 will be a dual completion well capable of storing and recovering from either the Upper or Lower Edwards
- Cycle 3 Recovery anticipated to take place in Spring/Summer 2026 once sufficient water is stored in the Lower Edwards

## Mission

Strengthening our community by providing resilient essential services



## Vision

Be a trusted community partner dedicated to excellence in service



## Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Future Planned Improvements

- ✓ Conceptual wellfield design is complete and additional aquifer modeling has been conducted
- ✓ An extension of our current experimental permit has been received
  - Full TCEQ Operating Permit
  - Additional monitoring well at Kohlenberg tank site
  - ASR Wellfield build-out
    - Can be phased or all at once
    - Instead of eight additional wells, likely only 3-4 will be needed
  - Additional Monitoring Wells

# Tentative Schedule

- May 29, 2024 - Bid Opening for ASR-D1 well deepening contract
- August 29, 2024 –Award ASR-D1 well deepening contract
- Fall/Winter 2025 - Complete Cycle 3 Recharge
- Spring/Summer 2026 – Cycle 3 Recovery
- 2026 – Place ASR-D1 into operating mode
- FY 26 – Drill Kohlenberg monitoring well
- FY 27 – Begin Wellfield Expansion
- FY28/29 – Additional monitoring wells

## Mission

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## Vision

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## Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Questions?



## Mission

Strengthening our community by providing resilient essential services



## Vision

Be a trusted community partner dedicated to excellence in service



## Core Values

Safety, Team, Integrity, Culture, and Stewardship



**Infrastructure and Technology**

**Financial Excellence**

**Safety and Security**

**Stewardship**

**EXHIBITS**

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1. Fiscal Year 2024 Strategic Plan Results Presentation



# NBU Fiscal Year 2024 Strategic Plan Results

Wednesday, August 29, 2024

# Agenda

- **NBU Mission, Vision, and Core Values**
- **NBU Guiding Principals and Definitions**
- **FY24 Strategic Goals**
- **FY24 Strategic Goals Results**
- **FY24 Annual Priorities**
- **FY24 Annual Priorities Results**
- **FY24 Performance Measure Payout**
- **Current Levels of Service and Key Performance Indicators**
- **Questions**

## **Mission**

Strengthening our community by providing resilient essential services

+

## **Vision**

Be a trusted community partner dedicated to excellence in service

+

## **Core Values**

Safety, Team, Integrity, Culture, and Stewardship



# Mission – Vision – Core Values

## MISSION

Strengthening our community by providing resilient essential services

## VISION

Be a trusted community partner dedicated to excellence in service

## CORE VALUES

Safety, Team, Integrity, Culture, and Stewardship (STICS)



### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service



### Core Values

Safety, Team, Integrity, Culture, and Stewardship



# Guiding Principles and Definitions

<b>One Utility, One Team</b>	Place organizational success above individual priorities and work together to maintain a team-oriented culture.
<b>Speak Up, Lead, and Care for All</b>	Lead and foster an environment of shared responsibility where everyone feels valued and empowered to perform their job.
<b>Know and Do the Right Thing</b>	Uphold the trust and confidence of the community and the organization.
<b>Continuously Improve</b>	Plan thoughtfully, set realistic expectations, and learn when things do not turn out as expected.
<b>Be Convenient</b>	Anticipate expectations and provide a positive experience.
<b>Be Resilient</b>	Be prepared to adapt to and recover from disruptions.
<b>Be Flexible and Innovative</b>	View challenges as opportunities and pursue new solutions.

# FY 2024 Strategic Goals Overview

A strategic goal is a long-term objective that guides NBU toward achieving its mission and vision.

Six Strategic Goals are the umbrella for the Annual Priorities.

The Strategic Goals serve as 30% of the Performance Measures.

# FY 2024 Strategic Goals | Results

#	Strategic Goal	Goal Measures	Q1	Q2	Q3	Q4
1	<b>Customer and Community</b>	Customer Satisfaction Survey Benchmark Organizational characteristics by the vendor (Great Blue) at or above Texas Organizational Characteristics of 56.6%. Measurement data from Public Power Data Source (PPDS).	On Track	On Track	Off Track	Did Not Meet
2	<b>People and Culture</b>	Maintain Gallup employee engagement survey participation > 80%	On Track	On Track	On Track	Complete
3	<b>People and Culture</b>	Implement select recommendations as presented from the Employee Experience Team	On Track	On Track	On Track	Complete
4	<b>Infrastructure and Technology</b>	Maintain a three-year rolling average SAIDI in top 10% of Texas utilities or three-year rolling average <52.56 minutes (99.99% reliability)	On Track	On Track	On Track	Complete
5	<b>Infrastructure and Technology</b>	Maintain Information Technology Systems Reliability ≥ 97% uptime for production systems	On Track	On Track	On Track	Complete
6	<b>Infrastructure and Technology</b>	Infrastructure Leakage Index (ILI) < 3.0 over a three-year rolling average	On Track	On Track	On Track	Complete
7	<b>Infrastructure and Technology</b>	Wastewater Treatment Compliance Events – maintain > 98% compliance	On Track	On Track	On Track	Complete
8	<b>Financial Excellence</b>	Maintain a competitive bond rating of A or greater	On Track	On Track	On Track	Complete
9	<b>Safety and Security</b>	Maintain equipment damage incidents to ≤ 2.7% per 200,000 man-hours worked	On Track	On Track	On Track	Complete
10	<b>Safety and Security</b>	Manage preventable damage to vehicles at ≤ 10 incidents per 1,000,000 miles driven	On Track	On Track	On Track	Complete
11	<b>Stewardship</b>	Two year project priority list with SMART goals established and approved by One Water Advisory Council by end of FY 2024	On Track	On Track	On Track	Complete

■ On Track 
 ■ Off Track 
 ■ On Hold 
 ■ At Risk 
 ■ Complete

## Mission

Strengthening our community by providing resilient essential services

## + Vision

Be a trusted community partner dedicated to excellence in service

## + Core Values

Safety, Team, Integrity, Culture, and Stewardship

# FY 2024 Annual Priorities Overview

Annual Priorities focus on mission-critical initiatives to move NBU forward.

