



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

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**AGENDA**

**CALL MEETING TO ORDER**

**PLEDGE OF ALLEGIANCE AND INVOCATION**

Board Trustee Yvette Villanueva Barrera

**NBU MISSION, VISION, AND CORE VALUES STATEMENT**

Chief Strategic Communications and Safety Officer Melissa Krause

**PUBLIC COMMENT**

**NBU EMPLOYEE RECOGNITIONS**

1. Retirement Recognitions of Manuel Estrada
2. Recognition of the 2023 Rising Star Award Recipient Brian McClure

**ITEMS FROM THE CHAIR**

1. Report from the Governance Committee
2. Report from the Facilities Master Plan Committee
3. Report from the Community Advisory Panel Board Committee: Kick-off Agenda Planning Meeting for the NBU Integrated Resources Plan

**ITEMS FROM STAFF**

1. Interim CEO's Update
  - a. NBU Distributive Energy Resources Team Collaborative Meeting with San Antonio CPS Energy
  - b. NBU and New Braunfels Food Bank Collaborative Toy Drive
  - c. NBU Assistance Program Information and Update
  - d. NBU Participation in the Texas Public Power Corridor (TxPPC) Group
  - e. NBU University Kickoff
  - f. NBU Community Advisory Panel Kickoff Meeting for the NBU Integrated Resources Plan
  - g. Interim CEO Roadshow: New Braunfels Realtors Group

- h. Update on NBU Chief Operations Officer Search
  - i. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code
2. Financial Update and Report
  3. Quarterly Capital Update
  4. Power Supply Update Including Update on Winter Storm Heather

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

1. Approve Minutes of the NBU Regular Board Meeting of December 14, 2023
2. Approve Minutes of the NBU Special Board Meeting of December 18, 2023
3. Approve Minutes of the NBU Special Board Meeting of January 18, 2024
4. Approve Amended Minutes of the NBU Regular Board Meeting of May 23, 2023
5. Approve the Change Order Log from November 15, 2023, through December 15, 2023
6. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through December 15, 2023
7. Approve the Electric Line of Business Alternative Procurements from November 15, 2023, through December 15, 2023
8. Authorize Interim 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 Trinity Water Treatment Plant and Pump Station Expansion Project
9. Authorize Interim CEO or his Designee to Negotiate and Execute a Construction Contract with Pesado Construction Company, Inc. for the Construction of the Mission to Westpointe Connection Water Line Project
10. Authorize Interim CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the I-35 Interceptor Project
11. Authorize Interim CEO or His Designee to Negotiate and Execute Second Amendment to the Professional Services Agreement with Periscope Holdings, Inc. for Purchasing Support Services for the NBU Purchasing Department
12. Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Service Agreement with DataProse, LLC for Utility Bill Provider Services
13. Authorize Interim CEO to Execute a (i) First Amendment to the Professional Services Agreement between New Braunfels Utilities and Environmental Research Group, LLC, formerly AmaTerra

Environmental, Inc., and (ii) an Assignment of Agreement for Cultural Services for Headwaters Construction Phase II

- [14.](#) Authorize Interim CEO or His Designee to Negotiate and Execute a First Amendment to the Vendor Services Agreement with Opin, LLC dba American FR for a Web-Based Uniform Purchase Program
- [15.](#) Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Britton Strategies LLC for the Community Advisory Panel for Planning, Facilities, and Project Management Services
- [16.](#) Authorize the Interim CEO or His Designee to Negotiate and Execute a Cooperative Contract with Lonestar Freightliner Group, LLC for One (1) Western Star 47X GAPVAX Unit

## **PRESENTATION ITEMS**

- [1.](#) Presentation and Update on the Status of the Amendment to the Memorandum of Agreement (MOU) with the Lower Colorado River Authority (LCRA) Regarding NBU Transmission Assets and Associated Payments

## **EXECUTIVE SESSION**

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

1. Power Supply Resources – Competitive Matters  
(Section 551.086 – Texas Government Code)
  - a. Power Supply Update
2. Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege  
(Section 551.071 – Texas Government Code)
  - a. Settlement Agreement Dated April 4, 2023 Among New Braunfels Utilities and Southerland Communities NB Land Properties, Ltd., Southerland Copper Ridge, LLC (“Southerland Defendants”), International Fidelity Insurance Company, and Harco National Insurance Company
3. Deliberation Regarding Real Property  
(Section 551.072 - Texas Government Code)
  - a. Deliberate the Purchase, Exchange, Lease, or Value of Property at the Intersection of South Sycamore Avenue and 1032 West Coll Street
4. Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege; Personnel Matters  
(Sections 551.071 and 551.074 – Texas Government Code)
  - a. Deliberate Plan and Strategy for Implementation of Executive Employment Agreement for Chief Executive Officer

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

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

**ACTION ITEMS**

1. Discuss and Consider Ratification of Letter Agreement Among New Braunfels Utilities, Southerland Communities NB Land Properties, Ltd., Southerland Copper Ridge, LLC, International Fidelity Insurance Company, and Harco National Insurance Company Pertaining to the Full Settlement Agreement Among the Same Said Parties Dated April 4, 2023
2. Discuss and Consider Approval of Executive Employment Agreement for the Chief Executive Officer

**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 Open Meeting was posted at the City of New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas, and New Braunfels Utilities Main Office, 263 Main Plaza, New Braunfels, Texas, on the **19th day of January 2024**, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.



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



**Meeting Date:** January 25, 2024      **Agenda Type:** Items from Staff

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

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

**RECOMMENDED ACTION:** Financial Update and Report

## **BACKGROUND**

NBU's service territory experienced higher temperatures and lower rainfall during the month of December than historically. The average temperature was 57.5 degrees, which was 5.1 degrees higher than the historical average temperature of 52.4 degrees. Rainfall totaled 1.1 inches for the month of December, which was 1.2 inches lower than the historical average rainfall of 2.3 inches.

For the month of December 2023, NBU recorded a change in net position after contributions ("CNPAC") of \$3,399,000, which represents an increase of \$2,087,000 compared to the budgeted monthly CNPAC of \$1,312,000. Operating service revenues of \$17,105,000 were less than budget by \$4,615,000, or 21%, for the month of December. A \$4,057,000 decrease in electric revenue, a \$294,000 decrease in water revenue, and a \$264,000 decrease in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$487,000 were greater than budget by \$66,000 for the month of December. Purchased power costs were \$4,193,000 less than budget for December 2023 and \$6,451,000 greater for Year-to-Date ("YTD"). A decrease in other operating expenses of \$1,462,000 resulted in total operating expenses to be \$5,655,000, or 27%, less than the budgeted amount of \$20,803,000. The net revenue and operating expense variances contributed to a favorable net operating income variance of \$1,108,000 from budget. Net non-operating items had a \$717,000 favorable variance compared to budget. Impact fees were greater than budget by \$356,000, services income was less than budget by \$28,000, and capital participation fees were less than budget by \$66,000. December 2023 YTD CNPAC was \$22,631,000, which was \$9,108,000 greater than the budgeted amount of \$13,523,000.

## **FINANCIAL IMPACT**

### **Electric**

The Electric Line of Business reported total operating revenues of \$11,643,000, a \$4,031,000 decrease, or 26%, from the December budgeted amount of \$15,674,000. The net rate realized per kWh was \$0.0966, which was 8% less than the budgeted rate of \$0.1045. December kWh sales were 116.7 million kWh, a 30.03 million kWh decrease, or 20%, in comparison to the budgeted amount of 146.7 million kWh. Purchased power costs totaled \$7,183,000, which was \$4,193,000 less than the budgeted amount of \$11,376,000. Electric gross margin, which is total operating revenues minus purchased power, resulted in the amount of \$4,460,000 for the month of December and \$25,842,000 YTD. These amounts were \$162,000 greater and \$222,000 less than the budgeted amount of \$4,298,000 Month-to-Date ("MTD") and \$26,064,000 YTD. Other operating expenses were less than budget by \$516,000. These items resulted in the Electric Line

of Business reporting net operating income of \$2,070,000, which was \$678,000 greater than the budgeted amount of \$1,392,000. Net non-operating items provided a favorable variance from budget of 347,000. Services income was less than budget by \$178,000. The Electric Line of Business reported December 2023 CNPAC of \$1,683,000 and YTD CNPAC of \$12,735,000. These amounts were \$847,000 greater and \$4,164,000 greater than their respective December 2023 MTD and December 2023 YTD budget amounts.

### **Water**

The Water Line of Business reported total operating revenues of \$2,977,000, a \$263,000 decrease, or 8%, from the December budgeted amount of \$3,240,000. In December, water gallons sold of 306,378,000 was less than the budgeted amount of 316,564,000 (a 10,187,000-gallon variance from budget, or 3%). NBU's net realized price per 1,000 gallons sold in December was \$9.43, which was less than the budgeted amount of \$10.06. Operating expenses for December were \$3,253,000, which was \$588,000 less than the budgeted amount of \$3,841,000. The net effect of less revenues and lesser operating expenses than budgeted resulted in the Water's net operating income of (\$276,000), which was less than budget. Net non-operating items provided a favorable variance of \$143,000 from budget. Impact fees of \$1,201,000 were greater than budget by \$185,000 and services income was greater than budget by \$149,000. The Water Line of Business reported December 2023 CNPAC of \$793,000 and YTD CNPAC of \$5,609,000. These amounts were \$802,000 greater than and \$2,954,000 greater than their respective December 2023 MTD and December 2023 YTD budget amounts.

### **Wastewater**

The Wastewater Line of Business reported total operating revenues of \$2,972,000, a \$254,000 decrease, or 8%, from the December budgeted amount of \$3,226,000. Total operating expenses of \$2,321,000 were \$359,000 less than the budgeted amount of \$2,680,000. As a result, the Wastewater Line of Business reported net operating income of \$651,000, which was \$105,000 greater than the budgeted amount of \$546,000. Net non-operating items provided a favorable variance of \$228,000 from budget. Impact fees were greater than budget by \$171,000, and capital participation fees were less than budget by \$66,000. The Wastewater Line of Business reported December 2023 CNPAC of \$923,000 and YTD CNPAC of \$4,287,000. These amounts were \$438,000 greater than and \$1,990,000 greater than their respective December 2023 MTD and December 2023 YTD budget amounts.

## **LINK TO STRATEGIC PLAN**

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### **Financial Excellence**

### **EXHIBITS**

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

**NEW BRAUNFELS UTILITIES**  
**OVERVIEW COMPARISON TO BUDGET & PRIOR FISCAL YEAR**  
 For the Period Ending December 31, 2023

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV	Variance Explanation +/-30%
<b>ELECTRIC</b>						
Sales Volume (MWh)	Actual	775.8				
	Budget	830.7	(54.9)	-7%		
	Prior Year	757.3	18.5	2%		
Revenues (\$M)	Actual	\$ 89.6				
	Budget	\$ 83.4	\$ 6.2	7%		
	Prior Year	84.7	\$ 4.9	6%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Pwr)</i>	Actual	\$ 25.8				
	Budget	\$ 26.1	\$ (0.2)	-1%		Prior year Gross Margin was \$7.8M under budget due to Purchase Power/Generation costs being \$14M over budget
	Prior Year	19.5	\$ 6.3	32%		
Operating Income (\$M)	Actual	\$ 14.1				
	Budget	\$ 11.4	\$ 2.8	24%		Prior years high purchase power costs lowering overall operating income.
	Prior Year	8.2	\$ 5.9	71%		
<b>WATER</b>						
Sales Volume (Million Gallons)	Actual	2.1				
	Budget	2.0	0.1	5%		
	Prior Year	1.9	0.2	11%		
Revenues (\$M)	Actual	\$ 19.3				
	Budget	\$ 19.1	\$ 0.2	1%		
	Prior Year	16.1	\$ 3.2	20%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Water)</i>	Actual	\$ 14.3				
	Budget	\$ 14.0	\$ 0.3	2%		
	Prior Year	12.8	\$ 1.5	12%		
Operating Income (\$M)	Actual	\$ 2.7				
	Budget	\$ (0.3)	\$ 3.0	*		
	Prior Year	3.2	\$ (0.4)	-14%		
<b>WASTEWATER</b>						
Revenues (\$M)	Actual	\$ 14.7				
	Budget	\$ 16.2	\$ (1.5)	-9%		
	Prior Year	13.2	\$ 1.5	11%		
Operating Income (\$M)	Actual	\$ 3.3				
	Budget	\$ 2.6	\$ 0.7	26%		
	Prior Year	3.1	\$ 0.2	6%		
<b>COMBINED</b>						
Operating Expenses (\$M)**	Actual	\$ 19.0				
	Budget	\$ 24.8	\$ (5.8)	-23%		
	Prior Year	17.2	\$ 1.9	11%		
Operating Income (\$M)	Actual	\$ 20.1				
	Budget	\$ 13.6	\$ 6.5	47%		YTD Residential Electric revenue greater than budget by \$6M & less operating expenses than planned.
	Prior Year	14.5	\$ 5.6	39%		
Change in Net Position Before Contributions (\$M)	Actual	\$ 14.2				
	Budget	\$ 4.9	\$ 9.4	*		
	Prior Year	4.8	\$ 9.5	*		
Impact Fees (\$M)	Actual	\$ 6.3				
	Budget	\$ 7.0	\$ (0.7)	-10%		
	Prior Year	7.3	\$ (1.0)	-14%		
Change in Net Position After Contributions (\$M)	Actual	\$ 22.6				
	Budget	\$ 13.5	\$ 9.1	67%		Higher Operating Income factors inot the favorable Change in Net Position.
	Prior Year	14.6	\$ 8.0	55%		

\*Note: Variances are based on rounding of actual numbers and not summary numbers in previous column.

\*\*Note: Operating expenses less purchased power, purchased water, and depreciation & amortization.

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

NEW BRAUNFELS UTILITIES  
Balance Sheet  
For the Period Ending December 31, 2023  
Amounts Shown in Thousands

	December 31 2023	November 30 2023	Variance	% Change
<b>ASSETS</b>				
<b>UTILITY PLANT</b>				
Utility Plant in Service	\$ 1,188,293	\$ 1,187,184	\$ 1,109	0%
Less: Accumulated Depreciation	(357,312)	(354,151)	(3,161)	1%
Construction in Progress	120,439	114,804	5,636	5%
<b>TOTAL UTILITY PLANT</b>	<b>\$ 951,420</b>	<b>\$ 947,837</b>	<b>\$ 3,584</b>	<b>0%</b>
<b>CURRENT &amp; ACCRUED ASSETS</b>				
Cash & Temporary Investments	\$ 42,446	\$ 35,024	\$ 7,422	21%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	14,791	15,984	(1,193)	-7%
Accounts Receivable - Other	5,820	6,178	(358)	-6%
Accrued Unbilled Revenue	14,173	14,387	(214)	-1%
Inventory	8,809	9,024	(215)	-2%
Prepaid Expenses	18,226	18,853	(627)	-3%
Accrued Interest Receivable	87	45	42	92%
Rents Receivable	-	-	-	0%
<b>TOTAL CURRENT &amp; ACCRUED ASSETS</b>	<b>\$ 104,351</b>	<b>\$ 99,495</b>	<b>\$ 4,856</b>	<b>5%</b>
<b>RESTRICTED ASSETS &amp; DEFERRED DEBITS</b>				
Restricted Funds	\$ 94,008	\$ 95,123	\$ (1,116)	-1%
Designated Funds	67,103	65,743	1,360	2%
Pension Deferred Outflows	16,755	16,755	-	0%
Mid-Basin Regulatory Asset	3,125	3,055	70	2%
Other Deferred Debits	3,574	3,574	-	0%
<b>TOTAL RESTRICTED ASSETS &amp; DEFERRED DEBITS</b>	<b>\$ 184,565</b>	<b>\$ 184,250</b>	<b>\$ 314</b>	<b>0%</b>
<b>TOTAL ASSETS</b>	<b>\$ 1,240,336</b>	<b>\$ 1,231,583</b>	<b>\$ 8,753</b>	<b>1%</b>
<b>LIABILITIES &amp; NET POSITION</b>				
<b>BONDS PAYABLE</b>				
Long-Term Debt	\$ 372,221	\$ 372,212	\$ 8	0%
Unamortized Bond Discount/Premium	24,256	24,464	(208)	-1%
<b>TOTAL BONDS PAYABLE</b>	<b>\$ 396,477</b>	<b>\$ 396,676</b>	<b>\$ (200)</b>	<b>0%</b>
<b>CURRENT &amp; ACCRUED LIABILITIES</b>				
Accounts Payable	\$ 6,097	\$ 12,318	\$ (6,221)	-51%
Accrued Purchased Power	8,611	7,360	1,252	17%
Commercial Paper Payable	75,000	65,000	10,000	15%
Customer Deposits	15,391	12,756	2,635	21%
Accrued Payroll & Benefits (Including Compensated Absences)	4,049	3,989	60	2%
Interest Accrued on Long Term Debt	271	6,591	(6,321)	-96%
Current Portion of Long Term Debt	8,045	8,045	-	0%
Other Payables	3,052	3,044	8	0%
<b>TOTAL CURRENT &amp; ACCRUED LIABILITIES</b>	<b>\$ 120,517</b>	<b>\$ 119,104</b>	<b>\$ 1,413</b>	<b>1%</b>
<b>NONCURRENT LIABILITIES &amp; DEFERRED CREDITS</b>				
Accumulated Provision for Pension	\$ 29,068	\$ 29,068	\$ -	0%
Power Cost Adjustments - Over-Recovered	6,795	6,962	(167)	-2%
Other Deferred Credits	26,639	22,331	4,309	19%
<b>TOTAL NONCURRENT LIABILITIES &amp; DEFERRED CREDITS</b>	<b>\$ 62,502</b>	<b>\$ 58,360</b>	<b>\$ 4,142</b>	<b>7%</b>
<b>TOTAL LIABILITIES</b>	<b>\$ 579,495</b>	<b>\$ 574,140</b>	<b>\$ 5,355</b>	<b>1%</b>
<b>NET POSITION</b>				
Reserve for Restricted Assets	\$ 75,149	\$ 73,811	\$ 1,338	2%
Reserve for Intergovernmental	10,254	10,573	(319)	-3%
Unrestricted Assets	315,918	313,539	2,379	1%
Contributed Capital	259,520	259,520	-	0%
<b>TOTAL NET POSITION</b>	<b>\$ 660,841</b>	<b>\$ 657,443</b>	<b>\$ 3,398</b>	<b>1%</b>
<b>TOTAL LIABILITIES &amp; NET POSITION</b>	<b>\$ 1,240,336</b>	<b>\$ 1,231,583</b>	<b>\$ 8,753</b>	<b>1%</b>



NEW BRAUNFELS UTILITIES  
Statement of Revenues & Expenses  
For the Period Ending December 31, 2023  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>VOLUME/RATES</b>								
Electric Sales kWh	116,706	146,739	(30,033)	-20%	775,805	830,703	(54,898)	-7%
Electric Sales Rate Per kWh	\$ 0.0966	\$ 0.1045	\$ (0.0079)	-8%	\$ 0.1129	\$ 0.0983	\$ 0.0146	15%
Purchased kWh	121,328	156,420	(35,091)	-22%	770,224	836,368	(66,144)	-8%
Purchased Rate per kWh	\$ 0.0592	\$ 0.0727	\$ (0.0135)	-19%	\$ 0.0828	\$ 0.0686	\$ 0.0143	21%
Gallons Sold	306,378	316,564	(10,187)	-3%	2,141,818	2,038,513	103,305	5%
Rate per 1,000 Gallons Sold	\$ 9.43	\$ 10.06	\$ (0.63)	-6%	\$ 8.82	\$ 9.24	\$ (0.43)	-5%
<b>OPERATING REVENUES</b>								
<b>SERVICE REVENUE</b>								
Electric Service	\$ 11,271	\$ 15,328	\$ (4,057)	-26%	\$ 87,601	\$ 81,683	\$ 5,918	7%
Water Service	2,890	3,184	(294)	-9%	18,887	18,846	41	0%
Wastewater Service	2,944	3,208	(264)	-8%	14,570	16,078	(1,508)	-9%
<b>TOTAL SERVICE REVENUE</b>	<b>\$ 17,105</b>	<b>\$ 21,720</b>	<b>\$ (4,615)</b>	<b>-21%</b>	<b>\$ 121,058</b>	<b>\$ 116,607</b>	<b>\$ 4,451</b>	<b>4%</b>
<b>OTHER OPERATING REVENUE</b>								
Electric Other	\$ 102	\$ 100	\$ 2	2%	\$ 698	\$ 500	\$ 198	40%
Water Other	66	42	24	57%	344	208	136	65%
Wastewater Other	28	18	10	56%	143	88	55	63%
Transmission System Revenue	230	217	13	6%	1,145	1,084	61	6%
Electric Pole Attachments	40	29	11	38%	198	146	52	36%
Water Tower Antenna Lease	21	15	6	40%	105	73	32	44%
<b>TOTAL OTHER OPERATING REVENUE</b>	<b>\$ 487</b>	<b>\$ 421</b>	<b>\$ 66</b>	<b>16%</b>	<b>\$ 2,633</b>	<b>\$ 2,099</b>	<b>\$ 534</b>	<b>25%</b>
<b>TOTAL OPERATING REVENUE</b>	<b>\$ 17,592</b>	<b>\$ 22,141</b>	<b>\$ (4,549)</b>	<b>-21%</b>	<b>\$ 123,691</b>	<b>\$ 118,706</b>	<b>\$ 4,985</b>	<b>4%</b>
<b>OPERATING EXPENSES</b>								
<b>ELECTRIC</b>								
Purchased Power	\$ 7,183	\$ 11,376	\$ (4,193)	-37%	\$ 63,800	\$ 57,349	\$ 6,451	11%
Electric O&M Expenses	501	764	(263)	-34%	2,620	3,946	(1,326)	-34%
Electric Depreciation & Amortization	1,093	1,215	(122)	-10%	5,421	6,076	(655)	-11%
Electric Support Services Allocated Operating Expenses	796	927	(131)	-14%	3,687	4,688	(1,001)	-21%
<b>TOTAL ELECTRIC OPERATING EXPENSE</b>	<b>\$ 9,573</b>	<b>\$ 14,282</b>	<b>\$ (4,709)</b>	<b>-33%</b>	<b>\$ 75,528</b>	<b>\$ 72,059</b>	<b>\$ 3,469</b>	<b>5%</b>
<b>WATER</b>								
Purchased Water	\$ 1,015	\$ 1,032	\$ (17)	-2%	\$ 5,071	\$ 5,160	\$ (89)	-2%
Water O&M Expenses	626	789	(163)	-21%	2,980	4,136	(1,156)	-28%
Water Depreciation & Amortization	923	1,032	(109)	-11%	4,583	5,160	(577)	-11%
Water Support Services Allocated Operating Expenses	690	988	(298)	-30%	3,993	4,981	(988)	-20%
<b>TOTAL WATER OPERATING EXPENSE</b>	<b>\$ 3,254</b>	<b>\$ 3,841</b>	<b>\$ (587)</b>	<b>-15%</b>	<b>\$ 16,627</b>	<b>\$ 19,437</b>	<b>\$ (2,810)</b>	<b>-14%</b>
<b>WASTEWATER</b>								
Wastewater O&M Expenses	\$ 628	\$ 702	\$ (74)	-11%	\$ 2,930	\$ 3,647	\$ (717)	-20%
Wastewater Depreciation & Amortization	1,145	1,306	(161)	-12%	5,692	6,532	(840)	-13%
Wastewater Support Services Allocated Operating Expenses	548	672	(124)	-18%	2,806	3,387	(581)	-17%
<b>TOTAL WASTEWATER OPERATING EXPENSE</b>	<b>\$ 2,321</b>	<b>\$ 2,680</b>	<b>\$ (359)</b>	<b>-13%</b>	<b>\$ 11,428</b>	<b>\$ 13,566</b>	<b>\$ (2,138)</b>	<b>-16%</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 15,148</b>	<b>\$ 20,803</b>	<b>\$ (5,655)</b>	<b>-27%</b>	<b>\$ 103,583</b>	<b>\$ 105,062</b>	<b>\$ (1,479)</b>	<b>-1%</b>
<b>NET OPERATING INCOME</b>								
ELECTRIC	\$ 2,070	\$ 1,392	\$ 678	49%	\$ 14,114	\$ 11,354	\$ 2,760	24%
WATER	(276)	(601)	325	-54%	2,709	(310)	3,019	*
WASTEWATER	651	546	105	19%	3,285	2,600	685	26%
<b>TOTAL NET OPERATING INCOME</b>	<b>\$ 2,445</b>	<b>\$ 1,337</b>	<b>\$ 1,108</b>	<b>83%</b>	<b>\$ 20,108</b>	<b>\$ 13,644</b>	<b>\$ 6,464</b>	<b>47%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 872	\$ 431	\$ 441	*	\$ 3,495	\$ 2,155	\$ 1,340	62%
Intergovernmental Expense	(944)	(989)	45	-5%	(4,711)	(4,944)	233	-5%
Interest and Amortization Expense	(1,295)	(1,376)	81	-6%	(6,554)	(6,881)	327	-5%
Other	328	178	150	84%	1,908	888	1,020	*
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (1,039)</b>	<b>\$ (1,756)</b>	<b>\$ 717</b>	<b>-41%</b>	<b>\$ (5,862)</b>	<b>\$ (8,782)</b>	<b>\$ 2,920</b>	<b>33%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 1,406</b>	<b>\$ (419)</b>	<b>\$ 1,825</b>	<b>*</b>	<b>\$ 14,246</b>	<b>\$ 4,862</b>	<b>\$ 9,384</b>	<b>*</b>
<b>CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 1,755	\$ 1,399	\$ 356	25%	\$ 6,266	\$ 6,997	\$ (731)	-10%
Services	238	266	(28)	-11%	2,119	1,332	787	59%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	332	(332)	-100%
<b>TOTAL CAPITAL CONTRIBUTIONS</b>	<b>\$ 1,993</b>	<b>\$ 1,731</b>	<b>\$ 262</b>	<b>15%</b>	<b>\$ 8,385</b>	<b>\$ 8,661</b>	<b>\$ (276)</b>	<b>-3%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 3,399</b>	<b>\$ 1,312</b>	<b>\$ 2,087</b>	<b>*</b>	<b>\$ 22,631</b>	<b>\$ 13,523</b>	<b>\$ 9,108</b>	<b>67%</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
ELECTRIC LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending December 31, 2023  
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	\$ 11,271	\$ 15,328	\$ (4,057)	-26%	\$ 87,601	\$ 81,683	\$ 5,918	7%
<b>TOTAL ELECTRIC SERVICE REVENUE</b>	<b>\$ 11,271</b>	<b>\$ 15,328</b>	<b>\$ (4,057)</b>	<b>-26%</b>	<b>\$ 87,601</b>	<b>\$ 81,683</b>	<b>\$ 5,918</b>	<b>7%</b>
<b>OTHER ELECTRIC OPERATING REVENUE</b>								
Electric Other	\$ 102	\$ 100	\$ 2	2%	\$ 698	\$ 500	\$ 198	40%
Transmission System Revenue	230	217	13	6%	1,145	1,084	61	6%
Electric Pole Attachments	40	29	11	38%	198	146	52	36%
<b>TOTAL OTHER ELECTRIC OPERATING REVENUE</b>	<b>\$ 372</b>	<b>\$ 346</b>	<b>\$ 26</b>	<b>8%</b>	<b>\$ 2,041</b>	<b>\$ 1,730</b>	<b>\$ 311</b>	<b>18%</b>
<b>TOTAL ELECTRIC OPERATING REVENUE</b>	<b>\$ 11,643</b>	<b>\$ 15,674</b>	<b>\$ (4,031)</b>	<b>-26%</b>	<b>\$ 89,642</b>	<b>\$ 83,413</b>	<b>\$ 6,229</b>	<b>7%</b>
<b>ELECTRIC OPERATING EXPENSES</b>								
Purchased Power & Other Power Supply	\$ 7,183	\$ 11,376	\$ (4,193)	-37%	\$ 63,800	\$ 57,349	\$ 6,451	11%
Transmission & Distribution	443	716	(273)	-38%	2,364	3,683	(1,319)	-36%
Customer Service	46	35	11	31%	124	176	(52)	-30%
Administrative & General	12	13	(1)	-8%	133	87	46	53%
Depreciation & Amortization	1,093	1,215	(122)	-10%	5,421	6,076	(655)	-11%
Support Services Allocated Operating Expenses	796	927	(131)	-14%	3,687	4,688	(1,001)	-21%
<b>TOTAL ELECTRIC OPERATING EXPENSE</b>	<b>\$ 9,573</b>	<b>\$ 14,282</b>	<b>\$ (4,709)</b>	<b>-33%</b>	<b>\$ 75,529</b>	<b>\$ 72,059</b>	<b>\$ 3,470</b>	<b>5%</b>
<b>ELECTRIC NET OPERATING INCOME</b>	<b>\$ 2,070</b>	<b>\$ 1,392</b>	<b>\$ 678</b>	<b>49%</b>	<b>\$ 14,114</b>	<b>\$ 11,354</b>	<b>\$ 2,760</b>	<b>24%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 371	\$ 183	\$ 188	*	\$ 1,486	\$ 916	\$ 570	62%
Intergovernmental Expense	(752)	(799)	47	-6%	(3,749)	(3,997)	248	-6%
Interest and Amortization Expense	(215)	(246)	31	-13%	(1,197)	(1,232)	35	-3%
Other	171	90	81	90%	526	451	75	17%
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (425)</b>	<b>\$ (772)</b>	<b>\$ 347</b>	<b>45%</b>	<b>\$ (2,934)</b>	<b>\$ (3,862)</b>	<b>\$ 928</b>	<b>24%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 1,645</b>	<b>\$ 620</b>	<b>\$ 1,025</b>	<b>*</b>	<b>\$ 11,180</b>	<b>\$ 7,492</b>	<b>\$ 3,688</b>	<b>49%</b>
<b>ELECTRIC CAPITAL CONTRIBUTIONS</b>								
Services	\$ 38	\$ 216	\$ (178)	-82%	\$ 1,555	\$ 1,079	\$ 476	44%
<b>TOTAL ELECTRIC CAPITAL CONTRIBUTIONS</b>	<b>\$ 38</b>	<b>\$ 216</b>	<b>\$ (178)</b>	<b>-82%</b>	<b>\$ 1,555</b>	<b>\$ 1,079</b>	<b>\$ 476</b>	<b>44%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 1,683</b>	<b>\$ 836</b>	<b>\$ 847</b>	<b>*</b>	<b>\$ 12,735</b>	<b>\$ 8,571</b>	<b>\$ 4,164</b>	<b>49%</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
WATER LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending December 31, 2023  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>WATER OPERATING REVENUES</b>								
<b>WATER SERVICE REVENUE</b>								
Water Service	\$ 2,890	\$ 3,183	\$ (293)	-9%	\$ 18,887	\$ 18,846	\$ 41	0%
<b>TOTAL WATER SERVICE REVENUE</b>	<b>\$ 2,890</b>	<b>\$ 3,183</b>	<b>\$ (293)</b>	<b>-9%</b>	<b>\$ 18,887</b>	<b>\$ 18,846</b>	<b>\$ 41</b>	<b>0%</b>
<b>OTHER WATER OPERATING REVENUE</b>								
Water Other	\$ 66	\$ 42	\$ 24	57%	\$ 344	\$ 208	\$ 136	65%
Water Tower Antenna Lease	21	15	6	40%	105	73	32	44%
<b>TOTAL OTHER WATER OPERATING REVENUE</b>	<b>\$ 87</b>	<b>\$ 57</b>	<b>\$ 30</b>	<b>53%</b>	<b>\$ 449</b>	<b>\$ 281</b>	<b>\$ 168</b>	<b>60%</b>
<b>TOTAL WATER OPERATING REVENUE</b>	<b>\$ 2,977</b>	<b>\$ 3,240</b>	<b>\$ (263)</b>	<b>-8%</b>	<b>\$ 19,336</b>	<b>\$ 19,127</b>	<b>\$ 209</b>	<b>1%</b>
<b>WATER OPERATING EXPENSES</b>								
Purchased Water	\$ 1,015	\$ 1,032	\$ (17)	-2%	\$ 5,071	\$ 5,160	\$ (89)	-2%
Supply Source	4	9	(5)	-56%	58	47	11	23%
Transmission & Distribution	223	286	(63)	-22%	899	1,495	(596)	-40%
Pumping	182	235	(53)	-23%	1,002	1,175	(173)	-15%
Water Treatment	138	205	(67)	-33%	812	1,115	(303)	-27%
Customer Service	21	9	12	*	36	43	(7)	-16%
Administrative & General	57	45	12	27%	172	261	(89)	-34%
Depreciation & Amortization	923	1,032	(109)	-11%	4,583	5,160	(577)	-11%
Support Services Allocated Operating Expenses	690	988	(298)	-30%	3,993	4,981	(988)	-20%
<b>TOTAL WATER OPERATING EXPENSE</b>	<b>\$ 3,253</b>	<b>\$ 3,841</b>	<b>\$ (588)</b>	<b>-15%</b>	<b>\$ 16,627</b>	<b>\$ 19,437</b>	<b>\$ (2,810)</b>	<b>-14%</b>
<b>WATER NET OPERATING INCOME</b>	<b>\$ (276)</b>	<b>\$ (601)</b>	<b>\$ 325</b>	<b>-54%</b>	<b>\$ 2,709</b>	<b>\$ (310)</b>	<b>\$ 3,019</b>	<b>*</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 243	\$ 120	\$ 123	*	\$ 974	\$ 601	\$ 373	62%
Intergovernmental Expense	(93)	(90)	(3)	3%	(467)	(450)	(17)	4%
Interest and Amortization Expense	(571)	(578)	7	-1%	(2,854)	(2,888)	34	-1%
Other	89	73	16	22%	627	367	260	71%
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (332)</b>	<b>\$ (475)</b>	<b>\$ 143</b>	<b>-30%</b>	<b>\$ (1,720)</b>	<b>\$ (2,370)</b>	<b>\$ 650</b>	<b>-27%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ (608)</b>	<b>\$ (1,076)</b>	<b>\$ 468</b>	<b>-43%</b>	<b>\$ 989</b>	<b>\$ (2,680)</b>	<b>\$ 3,669</b>	<b>*</b>
<b>WATER CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 1,201	\$ 1,016	\$ 185	18%	\$ 4,056	\$ 5,081	\$ (1,025)	-20%
Services	200	51	149	*	564	253	311	*
<b>TOTAL WATER CAPITAL CONTRIBUTIONS</b>	<b>\$ 1,401</b>	<b>\$ 1,067</b>	<b>\$ 334</b>	<b>31%</b>	<b>\$ 4,620</b>	<b>\$ 5,334</b>	<b>\$ (714)</b>	<b>-13%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 793</b>	<b>\$ (9)</b>	<b>\$ 802</b>	<b>*</b>	<b>\$ 5,609</b>	<b>\$ 2,655</b>	<b>\$ 2,954</b>	<b>*</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
WASTEWATER LINE OF BUSINESS  
Statement of Revenues & Expenses  
For the Period Ending December 31, 2023  
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
<b>WASTEWATER OPERATING REVENUES</b>								
<b>WASTEWATER SERVICE REVENUE</b>								
Wastewater Service	\$ 2,944	\$ 3,208	\$ (264)	-8%	\$ 14,570	\$ 16,078	\$ (1,508)	-9%
<b>TOTAL WASTEWATER SERVICE REVENUE</b>	<b>\$ 2,944</b>	<b>\$ 3,208</b>	<b>\$ (264)</b>	<b>-8%</b>	<b>\$ 14,570</b>	<b>\$ 16,078</b>	<b>\$ (1,508)</b>	<b>-9%</b>
<b>OTHER WASTEWATER OPERATING REVENUE</b>								
Wastewater Other	\$ 28	\$ 18	\$ 10	56%	\$ 143	\$ 88	\$ 55	63%
<b>TOTAL OTHER WASTEWATER OPERATING REVENUE</b>	<b>\$ 28</b>	<b>\$ 18</b>	<b>\$ 10</b>	<b>56%</b>	<b>\$ 143</b>	<b>\$ 88</b>	<b>\$ 55</b>	<b>63%</b>
<b>TOTAL WASTEWATER OPERATING REVENUE</b>	<b>\$ 2,972</b>	<b>\$ 3,226</b>	<b>\$ (254)</b>	<b>-8%</b>	<b>\$ 14,713</b>	<b>\$ 16,166</b>	<b>\$ (1,453)</b>	<b>-9%</b>
<b>WASTEWATER OPERATING EXPENSES</b>								
Transmission & Distribution	\$ -	\$ -	\$ -	100%	\$ 1	\$ -	\$ 1	100%
Wastewater Operations & Maintenance	585	663	(78)	-12%	2,736	3,400	(664)	-20%
Customer Service	25	9	16	*	44	45	(1)	-2%
Administrative & General	18	30	(12)	-40%	149	202	(53)	-26%
Depreciation & Amortization	1,145	1,306	(161)	-12%	5,692	6,532	(840)	-13%
Support Services Allocated Operating Expenses	548	672	(124)	-18%	2,806	3,387	(581)	-17%
<b>TOTAL WASTEWATER OPERATING EXPENSE</b>	<b>\$ 2,321</b>	<b>\$ 2,680</b>	<b>\$ (359)</b>	<b>-13%</b>	<b>\$ 11,428</b>	<b>\$ 13,566</b>	<b>\$ (2,138)</b>	<b>-16%</b>
<b>WASTEWATER NET OPERATING INCOME</b>	<b>\$ 651</b>	<b>\$ 546</b>	<b>\$ 105</b>	<b>19%</b>	<b>\$ 3,285</b>	<b>\$ 2,600</b>	<b>\$ 685</b>	<b>26%</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>								
Interest Income	\$ 258	\$ 128	\$ 130	*	\$ 1,035	\$ 638	\$ 397	62%
Intergovernmental Expense	(99)	(100)	1	-1%	(495)	(498)	3	-1%
Interest and Amortization Expense	(509)	(552)	43	-8%	(2,503)	(2,761)	258	-9%
Other	68	14	54	*	755	70	685	*
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b>\$ (282)</b>	<b>\$ (510)</b>	<b>\$ 228</b>	<b>-45%</b>	<b>\$ (1,208)</b>	<b>\$ (2,551)</b>	<b>\$ 1,343</b>	<b>-53%</b>
<b>CHANGE IN NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 369</b>	<b>\$ 36</b>	<b>\$ 333</b>	<b>*</b>	<b>\$ 2,077</b>	<b>\$ 49</b>	<b>\$ 2,028</b>	<b>*</b>
<b>WASTEWATER CAPITAL CONTRIBUTIONS</b>								
Impact Fees	\$ 554	\$ 383	\$ 171	45%	\$ 2,210	\$ 1,915	\$ 295	15%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	332	(332)	-100%
<b>TOTAL WASTEWATER CAPITAL CONTRIBUTIONS</b>	<b>\$ 554</b>	<b>\$ 449</b>	<b>\$ 105</b>	<b>23%</b>	<b>\$ 2,210</b>	<b>\$ 2,247</b>	<b>\$ (37)</b>	<b>-2%</b>
<b>CHANGE IN NET POSITION AFTER CONTRIBUTIONS</b>	<b>\$ 923</b>	<b>\$ 485</b>	<b>\$ 438</b>	<b>90%</b>	<b>\$ 4,287</b>	<b>\$ 2,297</b>	<b>\$ 1,990</b>	<b>87%</b>