NBU will have flexibility to adapt/modify the Annual Priorities based on immediate needs throughout the fiscal year.

The Annual Priorities will serve as 30% of the performance measure.

# FY 2024 Annual Priorities | Results

#	Annual Priorities	Objective or Milestones	Q1	Q2	Q3	Q4
1	<b>Electric Transportation (ET) Program Creation</b>	Contract with consulting firm signed	On Track	On Track	On Track	Complete
2	<b>Water Efficiency</b>	Define framework for calculating and measuring water use efficiency and a timeline for implementing the framework.	On Track	On Track	On Track	Complete
3	<b>Integrated Resource Plan</b>	Complete draft of the resource plan	On Track	On Track	On Track	Complete
4	<b>Enterprise Asset Management</b>	Execute contract with consulting firm	On Track	On Track	On Track	Complete
5	<b>Enterprise Project Management</b>	Build Enterprise level Project Management Information System and begin training and roll-out	On Track	On Track	On Track	Complete
6	<b>NBU HQ</b>	Close on the HQ property	On Track	On Track	On Track	Complete
7	<b>Emergency Management</b>	Standardize Emergency Management Plans into one Emergency Management Plan that addresses risks and events, targeting 50% completion.	On Track	On Track	On Track	Complete
8	<b>Power Supply (The Energy Authority) Roadmap</b>	Implement or continue implementing the tasks and projects contained within Phase 1 of the TEA Roadmap	On Track	On Track	On Track	Complete
9	<b>***Optimizing Customer Experience</b>	Publicly solicit the request for information for the Customer Experience Project	On Track	On Track	On Track	On Hold

\*\*\* Indicates a change was made to the FY24 Annual Priority

■ On Track 
 ■ Off Track 
 ■ On Hold 
 ■ At Risk 
 ■ Complete

# FY 2023 Performance Measures Payout

70% for Strategic Goals: \$430,500 (75% for full payout)  
30% for Annual Priorities: \$184,500 (100% for full payout)  
Total Payout Budget: \$615,000

The FY24 Performance Payout was 100%

# Questions



## Mission

Strengthening our community by providing resilient essential services



## Vision

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## Core Values

Safety, Team, Integrity, Culture, and Stewardship





**Meeting Date:** August 29, 2024      **Agenda Type:** Item for Future Action

**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:** Ryan Kelso  
Chief Executive Officer

**RECOMMENDED ACTION:** Review and Discuss 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, May 25, 2021, and June 29, 2023, to reflect organizational changes and the Board’s existing practices.

The Governance Committee (the “Committee”) met on March 6, 2024, and July 30, 2024, to review the Governance Policies and provide recommended revisions. The Committee recommends the following changes to the Governance Policies:

- update the preface to the Governance Policies to indicate that the Board follows the Carver Model of governance;
- include flexibility in the goal measurements in the Strategic Goals Policy to align with NBU’s current strategic plan;
- add a requirement for the Board to complete an annual fiscal year-end report that includes activities and accomplishments of the Board and to share the report publicly;
- update communication protocols with the CEO, Chief of Staff, and General Counsel;
- clarify the process for reporting a potential or perceived conflict of interest;
- reduce the timeframe from twenty-one to fourteen days for Board members to request an item be placed on the Board agenda;

- align Board resignation requirements with the City of New Braunfels Code of Ordinances;
- clarify that the Vice President conducts the annual self-evaluation and collaborates with the President to report the results to the Board;
- update Board committees;
- include a process for CEO communication to Board members regarding customer concerns; and
- revise vague, unclear, or outdated language.

The Committee proposes the following schedule to review and discuss the revisions to the Governance Policies:

- August 23—proposed Governance Policies provided to the Board in the August Board materials for review and input;
- September 11—Board members to provide comments to General Counsel to facilitate the review process with the Governance Committee;
- September 16—the Governance Committee will review the Board’s feedback and legal counsel will revise the Governance Policies;
- September 26—the proposed Governance Policies will be presented to the Board for discussion;
- week of October 14—Governance Committee to meet to discuss changes from the Board discussion, if necessary; and
- October 31—the proposed final drafts of the Governance Policies will be presented to the Board for approval.

If the schedule is agreeable to all Board members, NBU staff will calendar these dates on the Board of Trustees’ calendars.

## **FINANCIAL IMPACT**

None

## **LINK TO STRATEGIC PLAN**

**Customers and Community**

**Stewardship**

**EXHIBITS**

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1. Governance Policies (redline)
2. Governance Policies (clean)

# 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 ~~the Governance Policies under which it operates. In doing so, the Board chose to follow the Carver model of governance, which is a system for organizational governance that defines and guides the relationships between its board and chief executive through written policies. By focusing on the ends and not the means, the Carver model of policy governance enables a board to focus on the larger issues, delegate with clarity, and control management without micromanaging.~~

~~In~~ NBU's Governance Policies were revised in March 2016, May 2021, and June 2023. In 2024, the Board revised ~~its~~ these Governance Policies to align with its ~~FY2023~~ fiscal year 2025 strategic goals and ~~to make any~~ other adjustments deemed necessary.

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## *New Braunfels Utilities*

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### **Governance Policies**

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#### ***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

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Appendix

Article 11 from City Charter

Chapter 130, Article II from City Code of Ordinances

3

Revisions approved June 29, 2023, 2024; effective August 1, 2023/2024

## *New Braunfels Utilities*

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### **Governance Policies: Strategic Goals**

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4

Revisions approved June 29, 2023, 2024; effective August 1, 2023/2024

POLICY TYPE: STRATEGIC GOALS SG #1

POLICY TITLE: GLOBAL POLICY ON STRATEGIC GOALS

~~Date Approved by Board: May 25, 2021 (effective August 1, 2021)~~

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At a minimum of every five years, the Board ~~shall~~will 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~~will 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 at any time.