\*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES  
Statement of Cash Flows  
For the Period Ending December 31, 2023  
Amounts Shown in Thousands

	<u>MTD</u>	<u>YTD</u>
<b>NET POSITION BEFORE CONTRIBUTIONS</b>	<b>\$ 1,406</b>	<b>\$ 14,246</b>
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 3,161	\$ 15,696
Decrease (increase) in accounts receivable	1,765	13,959
Decrease (increase) in inventories	215	(2,272)
Decrease (increase) in other assets	2,550	6,619
Increase (decrease) in current liabilities	2,452	17,150
Increase (decrease) in other liabilities	4,142	200
<b>Net Cash Flow from Operating Activities</b>	<b><u>\$ 15,691</u></b>	<b><u>\$ 65,598</u></b>
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (6,745)	\$ (56,247)
Investments	(244)	(21,025)
Rents/Interest Receivable	(42)	491
<b>Net Cash Flow from Investing Activities</b>	<b><u>\$ (7,030)</u></b>	<b><u>\$ (76,781)</u></b>
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (1,039)	\$ (5,862)
Increase (decrease) in long-term debt	(200)	(999)
<b>Net Cash Flow from Financing Activities</b>	<b><u>\$ (1,239)</u></b>	<b><u>\$ (6,861)</u></b>
<b>Net Increase (Decrease) in Cash and Cash Equivalents</b>	<b><u>\$ 7,422</u></b>	<b><u>\$ (18,044)</u></b>

**CAPITAL EQUIPMENT SUMMARY - FY 2024**  
**YTD for the Period Ending December 31, 2023**

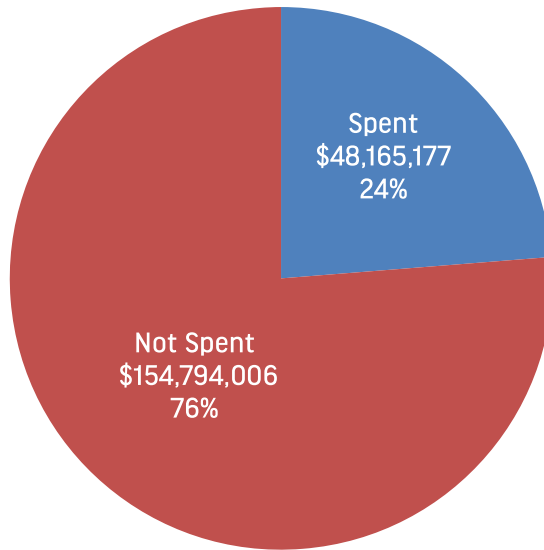


Department	Capital Equipment Description	YTD Actual	FY 2024 Budget	Budget Remaining
<b>ELECTRIC</b>				
117	SEA Air Excavation Unit	-	650,000	650,000
117	Altec Pressure Digger	429,317	400,000	(29,317)
117	Altec AM 60E	-	300,000	300,000
117	Altec 55' Articulating Boom	-	300,000	300,000
117	Altec AM 60E	-	185,000	185,000
117	Arc Demo Trailer	-	120,000	120,000
117	Ford F-550 Electric	-	111,982	111,982
117	Ford F-550 Electric	-	111,982	111,982
117	Ford F-550 Electric	-	111,982	111,982
117	Ford F-550 Electric	-	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	Locator Unit	-	45,000	45,000
117	Dump Trailer	12,733	15,000	2,267
118	Ford F-550 w/Crane	-	150,437	150,437
119	Ford F-550 Electric	-	61,393	61,393
	<b>TOTAL ELECTRIC</b>	<b>\$ 442,050</b>	<b>\$ 2,894,758</b>	<b>\$ 2,452,708</b>
<b>WATER</b>				
216	Ford F-150	26,995	55,000	28,005
220	Ford F-550 w/Crane	-	150,437	150,437
220	Ford F-150	54,845	55,000	155
	<b>TOTAL WATER</b>	<b>\$ 81,840</b>	<b>\$ 260,437</b>	<b>\$ 178,597</b>
<b>WASTEWATER</b>				
320	Ford F-550 w/Crane	-	150,437	150,437
320	Small Utility Unit	-	15,000	15,000
	<b>TOTAL WASTEWATER</b>	<b>\$ -</b>	<b>\$ 220,437</b>	<b>\$ 220,437</b>
<b>SHARED WATER/WASTEWATER</b>				
217/317	CAT 313 Excavator	-	250,000	250,000
217/317	Ford F-550	-	244,534	244,534
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	-	150,000	150,000
217/317	CAT Backhoe w/Ext	-	125,000	125,000
217/317	Ford F-550	-	122,267	122,267
217/317	Ford F-550	-	122,267	122,267
217/317	Ford F-550	-	122,267	122,267
217/317	International Dump Truck	-	115,000	115,000
217/317	CAT Backhoe	-	115,000	115,000
217/317	CAT Backhoe	-	115,000	115,000
217/317	CAT Backhoe	-	115,000	115,000
217/317	E.H. Wachs Large VE	-	86,000	86,000
217/317	E.H. Wachs Large VE	-	86,000	86,000
217/317	500' of Bypass Hose	-	85,000	85,000
217/317	CAT Skid Steer	-	65,000	65,000
217/317	Ford F-150	54,845	55,000	155
217/317	Scorpion Towable Attenuator	-	35,000	35,000
217/317	Towable Air Compressor	-	25,000	25,000
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>\$ 227,231</b>	<b>\$ 2,463,335</b>	<b>\$ 2,236,104</b>
<b>Business Planning</b>				
425	Ford Escape	-	30,000	30,000
425	GPS Unit	-	30,000	30,000
	<b>TOTAL BUSINESS PLANNING</b>	<b>\$ -</b>	<b>\$ 60,000</b>	<b>\$ 60,000</b>
<b>SAFETY</b>				
524	Ford Explorer	54,845	38,000	(16,845)
	<b>TOTAL SAFETY</b>	<b>\$ 54,845</b>	<b>\$ 38,000</b>	<b>\$ (16,845)</b>
<b>PURCHASING</b>				
527	Ford F-350	-	75,500	75,500
	<b>TOTAL PURCHASING</b>	<b>\$ -</b>	<b>\$ 75,500</b>	<b>\$ 75,500</b>
<b>FLEET/FACILITIES</b>				
528	Ford F-550 Fleet Service	-	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	-	55,000	55,000
528	Ford F-150	-	55,000	55,000
528	Ford Escape	-	30,000	30,000
528	Lawn Mowing Equipment	-	25,000	25,000
528	Other	-	25,000	25,000
528	Pressure washing trailer	-	16,000	16,000
528	Janitorial Equipment	-	15,000	15,000
	<b>TOTAL FLEET/FACILITIES</b>	<b>\$ 164,535</b>	<b>\$ 656,576</b>	<b>\$ 492,041</b>
<b>CONSERVATION AND CUSTOMER SOLUTIONS</b>				
529	Ford Escape Plug-in Hybrid	26,995	40,000	13,005
529	Ford Escape Plug-in Hybrid	-	40,000	40,000
	<b>TOTAL CONSERVATION AND CUSTOMER SOLUTIONS</b>	<b>\$ 26,995</b>	<b>\$ 80,000</b>	<b>\$ 53,005</b>
<b>TECHNOLOGY</b>				
531	Server Replacements	-	600,000	600,000
531	PC Replacements	149,015	400,000	250,985
531	Dell Nodes	-	400,000	400,000
531	Network Equipment Replacements	95,660	200,000	104,340
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>\$ 244,666</b>	<b>\$ 1,697,500</b>	<b>\$ 1,452,834</b>
<b>SYSTEM CONTROL</b>				
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	-	30,000	30,000
	<b>TOTAL SYSTEM CONTROL</b>	<b>\$ 134,975</b>	<b>\$ 180,000</b>	<b>\$ 45,025</b>
	<b>TOTAL CAPITAL EQUIPMENT</b>	<b>\$ 1,377,136</b>	<b>\$ 8,626,543</b>	<b>\$ 7,249,407</b>
<b>BUDGETED PRIOR YEAR ITEMS:</b>				
<b>WATER</b>				
220	2023 Aluminum Dump Trailer (FY22)	21,080	-	(21,080)
220	2023 Ford F150 4X4 Super crew (FY22)	54,845	-	(54,845)
220	2023 Ford F150 4X4 Super crew (FY22)	54,845	-	(54,845)
	<b>TOTAL WATER</b>	<b>\$ 130,770</b>	<b>\$ -</b>	<b>\$ (130,770)</b>
<b>WASTEWATER</b>				
320	2023 Ford F150 4X4 Super crew (FY22)	54,845	-	(54,845)
	<b>TOTAL WASTEWATER</b>	<b>\$ 54,845</b>	<b>\$ -</b>	<b>\$ (54,845)</b>
<b>SHARED WATER/WASTEWATER</b>				
217/317	2022 CUES Sewer Truck CCTV (FY22)	330,894	-	(330,894)
217/317	2023 Ford F150 4X4 Supercrew (FY22)	54,845	-	(54,845)
	<b>TOTAL SHARED WATER/WASTEWATER</b>	<b>\$ 385,739</b>	<b>\$ -</b>	<b>\$ (385,739)</b>
	<b>TOTAL BUDGETED PRIOR YEAR CAPITAL EQUIPMENT</b>	<b>\$ 571,354</b>	<b>\$ -</b>	<b>\$ (571,354)</b>
	<b>TOTAL</b>	<b>\$ 1,948,490</b>	<b>\$ 8,626,543</b>	<b>\$ 6,678,053</b>

### FY 2024 Capital Expenditure Summary As of December 31, 2023

42% of Year  
Completed

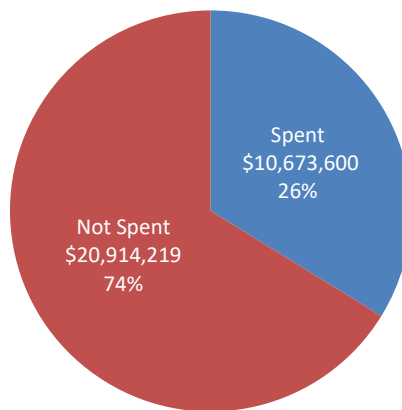
	<u>Spent</u>	<u>Not Spent</u>	<u>Total Budget</u>	<u>% of Total Budget Spent</u>
Electric	\$ 10,673,600	\$ 20,914,219	\$ 31,587,819	34%
Water	18,094,871	53,890,285	71,985,156	25%
Wastewater	5,472,269	46,858,286	52,330,555	10%
Support Services	13,924,437	33,131,216	47,055,653	30%
<b>TOTAL</b>	<b>\$ 48,165,177</b>	<b>\$ 154,794,006</b>	<b>\$ 202,959,183</b>	
	<i>24%</i>	<i>76%</i>	<i>100%</i>	



**Electric Line of Business  
FY 2024 Capital Expenditure Summary  
As of December 31, 2023**

42% 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	\$ 4,002,977	\$ 5,582,835	\$ 1,579,858	\$ 5,582,835	72%	42%
Distribution Transformers	3,230,696	5,642,698	2,412,002	5,642,698	57%	42%
Electric Meters	1,130,648	3,514,000	2,383,352	3,514,000	32%	42%
Electric Aging Infrastructure	600,032	2,967,536	2,367,504	2,967,536	20%	42%
Electric Technology Upgrades	828	149,106	148,278	149,106	1%	80%
Three-Phase Extensions	-	1,806,177	1,806,177	9,313,421	0%	33%
Fiber Optic Extensions	415	102,624	102,209	1,086,371	0%	5%
Hueco Springs Substation	292,627	7,301,106	7,008,479	9,939,535	4%	20%
Electric Aging Infrastructure, Substation	217,204	115,672	(101,532)	4,666,606	188%	10%
Freiheit Breaker Additions & Control House	85,279	2,371,748	2,286,469	2,445,650	4%	48%
EC23 FM 482 Feeder	-	712,665	712,665	812,622	0%	50%
HE11 Conrads Rd Feeder	1,651	114,026	112,375	1,966,183	1%	10%
Transmission Access & Wildlife Protection	247,677	175,117	(72,560)	953,166	141%	100%
Comal T3 Replacement & Feeder C033	73,735	377,427	303,692	3,644,220	20%	36%
Distribution Feeder Breaker Addition & Replacements	-	159,067	159,067	3,113,453	0%	10%
FR24 Kowald Ln. Feeder	21,364	91,221	69,857	880,778	23%	10%
Henne Substation Breaker & Half	4,712	171,040	166,328	2,419,085	3%	20%
CONB Road Widening Adjustments	50,133	233,754	183,621	2,256,995	21%	20%
<b>Total Budgeted Projects</b>	<b>\$ 9,959,979</b>	<b>\$ 31,587,819</b>	<b>\$ 21,627,840</b>	<b>\$ 61,354,259</b>	<b>32%</b>	
<b>Unbudgeted Projects:</b>						
Sheriff's Posse T3 Addition	\$ 6,160	\$ -	\$ (6,160)	\$ 7,622,556	0%	99%
E.C. Mornhinweg T2 & Feeders	42,087	-	(42,087)	4,093,931	0%	85%
Residential OH to UG Conversion	316,623	-	(316,623)	3,776,463	0%	95%
Weltner Rd Feeder 13, Clear Springs	5,709	-	(5,709)	965,027	0%	100%
L023 Loop 337 FM 1863 Extension Phase 2	3,019	-	(3,019)	1,224,681	0%	100%
C014 Kentucky Rd Feeder	86,492	-	(86,492)	601,370	0%	40%
HE23 IH-35 Stolte Feeder	199,847	-	(199,847)	1,564,074	0%	10%
Freiheit Feeder 11, Alves Ln	41,874	-	(41,874)	1,951,344	0%	100%
Kohlenberg Rd Substation	11,809	-	(11,809)	44,780	0%	19%
<b>Total Unbudgeted Projects</b>	<b>\$ 713,621</b>	<b>\$ -</b>	<b>\$ (713,621)</b>	<b>\$ 21,844,225</b>		
<b>TOTAL</b>	<b>\$ 10,673,600</b>	<b>\$ 31,587,819</b>	<b>\$ 20,914,219</b>	<b>\$ 83,198,485</b>	<b>34%</b>	

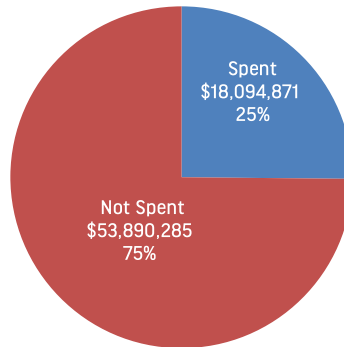




**Water Line of Business  
FY 2024 Capital Expenditure Summary  
As of December 31, 2023**

42% of Year Completed

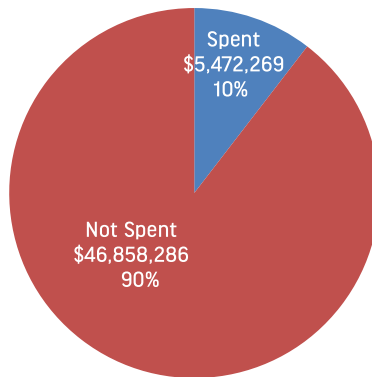
Project	<sup>1</sup> Total Spent YTD	<sup>2</sup> FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	<sup>(1)/(2)</sup> % Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
System Extensions	\$ 300,646	\$ 375,703	\$ 75,057	\$ 375,703	80%	49%
Water Meters	1,149,750	1,844,670	694,920	1,844,670	62%	44%
Water Technology Upgrades	-	140,116	140,116	140,116	0%	2%
Aging System Replacements	556,404	2,092,123	1,535,719	2,092,123	27%	14%
ASR Feasibility Dev (IF)	117,933	2,069,462	1,951,529	38,120,155	6%	41%
Wood Meadows Water Line River Crossing	453,429	216,373	(237,056)	3,052,319	210%	27%
I-35 Water Line (Downtown)	5,666,360	7,963,912	2,297,552	11,468,136	71%	54%
1.00MG Solms Ground Storage Tank and Flow Control Valve	278	235,473	235,195	4,337,137	0%	6%
Western Downtown to Morningside PZ Conversion	64,153	308,393	244,240	8,525,525	21%	21%
FM 306 Pump Station & Discharge Pipeline	554,031	1,885,704	1,331,673	10,821,940	29%	68%
Conrads EST	247	5,488,218	5,487,971	6,852,776	0%	10%
Goodwin Lane Water Main	3,488,998	6,884,157	3,395,159	12,624,155	51%	76%
Klein Rd Reconstruction Phase 2	384,374	1,126,496	742,122	1,404,382	34%	79%
Landa Pump Station Phase 2/Well 5	1,099,203	6,242,981	5,143,778	15,931,146	18%	66%
Trinity Expansion- Treatment Plant	2,780,908	17,173,917	14,393,009	27,357,602	16%	42%
Trinity Expansion- Well Field	762,370	7,057,207	6,294,837	10,222,796	11%	30%
FM 1044 EST	11,537	1,373,451	1,361,914	13,187,743	1%	2%
GBRA Interconnect Metering Station	258,700	701,780	443,080	996,909	37%	25%
Garden Street Bridge Water Line	142,176	390,851	248,675	587,926	36%	27%
Goodwin/Conrads Water Adjustments	534	403,683	403,149	434,276	0%	3%
Misison/Westpointe Connection Waterlines	30,571	5,539,877	5,509,306	6,495,952	1%	11%
Senate Bill 3 EPP Generators	78,533	1,301,224	1,222,691	1,328,362	6%	3%
Tank Decommission	7,489	865,803	858,314	954,937	1%	12%
Water Tank Rehabilitations	-	303,582	303,582	303,582	0%	10%
<b>Total Budgeted Projects</b>	<b>\$ 17,908,627</b>	<b>\$ 71,985,156</b>	<b>\$ 54,076,529</b>	<b>\$ 179,460,368</b>	<b>25%</b>	
<b>Unbudgeted Projects:</b>						
Castell Ave Rehabilitation (CNB)	\$ -	\$ -	\$ -	\$ 26,681,290		100%
Infrastructure Replacement Package 1-W	234	-	(234)	2,762		10%
30/24-inch SWTP Discharge Line (Downtown)	3,778	-	(3,778)	21,587,112		100%
Well 4 to Grandview Pump Station & Discharge Line Upgrades	136,177	-	(136,177)	9,460,061		100%
Weltner Rd Ground Strg Tank & Pump Station-Ph 1	46,055	-	(46,055)	24,173,897		100%
<b>Total Unbudgeted Projects</b>	<b>\$ 186,244</b>	<b>\$ -</b>	<b>\$ (186,244)</b>	<b>\$ 81,905,122</b>		
<b>TOTAL</b>	<b>\$ 18,094,871</b>	<b>\$ 71,985,156</b>	<b>\$ 53,890,285</b>	<b>\$ 261,365,489</b>	<b>25%</b>	