POLICY TYPE: STRATEGIC GOALS SG #2

POLICY TITLE: CUSTOMERS & COMMUNITY  
(Formerly OP#2a Treatment of Customers)

~~Date Adopted by Board: June 29, 2023 (effective August 1, 2023)~~

The Board is committed to NBU providing a customer-first focus and committing to innovative solutions to improve the customer experience.

With respect to interactions with current or potential customers or the community at large, the CEO ~~shall~~will 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~~will 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 at least annually. NBU's progress will be determined based on the specifics of the Customers & Community Strategic Goal measure(s) set annually and may include, by examining way of example, an examination of the annual customer satisfaction survey ~~results,~~ customer or community feedback received, and ~~or~~ any other related information provided by ~~the~~ 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.

6

Revisions approved ~~June 29, 2023~~, 2024; effective ~~August~~ 1, 2023/2024

POLICY TYPE: STRATEGIC GOALS SG #3

POLICY TITLE: PEOPLE & CULTURE  
(Formerly OP#2b Treatment of Staff & OP#2c Compensation & Benefits)

~~Date Adopted by Board: June 29, 2023 (effective August 1, 2023)~~

The Board is committed to NBU caring for its employees, building on its team-oriented culture, promoting ethical behavior, and preparing its team to meet the challenges ahead.

With respect to employment, compensation, and benefits of employees or contingent workers, the CEO ~~shall~~will 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~~will 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~~will 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 at least annually. NBU's progress will be determined based on the specifics of the People & Culture Strategic Goal measure(s) set annually and may include, by examining annual way of an example, an examination of employee participation in the annual engagement survey results, employee feedback or recommendations received or implemented, and ~~for~~ 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.

7

Revisions approved ~~June 29, 2023~~, 2024; effective ~~August~~ 1, ~~2023~~2024

POLICY TYPE: STRATEGIC GOALS SG #4

POLICY TITLE: INFRASTRUCTURE & TECHNOLOGY  
(Formerly OP#2f Asset Protection)

~~Date Adopted by Board: June 29, 2023 (effective August 1, 2023)~~

The Board is committed to NBU maintaining reliable and resilient systems through responsible planning, asset management, and innovative technologies that align with the strategic direction of the organization.

The CEO ~~shall~~will not allow NBU assets to be unprotected, inadequately maintained, or unnecessarily risked.

The CEO ~~shall~~will not:

1. Unnecessarily expose NBU, its Board, or staff to claims of liability related to infrastructure and technology.
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 at least annually. NBU's progress will be determined based on the specifics of the Infrastructure & Technology Strategic Goal measure(s) set annually and may include, by examining way of example, an examination of NBU's SAIDI three-year rolling average, technological ~~uptime~~system reliability, infrastructure leakage index results, percentage of completion of capital improvement projects, compliance events, and any other related information provided by ~~the~~ 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 #5

POLICY TITLE: FINANCIAL EXCELLENCE  
~~(Formerly OP#2d Financial Condition & Activities & OP#2e Financial Planning & Budgeting)~~

~~Date Adopted by Board: June 29, 2023 (effective August 1, 2023)~~

The Board is committed to NBU practicing sound financial management to be responsible stewards of public funds.

With respect to the actual, ongoing financial condition and activities of NBU, the CEO ~~shall~~will 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 annual Board-approved budget and any approved Board expenditures.

The CEO ~~shall~~will 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 Board-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~~will 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 at least annually. NBU's progress will be determined based on the specifics of the Financial Excellence Strategic Goal measure(s) set annually and may include, by examining way of an example, an examination of 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: June 29, 2023 (effective August 1, 2023)~~

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The Board is committed to NBU placing safety and security as the highest priorities for every employee and customer.

The CEO ~~shall~~will 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~~will 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 at least annually. NBU’s progress will be determined based on the specifics of the Safety & Security Strategic Goal measure(s) set annually and may include, by examining way of example, an examination of emergency response procedures, data- and cyber-security efforts, preventable equipment damage or vehicular damage incidents, workplace safety or security incidents (including at-fault safety violations), OSHA severity rate, security enhancements, 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: June 29, 2023 (effective August 1, 2023)~~

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The Board is committed to NBU preserving and protecting community resources through planning, innovation, collaboration, and education.

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The CEO ~~shall~~will 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 at least annually. NBU’s progress will be determined based on the specifics of the Stewardship Strategic Goal measure(s) set annually and may include, by way of example, an examination of~~ the status and progress of any implemented strategies for sustainable resources and conservation initiatives (such as One Water) and ~~for~~ 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*

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### **Governance Policies: Board Governance**

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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~~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, the Carver model of policy governance, 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 following the careful establishment~~ Carver model of overarching policy governance by carefully establishing 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 its written~~ 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 and will prepare an annual fiscal year-end report on its activities and accomplishments to be publicly shared. In addition to the annual fiscal year-end report, the Board will conduct an annual self-evaluation that will include a~~ 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~~ effect.

15

Revisions approved ~~June 29, 2023~~, 2024; effective ~~August~~ 1, 2023 2024

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 or the CEO at the Board's direction will update the City of New Braunfels on the status of NBU once each fiscal year and 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, maintain~~ loyalty to ~~the City of New Braunfels, NBU and its customers, and remain~~ unconflicted by loyalties to NBU staff, other organizations, and any personal ~~interests, including~~ interests, including as a personal customer of NBU.
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/or NBU's Chief of Staff (copying the CEO) and should~~ not use "reply all" when responding to communications sent to the Board on an informational basis.
  - d. Members may communicate directly with NBU's General Counsel when the subject matter dictates or necessitates direct communication and may do so without copying the CEO or NBU's Chief of Staff when appropriate.
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~~will immediately disclose the

conflict, withdraw without comment from the deliberations, and abstain from voting on that issue.

c. If a member believes another member has a potential or perceived conflict of interest, the following procedure will apply:

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i. The President

of the Board (or Vice President if the President has a potential or perceived conflict of interest) will be promptly informed of the potential or perceived conflict of interest.