**Wastewater Line of Business  
FY 2024 Capital Expenditure Summary  
As of December 31, 2023**

42% of Year Completed

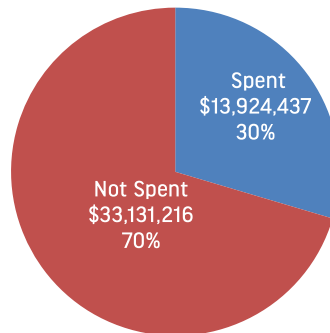
Project	<sup>1</sup>	<sup>2</sup>			<sup>(1)/(2)</sup>	
	Total Spent YTD	FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	% Spent YTD	% Physical Completion
<b>Budgeted Projects:</b>						
System Extensions	\$ 247,318	\$ 249,038	\$ 1,720	\$ 249,038	99%	42%
Aging System Replacements	417,216	2,046,224	1,629,008	2,046,224	20%	42%
Wastewater Technology Upgrades	-	145,563	145,563	145,563	0%	1%
Manhole Rehabilitation	-	789,673	789,673	789,673	0%	42%
South Kuehler Interceptor Phase 1	13,520	480,284	466,764	5,426,066	3%	16%
Gruene Rd Sewer Main Rehabilitation/Relocation	-	107,441	107,441	2,896,802	0%	6%
McKenzie WRF Expansion	4,211,343	20,026,694	15,815,351	72,312,120	21%	8%
Solms Lift Station Expansion	117,675	1,076,397	958,722	1,705,332	11%	18%
I-35 Interceptor Upgrade	111,716	4,090,487	3,978,771	14,155,678	3%	10%
Kuehler WRF Access Road-Courtyard Dr	8,911	3,265,043	3,256,132	3,739,824	0%	14%
McKenzie Interceptor Upgrade	226,638	2,291,295	2,064,657	50,706,156	10%	10%
Kuehler WRF Rehabilitation	8,178	12,890,556	12,882,378	44,788,333	0%	10%
Sewer Infrastructure Replacement Package 2	71,528	739,180	667,652	4,957,511	10%	8%
Saengerhalle North Interceptor	37,880	215,817	177,937	5,888,532	18%	15%
Goodwin/Conrads Adjustments (CNB)-WW	26,682	406,908	380,226	1,114,676	7%	5%
Gruene WRF Spoils & Materials Yard	43,022	447,632	404,610	1,061,999	10%	91%
North Kuehler Manhole Rehabilitation-Segment 3	-	494,109	494,109	1,016,271	0%	20%
Kuehler WRF Rehabilitation-Clarifier Replacement	96,802	2,568,214	2,471,412	2,758,806	4%	35%
<b>Total Budgeted Projects</b>	<b>\$ 5,638,428</b>	<b>\$ 52,330,555</b>	<b>\$ 46,692,127</b>	<b>\$ 215,758,603</b>	<b>11%</b>	
<b>Unbudgeted Projects:</b>						
Castell Ave Rehabilitation (CNB)	\$ -	\$ -	\$ -	\$ 5,585,413		100%
North Kuehler 42" Interceptor Upgrade	771	-	(771)	15,524,017		100%
North Kuehler 30 and 33-inch Interceptor Upgrade	40	-	(40)	26,748,112		100%
Gruene Rd Sewer Main Odor Control	-	-	-	239,659		44%
Infrastructure Replacement Package 1-WW	9,132	-	(9,132)	123,819		10%
Rio Lift Station Expansion	53,747	-	(53,747)	3,576,417		100%
Schmidt I-35 N Sewer Main Replacement	(237,521)	-	237,521	376,069		97%
Saengerhalle Lift Station Expansion & Force Main	7,673	-	(7,673)	4,892,290		100%
<b>Total Unbudgeted Projects</b>	<b>\$ (166,159)</b>	<b>\$ -</b>	<b>\$ 166,159</b>	<b>\$ 57,065,796</b>		
<b>TOTAL</b>	<b>\$ 5,472,269</b>	<b>\$ 52,330,555</b>	<b>\$ 46,858,286</b>	<b>\$ 272,824,400</b>	<b>10%</b>	



**Support Services Line of Business  
FY 2024 Capital Expenditure Summary  
As of December 31, 2023**

42% 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	\$ 933,023	\$ 4,500,000	\$ 3,566,977	\$ 25,670,681	21%	60%
Cyber Security System	44,700	325,000	280,300	325,000	14%	15%
Software Replacement and Enhancements	-	130,000	130,000	130,000	0%	10%
NBU Headquarters, Maint & Support Facility	11,913,067	25,000,000	13,086,933	134,505,960	48%	10%
Laserfiche Development	-	300,000	300,000	570,867	0%	20%
Backup Operations Center	34,430	1,280,000	1,245,570	8,452,700	3%	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	332,489	1,185,653	853,164	1,185,653	28%	33%
System Technology Upgrades - Monitoring	38,625	400,000	361,375	400,000	10%	0%
Fiber Network Distribution Expansion	-	650,000	650,000	1,428,700	0%	10%
Fleet AVL	-	75,000	75,000	75,000	0%	0%
Data Strategy Upgrades - GIS Upgrades	-	200,000	200,000	1,900,000	0%	15%
Pioneer Upgrade	-	171,000	171,000	171,000	0%	5%
Smartsheet Control Center	-	73,000	73,000	73,000	0%	0%
Tele-Communications Enhancements	6,500	102,000	95,500	181,754	6%	40%
Water/Wastewater SCADA Aging Infrastructure	-	1,000,000	1,000,000	1,000,000	0%	0%
Water SCADA Replacement & Integration	67,844	2,000,000	1,932,156	3,413,098	3%	50%
OT Security	-	50,000	50,000	50,000	0%	0%
Customer Bill Pay Portal	7,004	160,000	152,996	230,044	4%	0%
ARCGIS Indoors	-	50,000	50,000	50,000	0%	0%
Loop 337 Substation Control House	-	42,000	42,000	42,000	0%	0%
Replace Control Center Console	-	100,000	100,000	100,000	0%	0%
Future Facilities Rehab Projects	-	150,000	150,000	1,229,990	0%	0%
Firewall and VPN Replacement	-	120,000	120,000	120,000	0%	0%
Gruene Rd Fence	-	32,000	32,000	32,000	0%	0%
CIS Functionality Upgrade	-	1,500,000	1,500,000	1,500,000	0%	0%
Ipads for Cityworks Mobile & mcare	-	125,000	125,000	125,000	0%	30%
Customer Service Kiosk	-	78,000	78,000	78,000	0%	0%
Level 2 EV Chargers	-	72,000	72,000	72,000	0%	0%
Meraki Wifi Replacement	74,397	125,000	50,603	125,000	60%	60%
RTU replacement 4.6,7 Main office	-	40,000	40,000	40,000	0%	0%
New Braunfels Police Department	400,487	3,585,000	3,184,513	3,645,000	11%	0%
RuggedCom Switch Replacement	-	200,000	200,000	600,000	0%	10%
Sheriff's Posse Control House Recondition	-	35,000	35,000	35,000	0%	0%
Solar Array and Battery Storage	-	50,000	50,000	50,000	0%	0%
Mass Meter Change Out	-	2,000,000	2,000,000	2,000,000	0%	0%
Water Meter Study	-	500,000	500,000	500,000	0%	0%
<b>Total Budgeted Projects</b>	<b>\$ 13,852,566</b>	<b>\$ 47,055,653</b>	<b>\$ 33,203,087</b>	<b>\$ 190,765,042</b>	<b>29%</b>	
<b>Unbudgeted Projects:</b>						
Physical Security Systems	\$ 71,872	\$ -	\$ (71,872)	\$ 71,872		90%
<b>Total</b>	<b>\$ 71,872</b>	<b>\$ -</b>	<b>\$ (71,872)</b>	<b>\$ 71,872</b>		
<b>Total</b>	<b>\$ 13,924,437</b>	<b>\$ 47,055,653</b>	<b>\$ 33,131,216</b>	<b>\$ 190,836,914</b>	<b>30%</b>	



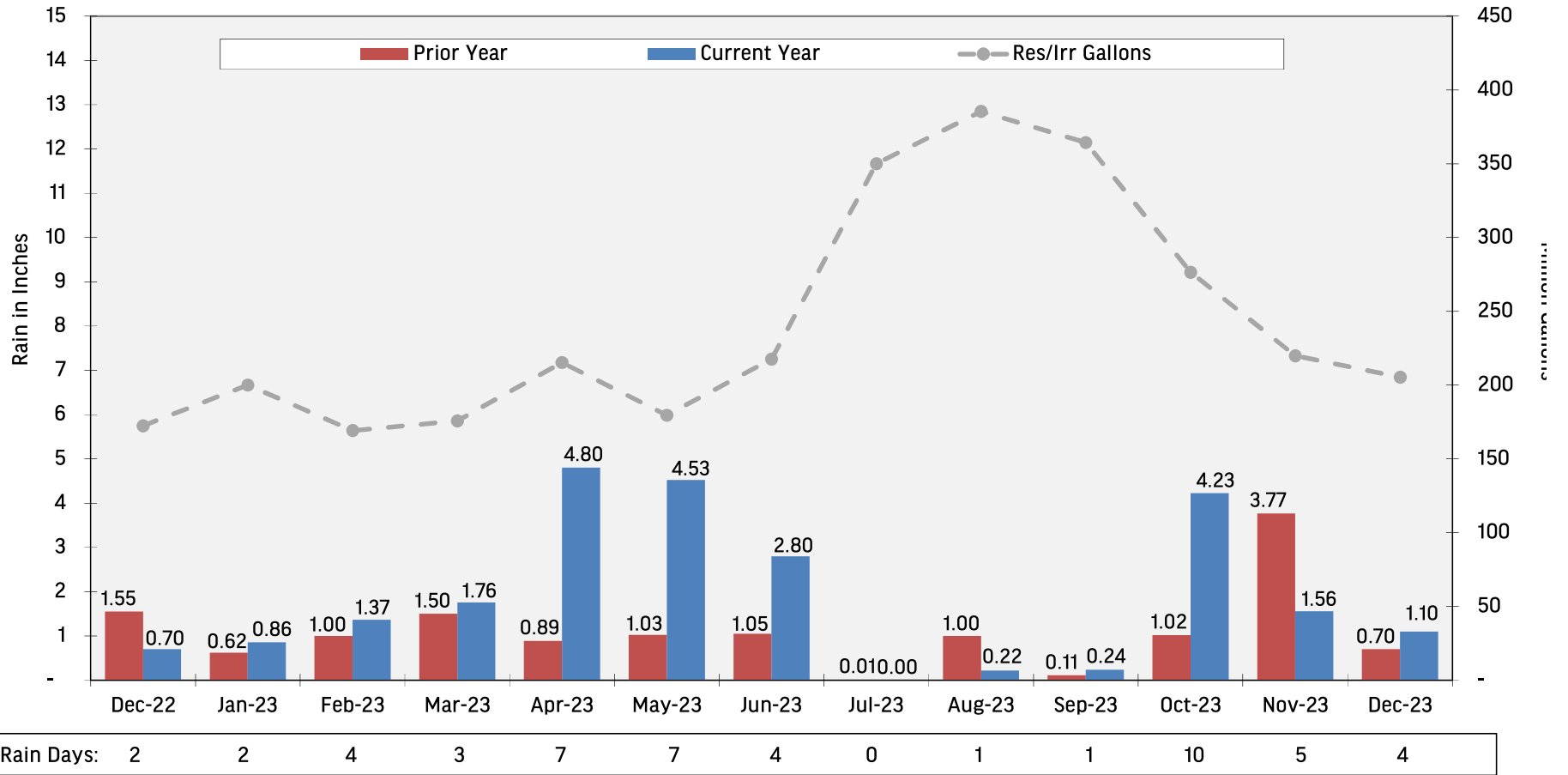
Electric Statistics are provided separately due to competitive matters.

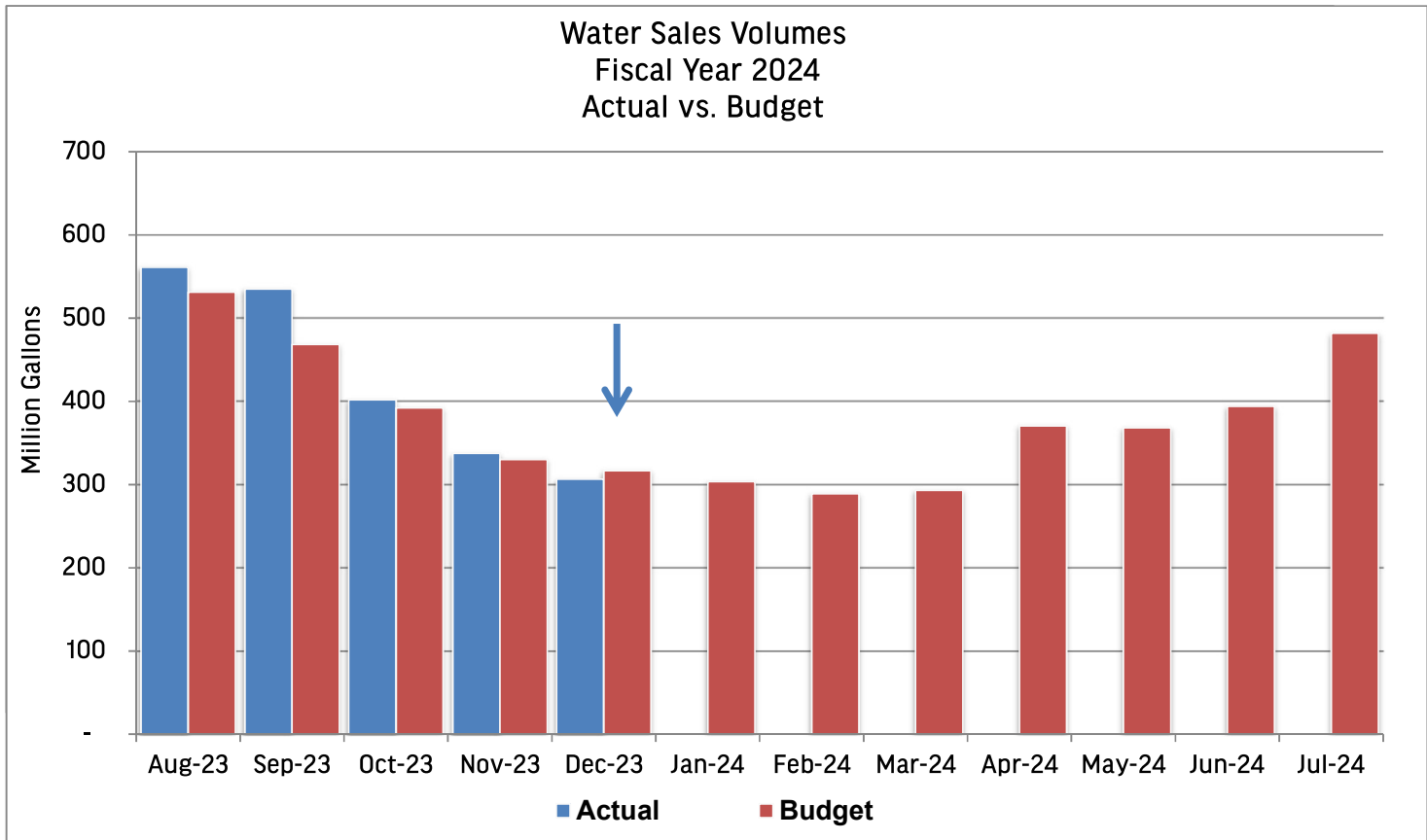
# WATER STATISTICS

**NEW BRAUNFELS UTILITIES  
WATER STATISTICS  
HIGHLIGHTS OVERVIEW**

- December MTD rainfall was higher than the prior year rainfall, totaling 1.10 inches for the month. The December rainfall total of 1.10 inches was 1.20 inches lower than the historical average rainfall of 2.3 inches. For December 2023, there were four rain days during the month compared to two rain days in December 2022.
- December YTD rainfall totaled 7.35 inches compared to the prior year total of 6.60 inches, which is an increase of 0.75 inches compared to prior year YTD. For YTD, there have been 21 rain days compared to 17 rain days for prior year YTD.
- Average MTD consumption by residential water customer in December 2023 was 4,469 gallons compared to 4,187 gallons in December 2022, reflecting a 6.7% increase.
- Actual YTD consumption by residential water customer through December 2023 was 30,507 gallons compared to 28,709 for YTD through December 2022, reflecting an increase of 6.3%.
- 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 210.2 million gallons, or 10.9% (2,141.8 million gallons for FY 2024 YTD vs. 1,931.6 million gallons for FY 2023 YTD).
- Actual total water sales volume for year-to-date FY 2024 is 2,141.8 million gallons, which is 103.3 million more than the budgeted amount of 2,038.5 million gallons for the same time period.
  - The following are major contributors, by rate classification, towards the 103.3 million gallons change from budget:
    - Residential Domestic – increase of 24.6 million gallons (up 2.3% from budget)
    - Multi-Unit 5+ - increase of 8.5 million gallons (up 7.0% from budget)
    - Residential Irrigation – decrease of 2.5 million gallons (down 0.7% from budget)
    - Commercial Irrigation – increase of 30.6 million gallons (up 24.9% from budget)
    - Small General Services – increase of 72.1 million gallons (up 50.0% from budget)
    - Large General Services – decrease of 60.1 million gallons (down 29.8% from budget)
    - Other Sales – increase of 22.6 million gallons (up 118.3% from budget)
    - ReUse Water – increase of 7.0 million gallons (up 664.3% from budget)