- ii. The President of the Board (or Vice President, if applicable) will inform the CEO and obtain legal advice from NBU's General Counsel as to the nature of the potential or perceived conflict of interest and whether recusal is required by law.
- iii. The President of the Board (or Vice President, if applicable) and NBU's General Counsel will meet with the member in question to discuss the potential or perceived conflict of interest and whether recusal is required by law.
- iv. If, after meeting with the President of the Board (or Vice President, if applicable) and NBU's General Counsel, the member does not recuse himself or herself from deliberations involving the issue creating the potential or perceived conflict of interest, then the President of the Board (or Vice President, if applicable) will disclose the potential or perceived conflict of interest to the Board, and NBU's General Counsel will advise the Board as to whether recusal is required by law.
- v. The Board at all times retains the discretion to determine the appropriate action to be taken in compliance with its Governance Policies and the City of New Braunfels' Code of Ethics and Code of Ordinances.

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 ~~24~~fourteen (14) days before the Board meeting, but in no event no later than seven (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 for adequate cause; however, the Board may recommend removal of a member with ~~advance~~advanced written notice of at least thirty (30) days 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 Any Board if they are member, other than the mayor, who is continuously absent without excuse from all Board meetings for a period of four consecutive months. Members who are will, unless granted a leave of absence by the unanimous vote of the remaining Board members, be considered to have vacated office.~~

Any Board member, other than the mayor, who is continuously absent without excuse from all Board meetings for three consecutive months will, unless granted a leave of absence by the unanimous vote of the remaining Board members, 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 or 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~~will ensure that the Board's actions consistently comply with its own policies and rules and those legitimately imposed upon it from outside the organization~~;~~ including, but not limited to, ensuring:
  - a. Meeting discussion content ordinarily ~~will address~~addresses only those issues that, according to Board policy, clearly belong to the Board to decide or to monitor.
  - b. Deliberation ~~will be~~is 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~~is 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.e.~~ 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.

~~f. The President will collaborate with the Vice President to report the results of the annual Board self-evaluation required under the Governance Investment Policy (BG#12) and conducted by the Vice President under the Vice President's Role (BG#7).~~

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)~~

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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~~will implement and ~~overseeing~~oversee 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. The Vice President will ensure an annual self-evaluation of the Board's performance, processes, and policies is conducted as referenced in Governing Style (BG#2) and as required under the Governance Investment policy (BG#12).
- 3.4. 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)~~

The CEO serves as the Board ~~Secretary’s Role~~

~~Date Adopted by Board: May 25, 2021 (effective August 1, 2021)~~

Secretary. 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~~will ensure all Board documents and filings are accurate and timely.
2. The Board Secretary ~~shall~~will ensure Board policies are current and accurately reflect Board decisions.
3. The Board Secretary ~~shall~~will 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~~will 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~~will 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~~will 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, regardless of 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, and it remains within the Board’s discretion to appoint other standing and ad hoc committees.

Unless otherwise stated, a committee ceases to exist when its task is complete. Timely reporting to the Board ~~shall~~will be by submission of a verbal or written report, following each meeting, with appropriate comment by the ~~Committee Chair~~committee.

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 applicable bylaws. Timely reporting to the Board ~~shall~~will 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. The Audit Committee meets once annually and as otherwise needed.
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. The Budget Committee meets once annually and as otherwise needed.
3. **Governance Committee** – The Governance Committee is responsible for reviewing and making recommendations to the Board on its governance policies, practices, and procedures. The Governance Committee consists at a minimum of the Board President and Vice President. The Governance Committee meets once annually and as otherwise needed.
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. Headwaters meets pursuant to its separately established bylaws.
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

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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. The Investment Committee meets once annually and as otherwise needed.

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. The Legislative Committee meets as needed.

~~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.~~

~~8.7. **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. The Records Management Committee meets once annually and as otherwise needed.~~

~~9.8. **Water Infrastructure Maintenance Facilities Committee** – The ~~Water Infrastructure Maintenance Facilities~~ Committee is responsible for evaluating ~~water infrastructure and options related maintenance obligations.~~to the evaluation of NBU’s existing facilities, and ~~how, when, and where to expend future resources to meet current and future facility needs.~~ The Facilities Committee meets as needed.~~

9. **Community Advisory Panel Ad Hoc Committee** – The Community Advisory Panel Ad Hoc Committee is responsible for providing structure and guidance to the Community Advisory Panel (CAP), which includes thirteen (13) members of the community appointed by the NBU Board of Trustees. The Board President and the mayor of the City of New Braunfels sit on this Ad Hoc Committee, as NBU and the City of New Braunfels are responsible for nominating community members to the CAP. The Chair and Vice Chair of the CAP are also members of the Ad Hoc Committee. The Community Advisory Panel Ad Hoc Committee meets as needed.

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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 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~~will 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#2: Cost of Governance)~~

~~Date Adopted by Board: June 29, 2023 (effective August 1, 2023)~~

Because good governance benefits NBU and its customers, the Board will invest in its governance capacity and ability. The Board's investment ~~shall~~will 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 arranged and monitored by NBU's Chief of Staff 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.

30

Revisions approved ~~June 29, 2023~~         , 2024; effective ~~August~~          1, ~~2023~~2024

~~Periodically, but no later than every five years, the Board~~

4. ~~The Board~~ will conduct an annual self-evaluation to determine Board and member compliance with the Board Governance and Board-Management Delegation Policies and whether process or policy improvements are needed. with a more in-depth self-evaluation to be conducted every five (5) years. The Vice President will facilitate this process as described in Vice President's Role (BG#7).

*New Braunfels Utilities*

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**Governance Policies: Board Management Delegation**

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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)~~

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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~~Board President, the CEO, and NBU's Chief of Staff are 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~~but need not include the CEO or NBU's Chief of Staff.
4. Any written communication on material NBU matters to the CEO or NBU's Chief of Staff 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.
6. If a Board member sends a customer request or concern to the CEO or NBU's Chief of Staff, the CEO or NBU's Chief of Staff will provide a response to the Board member indicating that the request or concern has been addressed, or if unable to address quickly, when the request or concern will be addressed.

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~~not 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 Strategic Goals,~~ annual ~~specific goals~~Board priorities, and Board directives ~~as set by the Board~~;
  - e. Identification of industry trends and emerging issues;
  - e-f. Maintenance of communication and transparency with the Board;
  - f-g. Satisfaction of any other specific requirements or expectations set by the Board; and
  - g-h. Feedback through a self-evaluation from the CEO.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #4

POLICY TITLE: DELEGATION TO CEO  
~~(Formerly BMD#2e Delegation to CEO)~~

~~Date Adopted by Board: May 25, 2021 (effective August 1, 2021)~~

Through these Governance Policies ~~and~~based on the Carver model of policy governance, as well as other Board policies and directives decided from time to time, the Board defines for the CEO the Strategic Goals to be achieved and ~~describes~~prescribes 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~~If the CEO uses any reasonable interpretation of these Governance Policies and other Board policies or directives, then 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~~will 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: and will avoid micromanagement of 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~~will 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~~will be as a *reasonable and prudent CEO*, and the Board ~~shall~~will 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 the 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~~present to the Board ~~a consent agenda containing items delegated to the CEO yet required~~any item or action that requires by law or contract ~~to be Board approved, along with any applicable monitoring or supporting information disclosure and approval.~~

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

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 the~~Fail, within a reasonable time of appointment or any executive staff changes, to ~~be~~identify and inform the Board of no fewer than two executive staff members who are, in the CEO's estimation, sufficiently familiar with the Board and CEO issues, NBU, and ~~procedures to enable~~the CEO's job duties and responsibilities such that either staff member ~~to~~can 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.

**New Braunfels Utilities**

**Appendix**

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# *New Braunfels Utilities*

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## **Governance Policies**

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### ***PREFACE***

In January 2010, the Board of Trustees (Board) for New Braunfels Utilities (NBU) established the Governance Policies under which it operates. In doing so, the Board chose to follow the Carver model of governance, which is a system for organizational governance that defines and guides the relationships between its board and chief executive through written policies. By focusing on the ends and not the means, the Carver model of policy governance enables a board to focus on the larger issues, delegate with clarity, and control management without micromanaging.

NBU's Governance Policies were revised in March 2016, May 2021, and June 2023. In \_\_\_ 2024, the Board revised these Governance Policies to align with its fiscal year 2025 strategic goals and make other adjustments deemed necessary.

# *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
Appendix		Article 11 from City Charter
		Chapter 130, Article II from City Code of Ordinances

# *New Braunfels Utilities*

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## **Governance Policies: Strategic Goals**

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POLICY TYPE: STRATEGIC GOALS

SG #1

POLICY TITLE: GLOBAL POLICY ON STRATEGIC GOALS

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At a minimum of every five years, the Board will review and establish Strategic Goals for NBU and determine how achievement of or adherence to those Strategic Goals should be measured. The Board then will 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 maintains discretion to add, remove, or change any Strategic Goal or any achievement or adherence measurement set at any time.

POLICY TYPE: STRATEGIC GOALS

SG #2

POLICY TITLE: CUSTOMERS & COMMUNITY

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The Board is committed to NBU providing a customer-first focus and committing to innovative solutions to improve the customer experience.

With respect to interactions with current or potential customers or the community at large, the CEO will 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 will 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 at least annually. NBU's progress will be determined based on the specifics of the Customers & Community Strategic Goal measure(s) set annually and may include, by way of example, an examination of the annual customer satisfaction survey, customer or community feedback received, and any other related information provided by the CEO, NBU customers, or the community at large. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.



POLICY TYPE: STRATEGIC GOALS

SG #3

POLICY TITLE: PEOPLE & CULTURE

The Board is committed to NBU caring for its employees, building on its team-oriented culture, promoting ethical behavior, and preparing its team to meet the challenges ahead.

With respect to employment, compensation, and benefits of employees or contingent workers, the CEO will 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 will 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 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 at least annually. NBU's progress will be determined based on the specifics of the People & Culture Strategic Goal measure(s) set annually and may include, by way of an example, an examination of employee participation in the annual engagement survey, employee feedback or recommendations received or implemented, and any other related information provided by its CEO or NBU employees. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #4

POLICY TITLE: INFRASTRUCTURE & TECHNOLOGY

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The Board is committed to NBU maintaining reliable and resilient systems through responsible planning, asset management, and innovative technologies that align with the strategic direction of the organization.

The CEO will not allow NBU assets to be unprotected, inadequately maintained, or unnecessarily risked.

The CEO will not:

1. Unnecessarily expose NBU, its Board, or staff to claims of liability related to infrastructure and technology.
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 at least annually. NBU's progress will be determined based on the specifics of the Infrastructure & Technology Strategic Goal measure(s) set annually and may include, by way of example, an examination of NBU's SAIDI three-year rolling average, technological system reliability, infrastructure leakage index results, percentage of completion of capital improvement projects, compliance events, and any other related information provided by the CEO, NBU customers, or the community at large. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #5

POLICY TITLE: FINANCIAL EXCELLENCE

The Board is committed to NBU practicing sound financial management to be responsible stewards of public funds.

With respect to the actual, ongoing financial condition and activities of NBU, the CEO will not cause or allow the development of fiscal jeopardy or a material deviation of actual expenditures from the annual Board-approved budget and any approved Board expenditures.