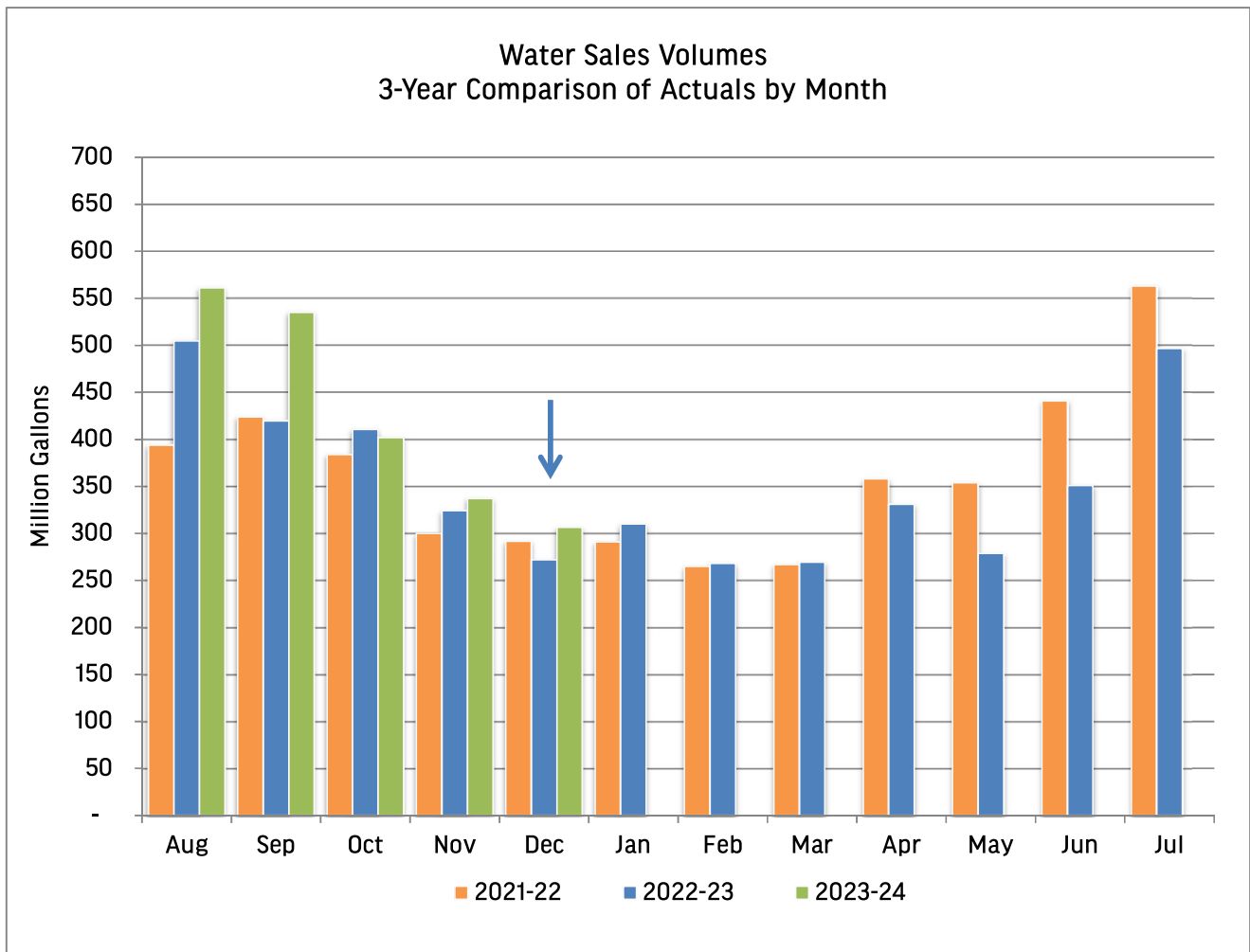
Monthly Rain Data  
 Prior Year vs. Current Year  
 Rolling 13 Months





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	-	304
Feb-24	-	289
Mar-24	-	293
Apr-24	-	371
May-24	-	368
Jun-24	-	394
Jul-24	-	482
<b>TOTAL</b>	<b>2,142</b>	<b>4,539</b>

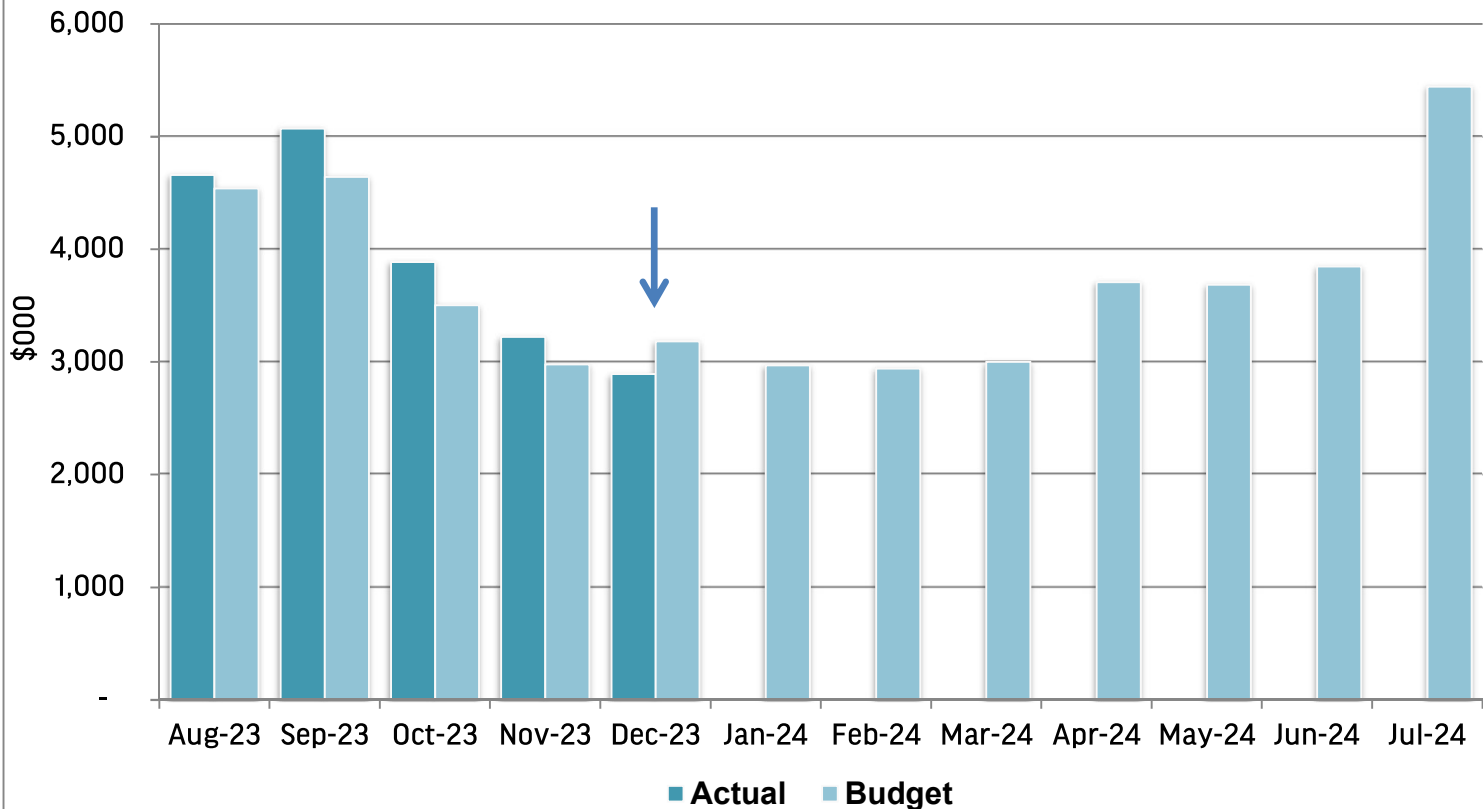




Water Sales Volumes (Million Gallons)			
Month	2021-22	2022-23	2023-24
Aug	394	505	561
Sep	424	420	535
Oct	384	411	402
Nov	300	324	337
Dec	292	272	306
Jan	291	310	-
Feb	265	268	-
Mar	267	269	-
Apr	358	331	-
May	354	279	-
Jun	441	351	-
Jul	563	497	-
<b>TOTAL</b>	<b>4,333</b>	<b>4,237</b>	<b>2,142</b>

Meter Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	33,360	5.38%	35,155	2.86%	36,162
Irrigation	12,242	11.25%	13,619	7.12%	14,588
Other	2,935	1.57%	2,981	4.43%	3,113
<b>TOTAL</b>	<b>48,537</b>	<b>6.63%</b>	<b>51,755</b>	<b>4.07%</b>	<b>53,863</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	\$ -	\$ 2,971
Feb-24	\$ -	\$ 2,943
Mar-24	\$ -	\$ 2,999
Apr-24	\$ -	\$ 3,708
May-24	\$ -	\$ 3,685
Jun-24	\$ -	\$ 3,847
Jul-24	\$ -	\$ 5,445
<b>TOTAL</b>	<b>\$ 19,733</b>	<b>\$ 44,444</b>

# WATER SUPPLEMENTAL INFORMATION

**NEW BRAUNFELS UTILITIES**  
**Water Volume (Gallons)**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	ACT	AVG
<b>Residential</b>							
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	1,095,959,884	219,191,977
Budget	278,669,478	237,292,325	207,072,688	175,109,490	173,209,570	1,071,353,552	214,270,710
Prior Year	264,945,370	214,133,721	210,921,150	168,052,918	147,195,572	1,005,248,731	201,049,746
<b>Multi-Unit 2-4</b>							
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	9,356,623	1,871,325
Budget	2,133,762	2,020,591	1,702,965	1,531,918	1,502,289	8,891,524	1,778,305
Prior Year	2,255,895	1,811,283	1,706,631	1,468,178	1,558,732	8,800,719	1,760,144
<b>Multi-Unit 5+</b>							
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	129,649,282	25,929,856
Budget	25,326,666	25,620,852	24,285,693	22,896,149	23,054,060	121,183,420	24,236,684
Prior Year	25,435,941	26,247,479	23,126,169	22,573,660	22,243,553	119,626,802	23,925,360
<b>Residential Irrigation</b>							
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	344,814,620	68,962,924
Budget	101,916,516	89,848,970	67,370,554	47,455,669	40,755,051	347,346,759	69,469,352
Prior Year	75,502,265	57,908,800	60,546,492	42,139,788	25,242,936	261,340,281	52,268,056
<b>Commercial Irrigation</b>							
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	153,900,157	30,780,031
Budget	31,806,969	32,170,482	23,953,236	19,136,346	16,184,358	123,251,391	24,650,278
Prior Year	33,744,774	30,535,334	28,118,852	21,721,253	14,886,687	129,006,901	25,801,380
<b>SGS</b>							
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	216,519,398	43,303,880
Budget	31,764,131	29,773,888	26,212,617	27,978,022	28,661,024	144,389,681	28,877,936
Prior Year	78,178,199	78,468,416	69,448,844	58,815,374	57,772,260	342,683,093	68,536,619
<b>LGS</b>							
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	141,840,475	28,368,095
Budget	51,137,660	44,700,916	38,954,200	34,714,127	32,435,703	201,942,607	40,388,521
Prior Year	-	-	-	-	-	-	-
<b>Other Sales</b>							
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	41,687,440	8,337,488
Budget	7,964,649	7,211,502	2,237,575	1,361,680	320,031	19,095,437	3,819,087
Prior Year	19,291,639	10,429,974	11,829,866	6,504,861	2,722,722	50,779,062	10,155,812
<b>ReUse Water</b>							
Actuals	4,312,900	1,955,900	1,821,400	-	-	8,090,200	1,618,040
Budget	613,050	(292,400)	117,738	177,998	442,163	1,058,548	211,710
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	14,098,200	2,819,640
<b>Total Sales</b>							
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	2,141,818,079	428,363,616
Budget	531,332,881	468,347,126	391,907,266	330,361,397	316,564,249	2,038,512,920	407,702,584
Prior Year	504,840,083	419,802,207	410,811,004	324,222,832	271,907,662	1,931,583,789	386,316,758

**NEW BRAUNFELS UTILITIES**  
**Water Volume (Gallons) Variance**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	ACT	AVG
<b>Residential</b>							
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	1,095,959,884	219,191,977
Actual vs Budget	7,708,959	32,678,690	(1,565,002)	(2,607,610)	(11,608,704)	24,606,332	4,921,266
Actual vs Prior Year	21,433,067	55,837,294	(5,413,464)	4,448,962	14,405,294	90,711,153	18,142,231
<b>Multi-Unit 2-4</b>							
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	9,356,623	1,871,325
Actual vs Budget	108,101	293,754	196,958	(9,706)	(124,009)	465,099	93,020
Actual vs Prior Year	(14,032)	503,062	193,292	54,034	(180,452)	555,904	111,181
<b>Multi-Unit 5+</b>							
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	129,649,282	25,929,856
Actual vs Budget	1,808,652	1,787,130	(1,812,216)	1,642,741	5,039,555	8,465,862	1,693,172
Actual vs Prior Year	1,699,377	1,160,503	(652,692)	1,965,230	5,850,062	10,022,480	2,004,496
<b>Residential Irrigation</b>							
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	344,814,620	68,962,924
Actual vs Budget	(2,850,427)	4,616,876	3,593,888	(26,770)	(7,865,707)	(2,532,139)	(506,428)
Actual vs Prior Year	23,563,824	36,557,046	10,417,950	5,289,111	7,646,408	83,474,339	16,694,868
<b>Commercial Irrigation</b>							
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	153,900,157	30,780,031
Actual vs Budget	7,389,631	9,778,635	8,960,510	3,620,110	899,880	30,648,766	6,129,753
Actual vs Prior Year	5,451,826	11,413,783	4,794,894	1,035,203	2,197,551	24,893,256	4,978,651
<b>SGS</b>							
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	216,519,398	43,303,880
Actual vs Budget	56,380,749	6,311,243	5,635,380	3,163,393	638,951	72,129,717	14,425,943
Actual vs Prior Year	9,966,681	(42,383,285)	(37,600,847)	(27,673,959)	(28,472,285)	(126,163,695)	(25,232,739)
<b>LGS</b>							
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	141,840,475	28,368,095
Actual vs Budget	(51,137,660)	3,666,488	(11,924,886)	(141,756)	(564,317)	(60,102,132)	(12,020,426)
Actual vs Prior Year	-	48,367,404	27,029,314	34,572,371	31,871,386	141,840,475	28,368,095
<b>Other Sales</b>							
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	41,687,440	8,337,488
Actual vs Budget	6,808,615	5,358,460	5,130,264	1,454,650	3,840,014	22,592,003	4,518,401
Actual vs Prior Year	(4,518,375)	2,139,988	(4,462,027)	(3,688,531)	1,437,323	(9,091,622)	(1,818,324)
<b>ReUse Water</b>							
Actuals	4,312,900	1,955,900	1,821,400	-	-	8,090,200	1,618,040
Actual vs Budget	3,699,850	2,248,300	1,703,662	(177,998)	(442,163)	7,031,652	1,406,330
Actual vs Prior Year	(1,173,100)	1,688,700	(3,291,600)	(2,946,800)	(285,200)	(6,008,000)	(1,201,600)
<b>Total Sales</b>							
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	2,141,818,079	428,363,616
Actual vs Budget	29,916,470	66,739,576	9,918,558	6,917,056	(10,186,500)	103,305,159	20,661,032
Actual vs Prior Year	56,409,268	115,284,495	(8,985,180)	13,055,621	34,470,087	210,234,290	42,046,858

**NEW BRAUNFELS UTILITIES**  
**Water Revenue**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	ACT	AVG
<b>Residential</b>							
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 8,685,903	\$ 1,737,181
Budget	\$ 1,675,906	\$ 1,751,798	\$ 1,399,790	\$ 1,266,297	\$ 1,417,615	\$ 7,511,405	\$ 1,502,281
Prior Year	\$ 1,435,468	\$ 1,424,172	\$ 1,284,509	\$ 1,094,836	\$ 976,144	\$ 6,215,128	\$ 1,243,026
<b>Multi-Unit 2-4</b>							
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 91,232	\$ 18,246
Budget	\$ 20,133	\$ 22,197	\$ 18,479	\$ 17,431	\$ 18,354	\$ 96,593	\$ 19,319
Prior Year	\$ 19,176	\$ 17,926	\$ 16,683	\$ 15,050	\$ 16,630	\$ 85,464	\$ 17,093
<b>Multi-Unit 5+</b>							
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 1,252,896	\$ 250,579
Budget	\$ 266,804	\$ 279,964	\$ 279,474	\$ 255,175	\$ 286,678	\$ 1,368,095	\$ 273,619
Prior Year	\$ 241,401	\$ 258,388	\$ 239,757	\$ 226,649	\$ 220,174	\$ 1,186,370	\$ 237,274
<b>Residential Irrigation</b>							
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 4,258,213	\$ 851,643
Budget	\$ 1,313,660	\$ 1,294,138	\$ 883,179	\$ 648,549	\$ 645,400	\$ 4,784,926	\$ 956,985
Prior Year	\$ 876,750	\$ 751,431	\$ 715,064	\$ 518,829	\$ 371,346	\$ 3,233,420	\$ 646,684
<b>Commercial Irrigation</b>							
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 1,868,746	\$ 373,749
Budget	\$ 424,000	\$ 469,064	\$ 310,403	\$ 234,897	\$ 222,201	\$ 1,660,564	\$ 332,113
Prior Year	\$ 405,253	\$ 401,101	\$ 328,274	\$ 240,204	\$ 164,788	\$ 1,539,621	\$ 307,924
<b>SGS</b>							
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 2,013,758	\$ 402,752
Budget	\$ 434,693	\$ 388,629	\$ 291,965	\$ 281,162	\$ 354,123	\$ 1,750,573	\$ 350,115
Prior Year	\$ 616,047	\$ 678,287	\$ 558,030	\$ 450,987	\$ 450,757	\$ 2,754,109	\$ 550,822
<b>LGS</b>							
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 946,147	\$ 189,229
Budget	\$ 290,436	\$ 325,951	\$ 289,257	\$ 252,430	\$ 233,412	\$ 1,391,486	\$ 278,297
Prior Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Other Sales</b>							
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 571,234	\$ 114,247
Budget	\$ 110,730	\$ 111,853	\$ 30,081	\$ 20,845	\$ 5,798	\$ 279,308	\$ 55,862
Prior Year	\$ 241,628	\$ 145,742	\$ 143,275	\$ 89,711	\$ 50,358	\$ 670,713	\$ 134,143
<b>ReUse Water</b>							
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 45,320	\$ 9,064
Budget	\$ 3,125	\$ (1,309)	\$ 634	\$ 952	\$ -	\$ 3,402	\$ 680
Prior Year	\$ 25,191	\$ 1,078	\$ 24,810	\$ 14,201	\$ 1,166	\$ 66,445	\$ 13,289
<b>Total Sales</b>							
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 19,733,448	\$ 3,946,690
Budget	\$ 4,539,486	\$ 4,642,285	\$ 3,503,262	\$ 2,977,737	\$ 3,183,581	\$ 18,846,352	\$ 3,769,270
Prior Year	\$ 3,860,913	\$ 3,678,125	\$ 3,310,402	\$ 2,650,466	\$ 2,251,363	\$ 15,751,270	\$ 3,150,254

**NEW BRAUNFELS UTILITIES**  
**Water Revenue Variance**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	ACT	AVG
<b>Residential</b>							
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 8,685,903	\$ 1,737,181
Actual vs Budget	\$ 151,366	\$ 640,842	\$ 347,460	\$ 146,062	\$ (111,232)	\$ 1,174,498	\$ 234,900
Actual vs Prior Year	\$ 391,804	\$ 968,468	\$ 462,741	\$ 317,523	\$ 330,238	\$ 2,470,774	\$ 494,155
<b>Multi-Unit 2-4</b>							
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 91,232	\$ 18,246
Actual vs Budget	\$ (176)	\$ (1,410)	\$ 10	\$ (1,060)	\$ (2,726)	\$ (5,361)	\$ (1,072)
Actual vs Prior Year	\$ 781	\$ 2,861	\$ 1,806	\$ 1,321	\$ (1,001)	\$ 5,767	\$ 1,153
<b>Multi-Unit 5+</b>							
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 1,252,896	\$ 250,579
Actual vs Budget	\$ (6,575)	\$ (22,694)	\$ (48,714)	\$ (13,849)	\$ (23,366)	\$ (115,199)	\$ (23,040)
Actual vs Prior Year	\$ 18,828	\$ (1,119)	\$ (8,997)	\$ 14,676	\$ 43,138	\$ 66,526	\$ 13,305
<b>Residential Irrigation</b>							
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 4,258,213	\$ 851,643
Actual vs Budget	\$ (195,872)	\$ (188,188)	\$ (13,200)	\$ (1,062)	\$ (128,393)	\$ (526,714)	\$ (105,343)
Actual vs Prior Year	\$ 241,039	\$ 354,519	\$ 154,916	\$ 128,659	\$ 145,660	\$ 1,024,793	\$ 204,959
<b>Commercial Irrigation</b>							
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 1,868,746	\$ 373,749
Actual vs Budget	\$ 53,522	\$ 35,845	\$ 88,505	\$ 41,894	\$ (11,584)	\$ 208,182	\$ 41,636
Actual vs Prior Year	\$ 72,269	\$ 103,808	\$ 70,634	\$ 36,587	\$ 45,828	\$ 329,125	\$ 65,825
<b>SGS</b>							
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 2,013,758	\$ 402,752
Actual vs Budget	\$ 330,538	\$ (44,787)	\$ 17,063	\$ 22,896	\$ (62,525)	\$ 263,185	\$ 52,637
Actual vs Prior Year	\$ 149,184	\$ (334,445)	\$ (249,002)	\$ (146,929)	\$ (159,159)	\$ (740,351)	\$ (148,070)
<b>LGS</b>							
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 946,147	\$ 189,229
Actual vs Budget	\$ (290,436)	\$ (37,006)	\$ (80,664)	\$ (17,421)	\$ (19,812)	\$ (445,339)	\$ (89,068)
Actual vs Prior Year	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 946,147	\$ 189,229
<b>Other Sales</b>							
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 571,234	\$ 114,247
Actual vs Budget	\$ 68,689	\$ 43,939	\$ 75,222	\$ 37,625	\$ 66,451	\$ 291,925	\$ 58,385
Actual vs Prior Year	\$ (62,209)	\$ 10,051	\$ (37,972)	\$ (31,240)	\$ 21,891	\$ (99,480)	\$ (19,896)
<b>ReUse Water</b>							
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 45,320	\$ 9,064
Actual vs Budget	\$ 9,420	\$ 1,482	\$ (470)	\$ 31,430	\$ 56	\$ 41,918	\$ 8,384
Actual vs Prior Year	\$ (12,646)	\$ (905)	\$ (24,645)	\$ 18,181	\$ (1,109)	\$ (21,125)	\$ (4,225)
<b>Total Sales</b>							
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 19,733,448	\$ 3,946,690
Actual vs Budget	\$ 120,477	\$ 428,022	\$ 385,214	\$ 246,514	\$ (293,131)	\$ 887,097	\$ 177,419
Actual vs Prior Year	\$ 799,050	\$ 1,392,183	\$ 578,074	\$ 573,785	\$ 639,087	\$ 3,982,179	\$ 796,436

**NEW BRAUNFELS UTILITIES**  
**Water Meters**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	AVG
<b>Residential</b>						
Actuals	35,651	35,942	36,027	36,016	36,162	35,960
Budget	35,570	35,716	35,862	36,008	36,154	35,862
Prior Year	34,863	35,017	35,058	35,080	35,155	35,035
<b>Multi-Unit 2-4</b>						
Actuals	208	221	225	223	223	220
Budget	208	208	208	208	208	208
Prior Year	208	209	207	208	209	208
<b>Multi-Unit 5+</b>						
Actuals	262	269	270	270	273	269
Budget	260	262	263	265	267	263
Prior Year	257	257	259	258	258	258
<b>Residential Irrigation</b>						
Actuals	13,351	13,533	13,592	13,610	13,749	13,567
Budget	13,187	13,347	13,507	13,668	13,828	13,507
Prior Year	12,525	12,620	12,669	12,722	12,769	12,661
<b>Commercial Irrigation</b>						
Actuals	884	830	831	832	839	843
Budget	860	862	865	868	870	865
Prior Year	845	835	849	849	850	846
<b>SGS</b>						
Actuals	2,412	2,282	2,276	2,270	2,290	2,306
Budget	2,268	2,271	2,275	2,277	2,280	2,275
Prior Year	2,380	2,383	2,383	2,386	2,389	2,384
<b>LGS</b>						
Actuals	-	198	213	214	219	169
Budget	133	134	134	136	137	135
Prior Year	-	-	-	-	-	-
<b>Other Sales</b>						
Actuals	109	111	116	108	107	110
Budget	151	153	154	156	158	154
Prior Year	124	124	130	132	124	127
<b>ReUse Water</b>						
Actuals	1	1	1	1	1	1
Budget	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1
<b>Total Meters</b>						
Actuals	52,878	53,387	53,551	53,544	53,863	53,445
Budget	52,638	52,954	53,271	53,588	53,904	53,271
Prior Year	51,203	51,446	51,556	51,636	51,755	51,519

New Meters	241	509	164	(7)	319	245
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New Meter Growth	0.5%	1.0%	0.3%	0.0%	0.6%	0.5%
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**NEW BRAUNFELS UTILITIES**  
**Water Volume per Meter (Gallons)**  
**For Month Ending December 31, 2023**

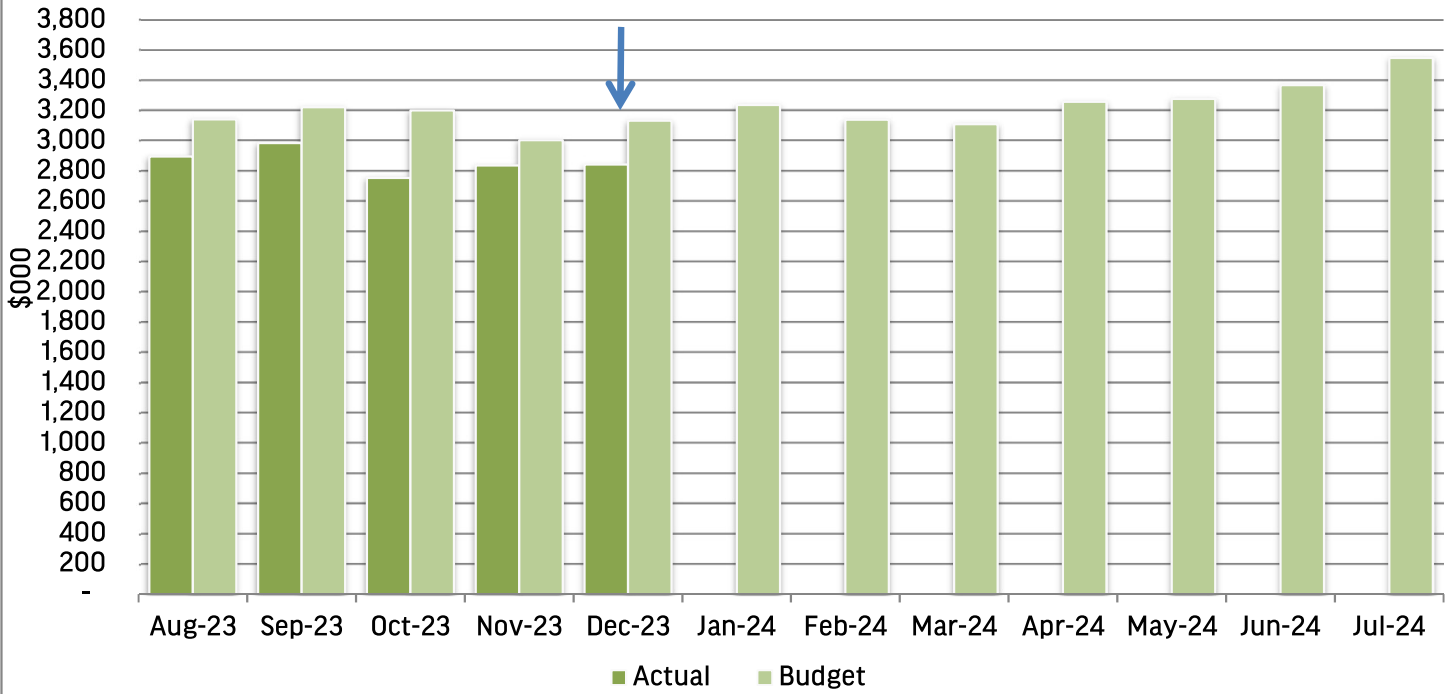
DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	ACT	AVG
<b>Residential</b>							
Actuals	8,033	7,511	5,704	4,790	4,469	30,507	6,101
Budget	7,834	6,644	5,774	4,863	4,791	29,906	5,981
Prior Year	7,600	6,115	6,016	4,791	4,187	28,709	5,742
<b>Multi-Unit 2-4</b>							
Actuals	10,778	10,472	8,444	6,826	6,181	42,701	8,540
Budget	10,258	9,714	8,187	7,365	7,223	42,748	8,550
Prior Year	10,846	8,666	8,245	7,059	7,458	42,273	8,455
<b>Multi-Unit 5+</b>							
Actuals	103,570	101,888	83,235	90,885	102,907	482,485	96,497
Budget	97,504	97,976	92,253	86,400	86,426	460,560	92,112
Prior Year	98,973	102,130	89,290	87,495	86,215	464,103	92,821
<b>Residential Irrigation</b>							
Actuals	7,420	6,980	5,221	3,485	2,392	25,499	5,100
Budget	7,729	6,732	4,988	3,472	2,947	25,868	5,174
Prior Year	6,028	4,589	4,779	3,312	1,977	20,685	4,137
<b>Commercial Irrigation</b>							
Actuals	44,340	50,541	39,607	27,352	20,363	182,203	36,441
Budget	36,995	37,302	27,689	22,053	18,594	142,632	28,526
Prior Year	39,935	36,569	33,120	25,585	17,514	152,722	30,544
<b>SGS</b>							
Actuals	36,544	15,813	13,993	13,719	12,795	92,864	18,573
Budget	14,002	13,108	11,520	12,285	12,568	63,482	12,696
Prior Year	32,848	32,928	29,143	24,650	24,183	143,753	28,751
<b>LGS</b>							
Actuals	-	244,280	126,898	161,553	145,531	678,263	135,653
Budget	384,494	333,589	290,703	255,251	236,757	1,500,793	300,159
Prior Year	-	-	-	-	-	-	-
<b>Other Sales</b>							
Actuals	135,535	113,243	63,516	26,077	38,879	377,249	75,450
Budget	52,714	47,203	14,487	8,721	2,028	125,152	25,030
Prior Year	155,578	84,113	90,999	49,279	21,957	401,926	80,385
<b>ReUse Water</b>							
Actuals	4,312,900	1,955,900	1,821,400	-	-	8,090,200	1,618,040
Budget	613,050	(292,400)	117,738	177,998	442,163	1,058,548	211,710
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	14,098,200	2,819,640

**NEW BRAUNFELS UTILITIES**  
**Water Rates (per Gallon)**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	AVG
<b>Residential</b>						
Actuals	\$ 0.0064	\$ 0.0089	\$ 0.0085	\$ 0.0082	\$ 0.0081	\$ 0.0080
Budget	\$ 0.0060	\$ 0.0074	\$ 0.0068	\$ 0.0072	\$ 0.0082	\$ 0.0071
Prior Year	\$ 0.0054	\$ 0.0067	\$ 0.0061	\$ 0.0065	\$ 0.0066	\$ 0.0063
<b>Multi-Unit 2-4</b>						
Actuals	\$ 0.0089	\$ 0.0090	\$ 0.0097	\$ 0.0108	\$ 0.0113	\$ 0.0099
Budget	\$ 0.0094	\$ 0.0110	\$ 0.0109	\$ 0.0114	\$ 0.0122	\$ 0.0110
Prior Year	\$ 0.0085	\$ 0.0099	\$ 0.0098	\$ 0.0103	\$ 0.0107	\$ 0.0098
<b>Multi-Unit 5+</b>						
Actuals	\$ 0.0096	\$ 0.0094	\$ 0.0103	\$ 0.0098	\$ 0.0094	\$ 0.0097
Budget	\$ 0.0105	\$ 0.0109	\$ 0.0115	\$ 0.0111	\$ 0.0124	\$ 0.0113
Prior Year	\$ 0.0095	\$ 0.0098	\$ 0.0104	\$ 0.0100	\$ 0.0099	\$ 0.0099
<b>Residential Irrigation</b>						
Actuals	\$ 0.0113	\$ 0.0117	\$ 0.0123	\$ 0.0137	\$ 0.0157	\$ 0.0129
Budget	\$ 0.0129	\$ 0.0144	\$ 0.0131	\$ 0.0137	\$ 0.0158	\$ 0.0140
Prior Year	\$ 0.0116	\$ 0.0130	\$ 0.0118	\$ 0.0123	\$ 0.0147	\$ 0.0127
<b>Commercial Irrigation</b>						
Actuals	\$ 0.0122	\$ 0.0120	\$ 0.0121	\$ 0.0122	\$ 0.0123	\$ 0.0122
Budget	\$ 0.0133	\$ 0.0146	\$ 0.0130	\$ 0.0123	\$ 0.0137	\$ 0.0134
Prior Year	\$ 0.0120	\$ 0.0131	\$ 0.0117	\$ 0.0111	\$ 0.0111	\$ 0.0118
<b>SGS</b>						
Actuals	\$ 0.0087	\$ 0.0095	\$ 0.0097	\$ 0.0098	\$ 0.0100	\$ 0.0095
Budget	\$ 0.0137	\$ 0.0131	\$ 0.0111	\$ 0.0100	\$ 0.0124	\$ 0.0121
Prior Year	\$ 0.0079	\$ 0.0086	\$ 0.0080	\$ 0.0077	\$ 0.0078	\$ 0.0080
<b>LGS</b>						
Actuals	\$ -	\$ 0.0060	\$ 0.0077	\$ 0.0068	\$ 0.0067	\$ 0.0054
Budget	\$ 0.0057	\$ 0.0073	\$ 0.0074	\$ 0.0073	\$ 0.0072	\$ 0.0070
Prior Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Other Sales</b>						
Actuals	\$ 0.0121	\$ 0.0124	\$ 0.0143	\$ 0.0208	\$ 0.0174	\$ 0.0154
Budget	\$ 0.0139	\$ 0.0155	\$ 0.0134	\$ 0.0153	\$ 0.0181	\$ 0.0153
Prior Year	\$ 0.0125	\$ 0.0140	\$ 0.0121	\$ 0.0138	\$ 0.0185	\$ 0.0142
<b>ReUse Water</b>						
Actuals	\$ 0.0029	\$ 0.0001	\$ 0.0001	\$ -	\$ -	\$ 0.0006
Budget	\$ 0.0051	\$ 0.0045	\$ 0.0054	\$ 0.0053	\$ -	\$ 0.0041
Prior Year	\$ 0.0046	\$ 0.0040	\$ 0.0049	\$ 0.0048	\$ 0.0041	\$ 0.0045

# SEWER STATISTICS

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



Month	Total Sewer 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	\$ -	\$ 3,238
Feb-24	\$ -	\$ 3,140
Mar-24	\$ -	\$ 3,111
Apr-24	\$ -	\$ 3,260
May-24	\$ -	\$ 3,279
Jun-24	\$ -	\$ 3,370
Jul-24	\$ -	\$ 3,549
<b>TOTAL</b>	<b>\$ 14,320</b>	<b>\$ 38,653</b>

Customer Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	29,964	5.78%	31,697	3.14%	32,691
Other	2,547	0.82%	2,568	2.96%	2,644
<b>TOTAL</b>	<b>32,511</b>	<b>5.40%</b>	<b>34,265</b>	<b>3.12%</b>	<b>35,335</b>

# SEWER SUPPLEMENTAL INFORMATION

**NEW BRAUNFELS UTILITIES**  
**Sewer Revenue**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	ACT	AVG
<b>Residential</b>							
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 8,587,542	\$ 1,717,508
Budget	\$ 1,877,005	\$ 1,952,128	\$ 1,949,215	\$ 1,872,739	\$ 1,976,311	\$ 9,627,398	\$ 1,925,480
Prior Year	\$ 1,431,988	\$ 1,602,167	\$ 1,517,326	\$ 1,513,842	\$ 1,516,902	\$ 7,582,224	\$ 1,516,445
<b>Multi-Unit 2-4</b>							
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 78,782	\$ 15,756
Budget	\$ 15,982	\$ 16,707	\$ 16,656	\$ 15,857	\$ 16,392	\$ 81,594	\$ 16,319
Prior Year	\$ 12,873	\$ 14,215	\$ 13,595	\$ 13,583	\$ 13,704	\$ 67,969	\$ 13,594
<b>Multi-Unit 5+</b>							
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 1,752,853	\$ 350,571
Budget	\$ 387,068	\$ 401,507	\$ 399,515	\$ 372,282	\$ 397,709	\$ 1,958,080	\$ 391,616
Prior Year	\$ 324,197	\$ 352,643	\$ 334,562	\$ 322,131	\$ 318,915	\$ 1,652,448	\$ 330,490
<b>SGS</b>							
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 3,894,209	\$ 778,842
Budget	\$ 861,177	\$ 851,972	\$ 833,952	\$ 741,792	\$ 741,660	\$ 4,030,553	\$ 806,111
Prior Year	\$ 720,511	\$ 787,794	\$ 743,962	\$ 649,301	\$ 662,503	\$ 3,564,070	\$ 712,814
<b>Schertz Sewer</b>							
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 6,449	\$ 1,290
Budget	\$ 1,902	\$ 1,867	\$ 1,902	\$ 1,865	\$ 1,853	\$ 9,388	\$ 1,878
Prior Year	\$ 1,476	\$ 1,282	\$ 1,310	\$ 1,306	\$ 1,194	\$ 6,568	\$ 1,314
<b>Total Sales</b>							
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 14,319,834	\$ 2,863,967
Budget	\$ 3,143,133	\$ 3,224,180	\$ 3,201,239	\$ 3,004,535	\$ 3,133,925	\$ 15,707,013	\$ 3,141,403
Prior Year	\$ 2,491,044	\$ 2,758,100	\$ 2,610,754	\$ 2,500,162	\$ 2,513,218	\$ 12,873,279	\$ 2,574,656