The CEO will 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 Board-approved 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 will 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 at least annually. NBU's progress will be determined based

on the specifics of the Financial Excellence Strategic Goal measure(s) set annually and may include, by way of an example, an examination of its annual cost per customer, its bond (or other recognized financial) rating, and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #6

POLICY TITLE: SAFETY & SECURITY

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The Board is committed to NBU placing safety and security as the highest priorities for every employee and customer.

The CEO will 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 will 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 at least annually. NBU's progress will be determined based on the specifics of the Safety & Security Strategic Goal measure(s) set annually and may include, by way of example, an examination of emergency response procedures, data- and cyber-security efforts, preventable equipment damage or vehicular damage incidents, workplace safety or security incidents (including at-fault safety violations), OSHA severity rate, security enhancements, and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #7

POLICY TITLE: STEWARDSHIP

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The Board is committed to NBU preserving and protecting community resources through planning, innovation, collaboration, and education.

The CEO will 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 at least annually. NBU's progress will be determined based on the specifics of the Stewardship Strategic Goal measure(s) set annually and may include, by way of example, an examination of the status and progress of any implemented strategies for sustainable resources and conservation initiatives (such as One Water) and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

# *New Braunfels Utilities*

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## **Governance Policies: Board Governance**

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POLICY TYPE: BOARD GOVERNANCE

BG #1

POLICY TITLE: GLOBAL POLICY ON GOVERNANCE PROCESS

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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

The Board will govern lawfully, observing the principles of its adopted governance model, the Carver model of policy governance, 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 following the Carver model of policy governance by carefully establishing 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 its written 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 and will prepare an annual fiscal year-end report on its activities and accomplishments to be publicly shared. In addition to the annual fiscal year-end report, the Board will conduct an annual self-evaluation that will include a 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 effect.

POLICY TYPE: BOARD GOVERNANCE

BG #3

POLICY TITLE: BOARD JOB DESCRIPTION

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 or the CEO at the Board's direction will update the City of New Braunfels on the status of NBU once each fiscal year and 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

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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, maintain loyalty to NBU and its customers, and remain unconflicted by loyalties to NBU staff, other organizations, and any personal interests, including as a personal customer of NBU.
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 or NBU's Chief of Staff (copying the CEO) and should not use "reply all" when responding to communications sent to the Board on an informational basis.
  - d. Members may communicate directly with NBU's General Counsel when the subject matter dictates or necessitates direct communication and may do so without copying the CEO or NBU's Chief of Staff when appropriate.
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 will immediately disclose the conflict, withdraw without comment from the deliberations, and abstain from voting on that issue.

- c. If a member believes another member has a potential or perceived conflict of interest, the following procedure will apply:
    - i. The President of the Board (or Vice President if the President has a potential or perceived conflict of interest) will be promptly informed of the potential or perceived conflict of interest.
    - ii. The President of the Board (or Vice President, if applicable) will inform the CEO and obtain legal advice from NBU's General Counsel as to the nature of the potential or perceived conflict of interest and whether recusal is required by law.
    - iii. The President of the Board (or Vice President, if applicable) and NBU's General Counsel will meet with the member in question to discuss the potential or perceived conflict of interest and whether recusal is required by law.
    - iv. If, after meeting with the President of the Board (or Vice President, if applicable) and NBU's General Counsel, the member does not recuse himself or herself from deliberations involving the issue creating the potential or perceived conflict of interest, then the President of the Board (or Vice President, if applicable) will disclose the potential or perceived conflict of interest to the Board, and NBU's General Counsel will advise the Board as to whether recusal is required by law.
    - v. The Board at all times retains the discretion to determine the appropriate action to be taken in compliance with its Governance Policies and the City of New Braunfels' Code of Ethics and Code of Ordinances.
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 fourteen (14) days before the Board meeting, but in no event no later than seven (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

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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 for adequate cause; however, the Board may recommend removal of a member with advanced written notice of at least thirty (30) days 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.

Any Board member, other than the mayor, who is continuously absent from all Board meetings for a period of four consecutive months will, unless granted a leave of absence by the unanimous vote of the remaining Board members, be considered to have vacated office.

Any Board member, other than the mayor, who is continuously absent without excuse from all Board meetings for three consecutive months will, unless granted a leave of absence by the unanimous vote of the remaining Board members, be subject to censure.

POLICY TYPE: BOARD GOVERNANCE

BG #6

POLICY TITLE: PRESIDENT'S ROLE

The chief governance officer (Board President or 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 will ensure that the Board's actions consistently comply with its own policies and rules and those legitimately imposed upon it from outside the organization, including, but not limited to, ensuring:
  - a. Meeting discussion content ordinarily addresses only those issues that, according to Board policy, clearly belong to the Board to decide or to monitor.
  - b. Deliberation is fair, open, and thorough, but also timely, orderly, pertinent, and courteous.
  - c. Information that is unnecessary for monitoring NBU performance or Board decisions is 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. 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.

- f. The President will collaborate with the Vice President to report the results of the annual Board self-evaluation required under the Governance Investment Policy (BG#12) and conducted by the Vice President under the Vice President's Role (BG#7).
- g. Throughout the year, the 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

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 will implement and oversee 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. The Vice President will ensure an annual self-evaluation of the Board's performance, processes, and policies is conducted as referenced in Governing Style (BG#2) and as required under the Governance Investment policy (BG#12).
4. 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

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The CEO serves as the Board Secretary. The Board Secretary is an officer of the Board but not a member of the Board. The Board Secretary’s role is to ensure the integrity of the Board’s documents.

1. The Board Secretary will ensure all Board documents and filings are accurate and timely.
2. The Board Secretary will ensure Board policies are current and accurately reflect Board decisions.
3. The Board Secretary will 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

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Board committees, when used, will be assigned to assist the entire Board but will 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 will 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 will 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, regardless of whether called a committee and 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

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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, and it remains within the Board's discretion to appoint other standing and ad hoc committees.