## NEW BRAUNFELS UTILITIES

## Sewer Revenue Variance

For Month Ending December 31, 2023

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	ACT	AVG
<b>Residential</b>							
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 8,587,542	\$ 1,717,508
Actual vs Budget	\$ (256,620)	\$ (171,872)	\$ (258,420)	\$ (135,477)	\$ (217,468)	\$ (1,039,856)	\$ (207,971)
Actual vs Prior Year	\$ 188,397	\$ 178,089	\$ 173,470	\$ 223,421	\$ 241,941	\$ 1,005,317	\$ 201,063
<b>Multi-Unit 2-4</b>							
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 78,782	\$ 15,756
Actual vs Budget	\$ (1,628)	\$ (430)	\$ (738)	\$ 270	\$ (286)	\$ (2,812)	\$ (562)
Actual vs Prior Year	\$ 1,481	\$ 2,063	\$ 2,323	\$ 2,544	\$ 2,402	\$ 10,813	\$ 2,163
<b>Multi-Unit 5+</b>							
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 1,752,853	\$ 350,571
Actual vs Budget	\$ (24,285)	\$ (32,143)	\$ (72,316)	\$ (28,430)	\$ (48,054)	\$ (205,227)	\$ (41,045)
Actual vs Prior Year	\$ 38,586	\$ 16,721	\$ (7,364)	\$ 21,721	\$ 30,740	\$ 100,405	\$ 20,081
<b>SGS</b>							
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 3,894,209	\$ 778,842
Actual vs Budget	\$ 36,188	\$ (33,935)	\$ (113,873)	\$ (2,025)	\$ (22,698)	\$ (136,344)	\$ (27,269)
Actual vs Prior Year	\$ 176,854	\$ 30,242	\$ (23,883)	\$ 90,466	\$ 56,459	\$ 330,138	\$ 66,028
<b>Schertz Sewer</b>							
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 6,449	\$ 1,290
Actual vs Budget	\$ (595)	\$ (547)	\$ (606)	\$ (552)	\$ (640)	\$ (2,940)	\$ (588)
Actual vs Prior Year	\$ (169)	\$ 38	\$ (14)	\$ 7	\$ 19	\$ (119)	\$ (24)
<b>Total Sales</b>							
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 14,319,834	\$ 2,863,967
Actual vs Budget	\$ (246,941)	\$ (238,926)	\$ (445,953)	\$ (166,214)	\$ (289,145)	\$ (1,387,179)	\$ (277,436)
Actual vs Prior Year	\$ 405,148	\$ 227,154	\$ 144,532	\$ 338,159	\$ 331,561	\$ 1,446,555	\$ 289,311

**NEW BRAUNFELS UTILITIES**  
**Sewer Usage (Gallons)**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	ACT	AVG
<b>Residential</b>							
Actuals	104,591,818	110,400,361	98,017,580	104,695,640	106,901,538	524,606,938	104,921,388
Prior Year	105,945,683	113,046,276	100,144,142	99,574,341	99,394,434	518,104,876	103,620,975
<b>Multi-Unit 2-4</b>							
Actuals	835,859	859,259	803,385	849,140	838,636	4,186,279	837,256
Prior Year	834,405	876,991	783,357	774,377	790,783	4,059,913	811,983
<b>Multi-Unit 5+</b>							
Actuals	26,464,494	26,498,569	21,294,621	23,400,792	23,794,355	121,452,831	24,290,566
Prior Year	25,753,140	28,032,246	23,907,336	22,819,107	22,650,042	123,161,871	24,632,374
<b>SGS</b>							
Actuals	147,287,980	131,416,134	111,637,606	114,268,301	111,907,830	616,517,853	123,303,571
Prior Year	130,005,417	129,722,018	125,164,836	97,417,889	104,504,690	586,814,852	117,362,970
<b>Schertz Sewer</b>							
Actuals	433,200	437,700	429,500	435,300	402,200	2,137,900	427,580
Prior Year	145,500	141,667	144,733	144,333	131,933	708,167	141,633
<b>Total Sales</b>							
Actuals	279,613,351	269,612,023	232,182,693	243,649,174	243,844,560	1,268,901,801	253,780,360
Prior Year	262,684,145	271,819,198	250,144,405	220,730,048	227,471,883	1,232,849,679	246,569,936



**NEW BRAUNFELS UTILITIES**  
**Sewer Customers**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	AVG
<b>Residential</b>						
Actuals	32,187	32,472	32,558	32,545	32,691	32,491
Budget	34,071	34,211	34,352	34,494	34,636	34,353
Prior Year	31,424	31,569	31,602	31,627	31,697	31,584
<b>Multi-Unit 2-4</b>						
Actuals	173	186	189	188	188	185
Budget	182	182	182	182	182	182
Prior Year	174	174	173	174	175	174
<b>Multi-Unit 5+</b>						
Actuals	261	268	269	269	270	267
Budget	260	261	263	265	267	263
Prior Year	256	257	259	258	258	258
<b>SGS</b>						
Actuals	2,158	2,167	2,168	2,167	2,185	2,169
Budget	2,135	2,139	2,142	2,146	2,150	2,142
Prior Year	2,125	2,127	2,131	2,131	2,134	2,130
<b>Schertz Sewer</b>						
Actuals	1	1	1	1	1	1
Budget	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1
<b>Total Accounts</b>						
Actuals	34,780	35,094	35,185	35,170	35,335	35,113
Budget	36,648	36,794	36,941	37,088	37,236	36,942
Prior Year	33,980	34,128	34,166	34,191	34,265	34,146

New Customers	85	314	91	(15)	165	128
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New Customer Growth %	0.2%	0.9%	0.3%	0.0%	0.5%	0.4%
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**NEW BRAUNFELS UTILITIES**  
**Sewer Rates (per Customer)**  
**For Month Ending December 31, 2023**

DESCRIPTION	2023	2023	2023	2023	2023	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	AVG
<b>Residential</b>						
Actuals	\$ 50.34	\$ 54.82	\$ 51.93	\$ 53.38	\$ 53.80	\$ 52.86
Budget	\$ 55.09	\$ 57.06	\$ 56.74	\$ 54.29	\$ 57.06	\$ 56.05
Prior Year	\$ 45.57	\$ 50.75	\$ 48.01	\$ 47.87	\$ 47.86	\$ 48.01
<b>Multi-Unit 2-4</b>						
Actuals	\$ 82.97	\$ 87.52	\$ 84.22	\$ 85.78	\$ 85.67	\$ 85.23
Budget	\$ 87.80	\$ 91.78	\$ 91.48	\$ 87.08	\$ 90.01	\$ 89.63
Prior Year	\$ 73.98	\$ 81.69	\$ 78.58	\$ 78.06	\$ 78.31	\$ 78.13
<b>Multi-Unit 5+</b>						
Actuals	\$ 1,389.97	\$ 1,378.22	\$ 1,216.35	\$ 1,278.26	\$ 1,295.02	\$ 1,311.57
Budget	\$ 1,490.48	\$ 1,535.99	\$ 1,518.40	\$ 1,405.67	\$ 1,491.88	\$ 1,488.48
Prior Year	\$ 1,266.40	\$ 1,372.15	\$ 1,291.75	\$ 1,248.57	\$ 1,236.11	\$ 1,282.99
<b>SGS</b>						
Actuals	\$ 415.83	\$ 377.50	\$ 332.14	\$ 341.38	\$ 329.04	\$ 359.18
Budget	\$ 403.40	\$ 398.37	\$ 389.25	\$ 345.61	\$ 344.93	\$ 376.31
Prior Year	\$ 339.06	\$ 370.38	\$ 349.11	\$ 304.69	\$ 310.45	\$ 334.74
<b>Schertz Sewer</b>						
Actuals	\$ 1,306.75	\$ 1,320.32	\$ 1,295.59	\$ 1,313.08	\$ 1,213.24	\$ 1,289.80
Budget	\$ 1,902.07	\$ 1,866.97	\$ 1,901.70	\$ 1,864.68	\$ 1,853.06	\$ 1,877.70
Prior Year	\$ 1,476.00	\$ 1,282.01	\$ 1,309.76	\$ 1,306.14	\$ 1,193.93	\$ 1,313.57



# Financial Update

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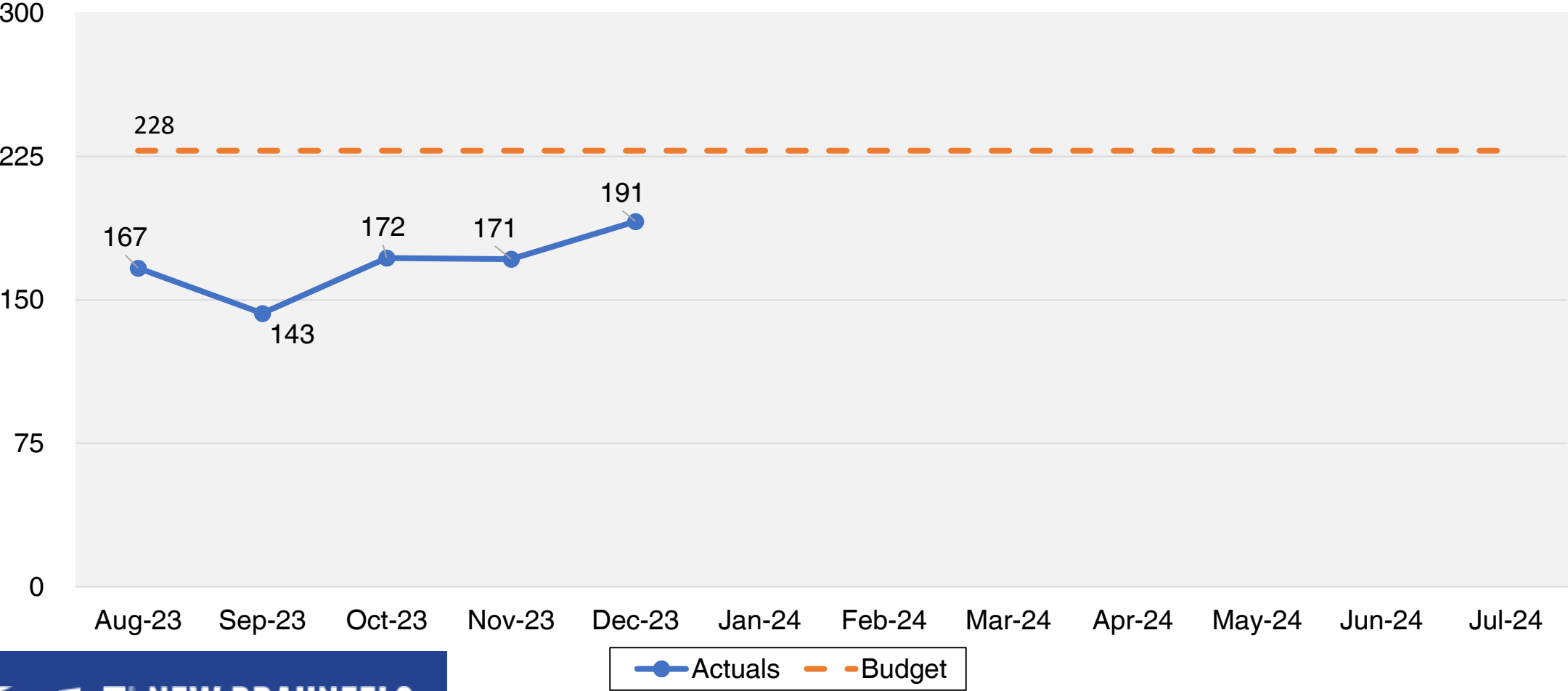
December 2023 Financials  
Kimberly Huffman  
Accounting Manager

# Board Financial Policy Compliance December 2023 YTD

	FY 2023 Actual**	FY 2024 Budget	Financial Policy	FY 2024 Actual*
Debt to Capitalization (lower is better)	44.5%	47.4%	≤55.0%	<b>38.0%</b>
Debt Service Coverage (higher is better)	5.44	4.28	≥2.40	<b>5.13</b>
Days Cash on Hand (higher is better)	162	228	≥140	<b>191</b>
Days Liquidity on Hand (higher is better)	352	N/A	N/A	<b>365</b>

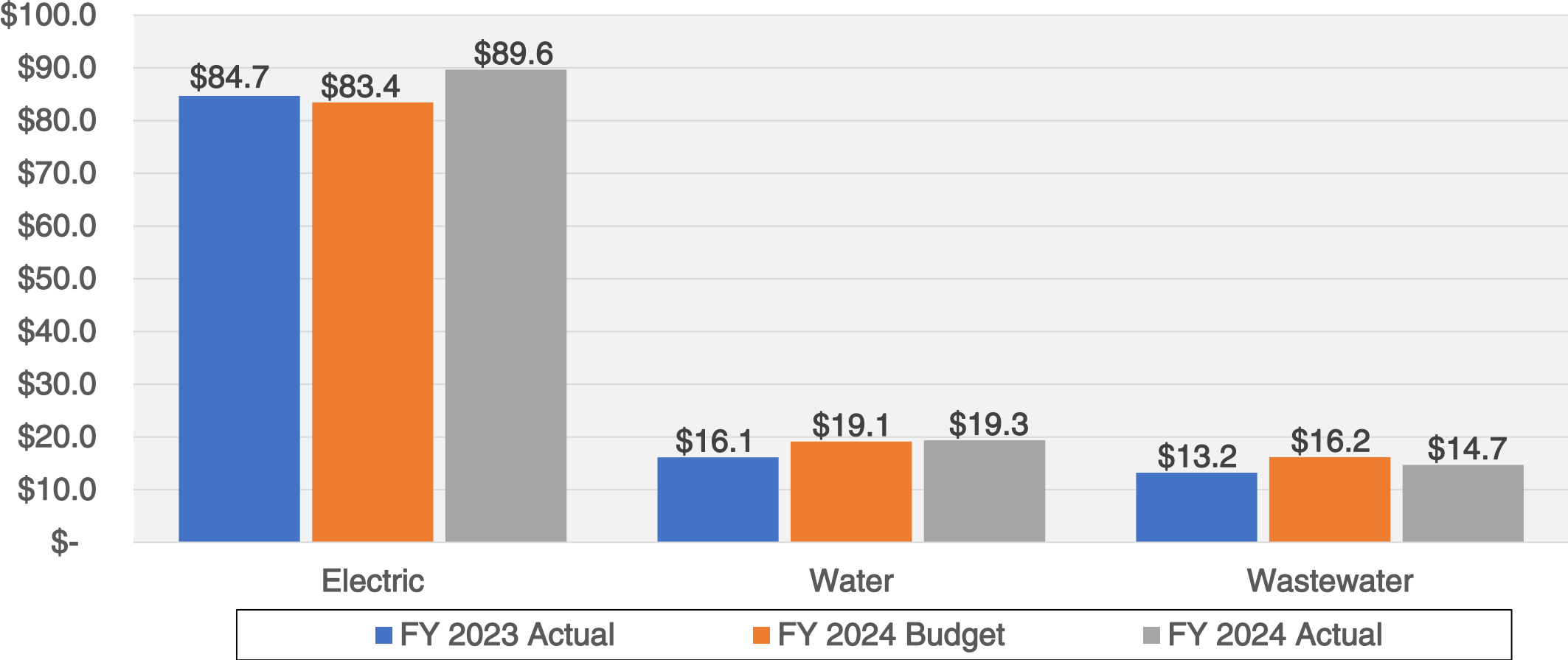
\* Amounts are calculated by annualizing the YTD results