Unless otherwise stated, a committee ceases to exist when its task is complete. Timely reporting to the Board will be by submission of a verbal or written report, following each meeting, with appropriate comment by the committee.

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 applicable bylaws. Timely reporting to the Board will be reported on the Board's agenda as Items from Staff.

Standing Committees:

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. The Audit Committee meets once annually and as otherwise needed.
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. The Budget Committee meets once annually and as otherwise needed.
3. **Governance Committee** – The Governance Committee is responsible for reviewing and making recommendations to the Board on its governance policies, practices, and procedures. The Governance Committee consists at a minimum of the Board President and Vice President. The Governance Committee meets once annually and as otherwise needed.
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. Headwaters meets pursuant to its separately established bylaws.
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. The Investment Committee meets once annually and as otherwise needed.

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. The Legislative Committee meets as needed.
7. **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. The Records Management Committee meets once annually and as otherwise needed.
8. **Facilities Committee** – The Facilities Committee is responsible for evaluating options related to the evaluation of NBU's existing facilities, and how, when, and where to expend future resources to meet current and future facility needs. The Facilities Committee meets as needed.
9. **Community Advisory Panel Ad Hoc Committee** – The Community Advisory Panel Ad Hoc Committee is responsible for providing structure and guidance to the Community Advisory Panel (CAP), which includes thirteen (13) members of the community appointed by the NBU Board of Trustees. The Board President and the mayor of the City of New Braunfels sit on this Ad Hoc Committee, as NBU and the City of New Braunfels are responsible for nominating community members to the CAP. The Chair and Vice Chair of the CAP are also members of the Ad Hoc Committee. The Community Advisory Panel Ad Hoc Committee meets as needed.

POLICY TYPE: BOARD GOVERNANCE

BG #11

POLICY TITLE: ANNUAL PLANNING

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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 will occur as needed and at a minimum at least once each fiscal year.

POLICY TYPE: BOARD GOVERNANCE

BG #12

POLICY TITLE: GOVERNANCE INVESTMENT

Because good governance benefits NBU and its customers, the Board will invest in its governance capacity and ability. The Board's investment will 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 arranged and monitored by NBU's Chief of Staff 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.
4. The Board will conduct an annual self-evaluation to determine Board and member compliance with the Board Governance and Board-Management Delegation Policies and

whether process or policy improvements are needed, with a more in-depth self-evaluation to be conducted every five (5) years. The Vice President will facilitate this process as described in Vice President's Role (BG#7).



# *New Braunfels Utilities*

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## **Governance Policies: Board Management Delegation**

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POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #1

POLICY TITLE: GLOBAL POLICY ON BOARD DELEGATION

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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

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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 Board President, the CEO, and NBU's Chief of Staff are 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 but need not include the CEO or NBU's Chief of Staff.
4. Any written communication on material NBU matters to the CEO or NBU's Chief of Staff 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.
6. If a Board member sends a customer request or concern to the CEO or NBU's Chief of Staff, the CEO or NBU's Chief of Staff will provide a response to the Board member indicating that the request or concern has been addressed, or if unable to address quickly, when the request or concern will be addressed.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #3  
 POLICY TITLE: ACCOUNTABILITY OF THE CEO

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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 not 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 Strategic Goals, annual Board priorities, and Board directives;
  - e. Identification of industry trends and emerging issues;
  - f. Maintenance of communication and transparency with the Board;
  - g. Satisfaction of any other specific requirements or expectations set by the Board; and
  - h. Feedback through a self-evaluation from the CEO.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #4

POLICY TITLE: DELEGATION TO CEO

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Through these Governance Policies based on the Carver model of policy governance, as well as other Board policies and directives decided from time to time, the Board defines for the CEO the Strategic Goals to be achieved and prescribes 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. If the CEO uses any reasonable interpretation of these Governance Policies and other Board policies or directives, then 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 will 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 and will avoid micromanagement of 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 will recognize and support the decisions of the CEO previously authorized.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #5

POLICY TITLE: EVALUATING CEO PERFORMANCE

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 will be as a *reasonable and prudent CEO*, and the Board will 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

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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 the 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 present to the Board any item or action that requires by law or contract Board disclosure and approval.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #7

POLICY TITLE: EMERGENCY EXECUTIVE CEO SUCCESSION

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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. Fail, within a reasonable time of appointment or any executive staff changes, to identify and inform the Board of no fewer than two executive staff members who are, in the CEO's estimation, sufficiently familiar with the Board, NBU, and the CEO's job duties and responsibilities such that either staff member can 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.



# *New Braunfels Utilities*

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## **Appendix**

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**Meeting Date:** August 29, 2024      **Agenda Type:** Action Items

**From:** Shawn Schorn      **Reviewed by:** Rocio Gallegos  
 Director of Business Planning      Chief of Staff

**Submitted by:** Shawn Schorn      **Approved by:** Ryan Kelso  
 Director of Business Planning      Chief Executive Officer

**RECOMMENDED ACTION:** Discuss and Consider Approval of the Fiscal Year 2025 Strategic Plan

## BACKGROUND

In August 2023, the New Braunfels Utilities (NBU) Board of Trustees approved the FY 2024 strategic plan. Following this approval, a thorough assessment of the strategic objectives was conducted to ensure alignment with the organization's core mission.

Since then, the eleven (11) strategic goal metrics and nine (9) annual priorities have been carefully refined through a comprehensive evaluation, enhancing their accuracy and relevance. This process included updating all eleven (11) annual priorities to facilitate continuous progress on these mission-critical goals and milestones.

In August 2023, NBU staff presented a plan to the Board that proposed reducing the requirements for full performance measure payout, along with a reduction in the number of annual priorities. This adjustment aimed to alleviate pressure on employees, acknowledging that perfection isn't always attainable. By easing these requirements, the plan sought to reduce stress and promote a healthier work-life balance, ultimately fostering a more sustainable and productive work environment. NBU staff recommends continuing the FY 2024 performance measure weighting, with 70% assigned to strategic goals and 30% to annual priorities. Additionally, to achieve full performance measure payout, staff must meet 75% of the strategic goals and 100% of the annual priorities. This recommendation acknowledges that emerging initiatives may shift priorities throughout the year, allowing flexibility while maintaining focus. The annual performance measures payout is designed to incentivize company-wide performance, leading to increased efficiencies and cost savings.

In light of these refined FY 2025 strategic goals, annual priorities, and the continuation of the current performance measures weighting, we respectfully request the Board's approval. The proposed revisions reinforce NBU's commitment to advancing its mission while effectively stewarding resources and optimizing operational excellence.

**FINANCIAL IMPACT**

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None

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Infrastructure and Technology**

**Financial Excellence**

**Safety and Security**

**Stewardship**

**EXHIBITS**

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1. Fiscal Year 2025 Strategic Plan Updates Presentation

# Discuss and Consider Approval of the Fiscal Year 2025 Strategic Plan Updates

**NBU Board Action Item**

August 29, 2024



# Agenda

- **Mission, Vision, and Core Values**
- **Guiding Principles and Definitions**
- **Proposed FY25 Strategic Goals**
- **Proposed FY25 Annual Priorities**
- **Proposed FY25 Performance Measure payout**

# Mission – Vision – Core Values

## MISSION

Strengthening our community by providing resilient essential services

## VISION

Be a trusted community partner dedicated to excellence in service

## CORE VALUES

Safety, Team, Integrity, Culture, and Stewardship (STICS)



### Mission

Strengthening our community by providing resilient essential services



### Vision

Be a trusted community partner dedicated to excellence in service



### Core Values

Safety, Team, Integrity, Culture, and Stewardship



# Guiding Principles and Definitions

<b>One Utility, One Team</b>	Place organizational success above individual priorities and work together to maintain a team-oriented culture.
<b>Speak Up, Lead, and Care for All</b>	Lead and foster an environment of shared responsibility where everyone feels valued and empowered to perform their job.
<b>Know and Do the Right Thing</b>	Uphold the trust and confidence of the community and the organization.
<b>Continuously Improve</b>	Plan thoughtfully, set realistic expectations, and learn when things do not turn out as expected.
<b>Be Convenient</b>	Anticipate expectations and provide a positive experience.
<b>Be Resilient</b>	Be prepared to adapt to and recover from disruptions.
<b>Be Flexible and Innovative</b>	View challenges as opportunities and pursue new solutions.

# Proposed FY 2025 Strategic Goals

#	Strategic Goal	Goal Measures	Q1	Q2	Q3	Q4
1	Customer and Community	Customer Satisfaction Survey benchmark organizational characteristics by the vendor (Great Blue) at or above the Texas organizational characteristics of 56.6%. Measurement data from Public Power Data Source (new number out in January 2025)				
2	People and Culture	Maintain Gallup engagement survey participation above 80%				
3	People and Culture	Pulse survey resulting in at least 50% of participants ranking of "Improved" or higher on implemented initiatives from approved engagement survey action item themes				
4	Infrastructure and Technology	Maintain a three-year rolling average SAIDI in top 10% of Texas utilities or three year rolling average <52.56 minutes (99.99% reliability)				
5	Infrastructure and Technology	Maintain Information Technology Systems Reliability ≥ 98% uptime for production systems				
6	Infrastructure and Technology	Infrastructure Leakage Index (ILI) <3.0 over a three-year rolling average				
7	Infrastructure and Technology	Wastewater Treatment Compliance Events - Maintain >98% compliance				
8	Financial Excellence	Maintain a competitive bond rating - maintain a bond rating of ≥ A+				
9	Safety and Security	Manage preventable damage to equipment incidents to ≤ 2.7 incidents or fewer per 100 employees				
10	Safety and Security	Manage preventable damage to vehicle to ≤ 10 incidents or fewer per 1,000,000 miles driven				
11	Stewardship	Refine and deploy the triple bottom line evaluation tool with One Water partners. Evaluate 3 NBU projects using the tool and develop the tool SOP (standard operating procedure) for NBU processes after evaluation				



# Proposed FY 2025 Annual Priorities

#	Annual Priority	Objective of Milestone	Q1	Q2	Q3	Q4
1	Electric Transportation (ET) Program Creation	Phase 1 of program design completed, and phase 2 contract executed				
2	Integrated Resource Plan	Present the final Integrated Resource Plan to the Board				
3	Power Supply (The Energy Authority) Roadmap	Update Energy Risk Management Policy to include Phase 1 Roadmap changes				
4	Enterprise Asset Management	Finalize Strategic Asset Management Plan Update including departmental roadmaps				
5	Enterprise Project Management	Implement project management information system for capital projects within the Electric and Substation departments. Provide Project Management training to all identified managers, directors, and executives				
6	NBU HQ	Complete 100% design and construction drawings				
7	Emergency Management	Complete the general standardization of all NBU Emergency Management Plans into one core Plan, 100% completion by end of FY25				
8	Optimizing Customer Experience	Solicit request for proposal for customer experience project and execute contract with consultant				
9	Communication Plan	Engage consultant to establish baselines around current community engagement and begin phase I implementation and measurement				

# Proposed FY 2025 Performance Measures Payout

70% for Strategic Goals: \$430,500 (75% for full payout)  
30% for Annual Priorities: \$184,500 (100% for full payout)  
Total Payout Budget: \$615,000

Currently, the anticipated payout is 100%

## Mission

Strengthening our community by providing resilient essential services

+

## Vision

Be a trusted community partner dedicated to excellence in service

+

## Core Values

Safety, Team, Integrity, Culture, and Stewardship

# Questions



## Mission

Strengthening our community by providing resilient essential services

+

## Vision

Be a trusted community partner dedicated to excellence in service

+

## Core Values

Safety, Team, Integrity, Culture, and Stewardship