# Days Cash on Hand December 2023 YTD



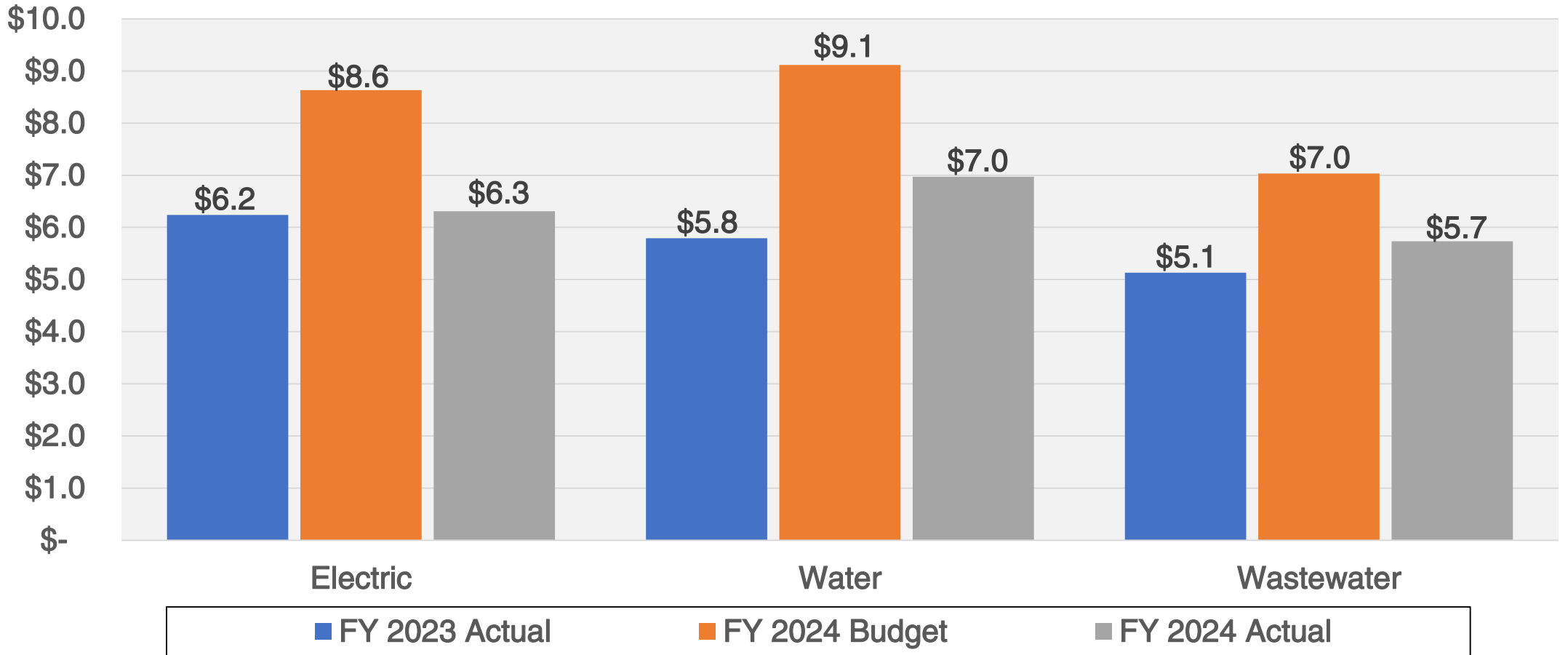
# Operating Revenue by LOB

## December 2023 YTD – Amounts in Millions



# Operating Expenses\* by LOB

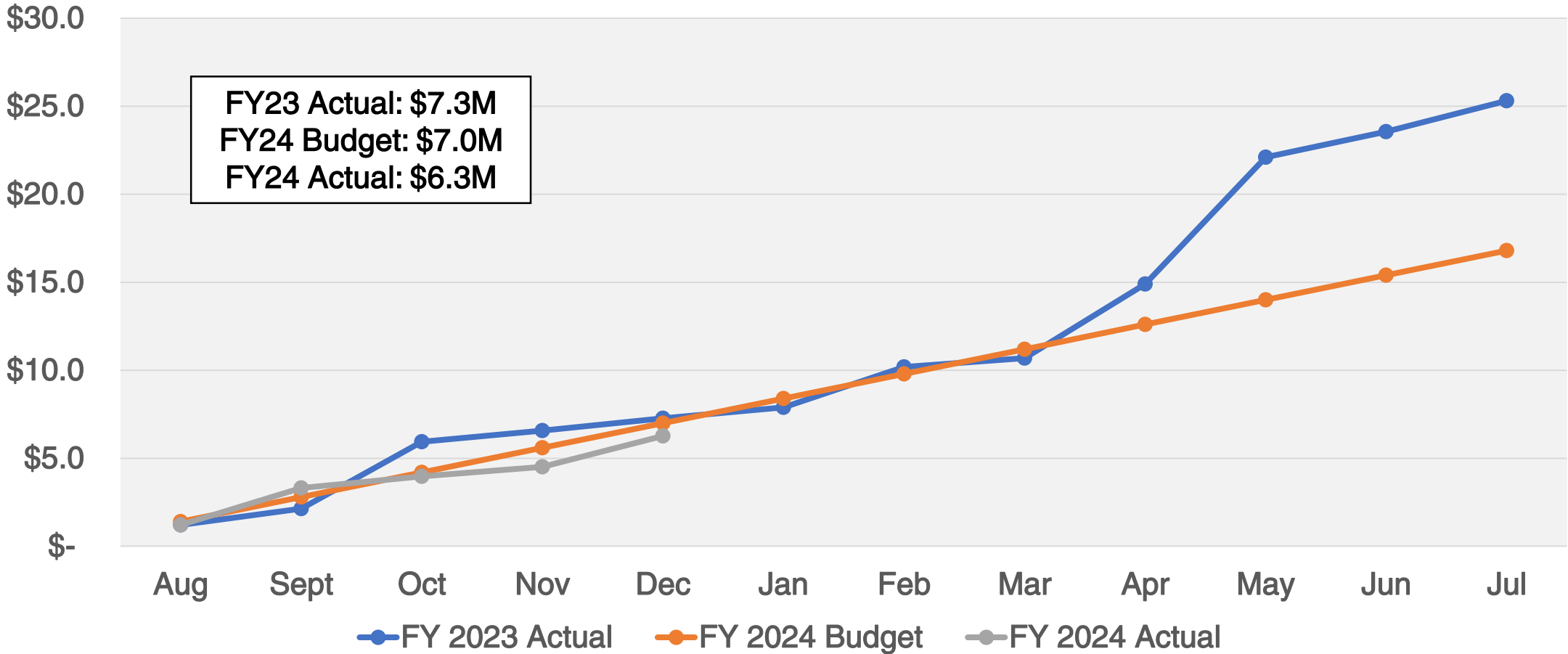
## December 2023 YTD – Amounts in Millions



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

# Impact Fees

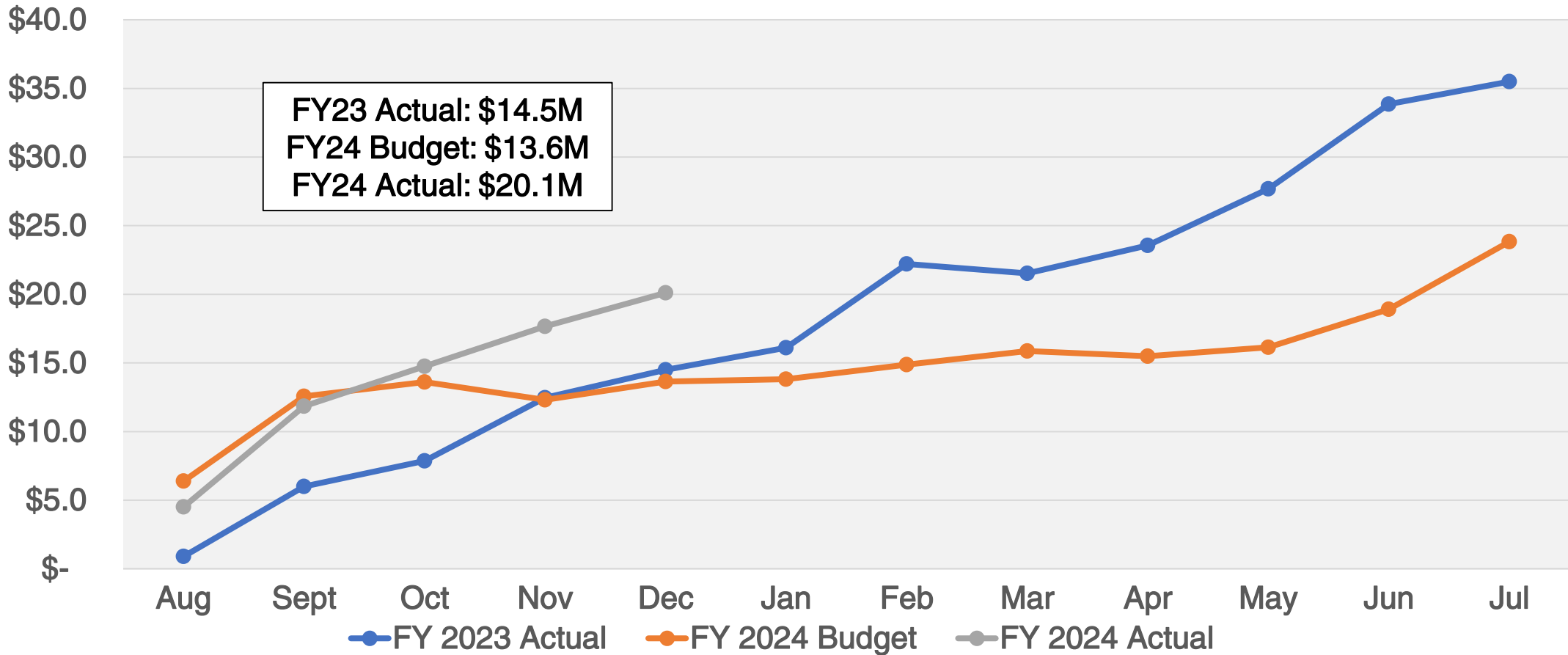
## December 2023 YTD – Amounts in Millions\*



\* Amounts shown are YTD for each month

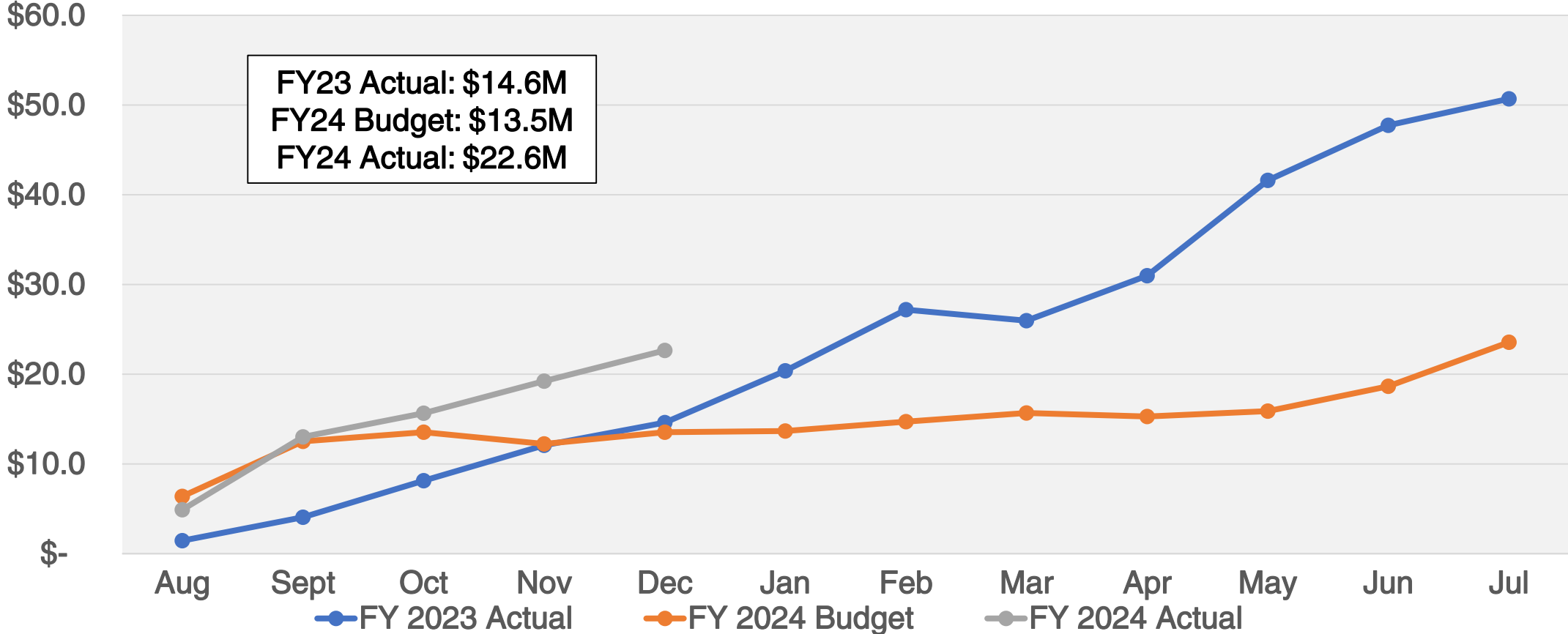


# Net Operating Income December 2023– Amounts in Millions\*



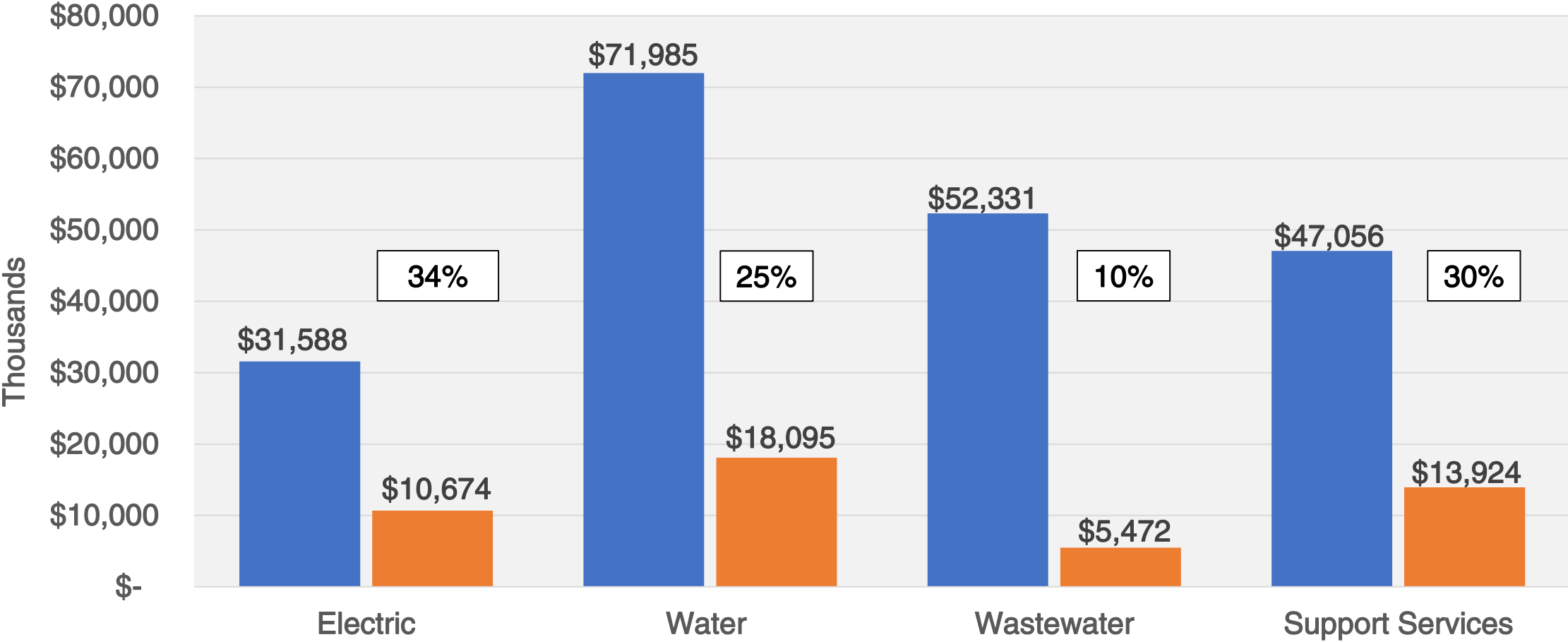
\* Amounts shown are YTD for each month

# Change in Net Position After Contributions December 2023– Amounts in Millions\*



\* Amounts shown are YTD for each month

# Capital Project Expenditures December 2023 YTD – Amounts in Thousands





**Questions?**



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# CIP Update

FY 2024, Q1

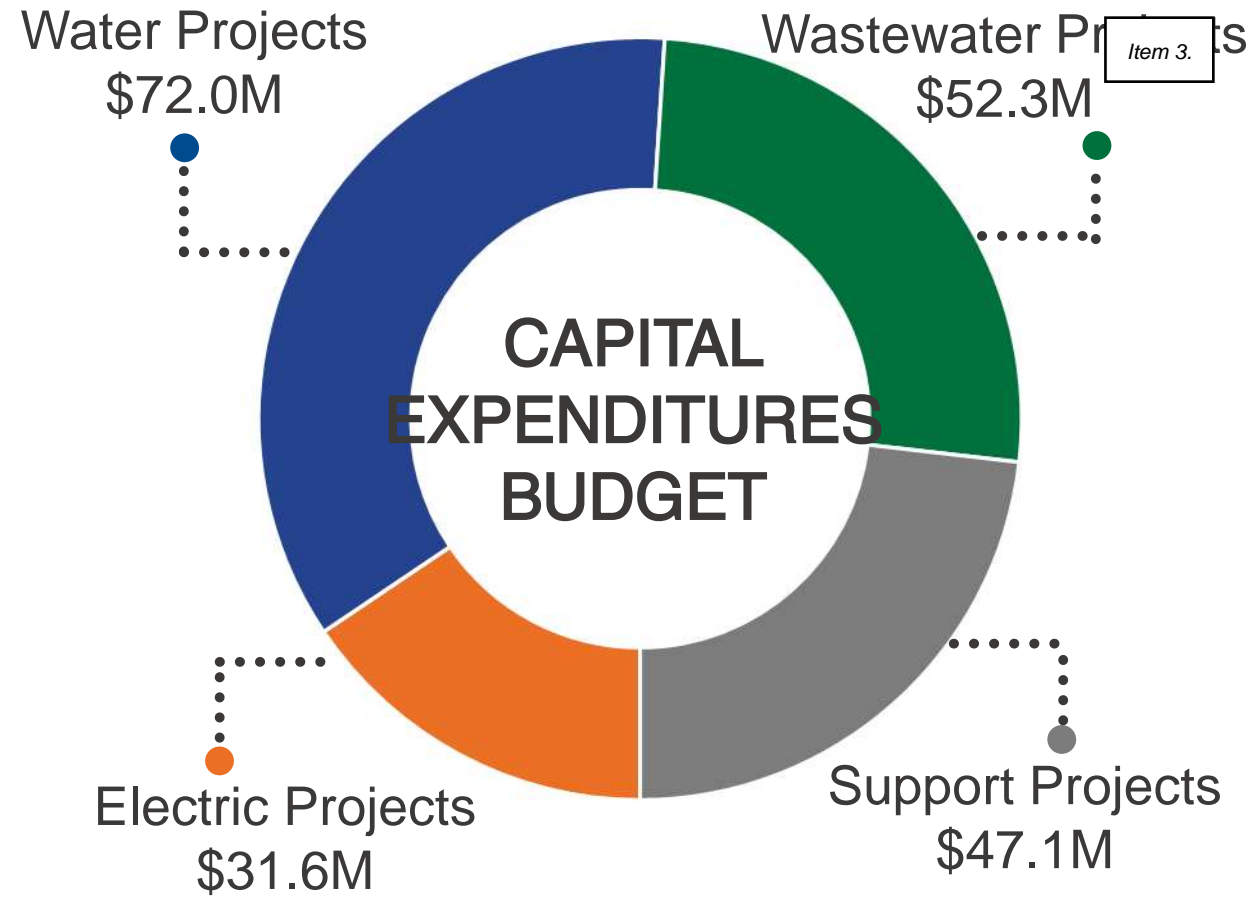
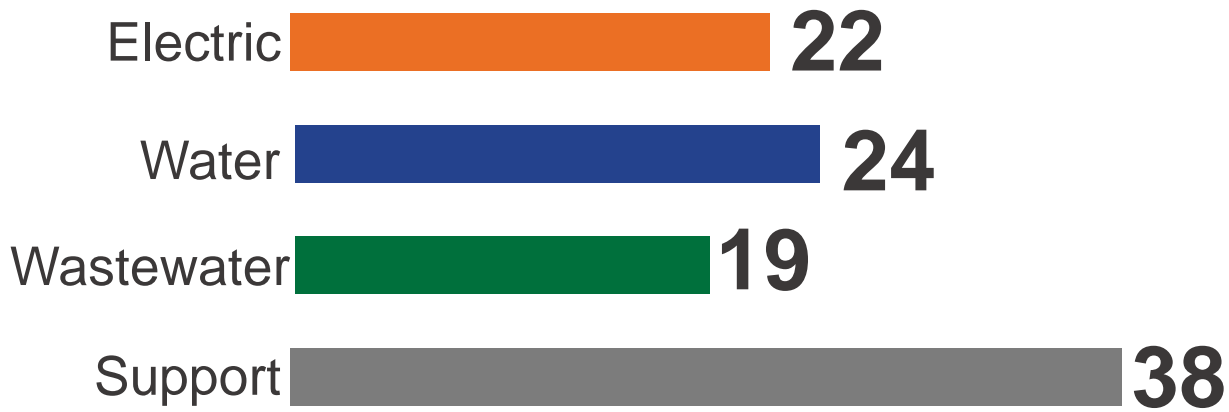
# Overview

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- Program Status through Q1 of FY 2024
- Performance and Accomplishments for each line of business

# FY 2024 Budget Capital Projects

## PROJECT COUNT



### BUDGET

Developed in February 2023 based on expected project costs

**\$202,959,183**

### SPENDING

Year-to-date project spending through Q1 (October 2023)

**\$30,283,635**

### YTD %

Year-to-date project spending versus budget (October 2023)

**15%**

### VARIANCE

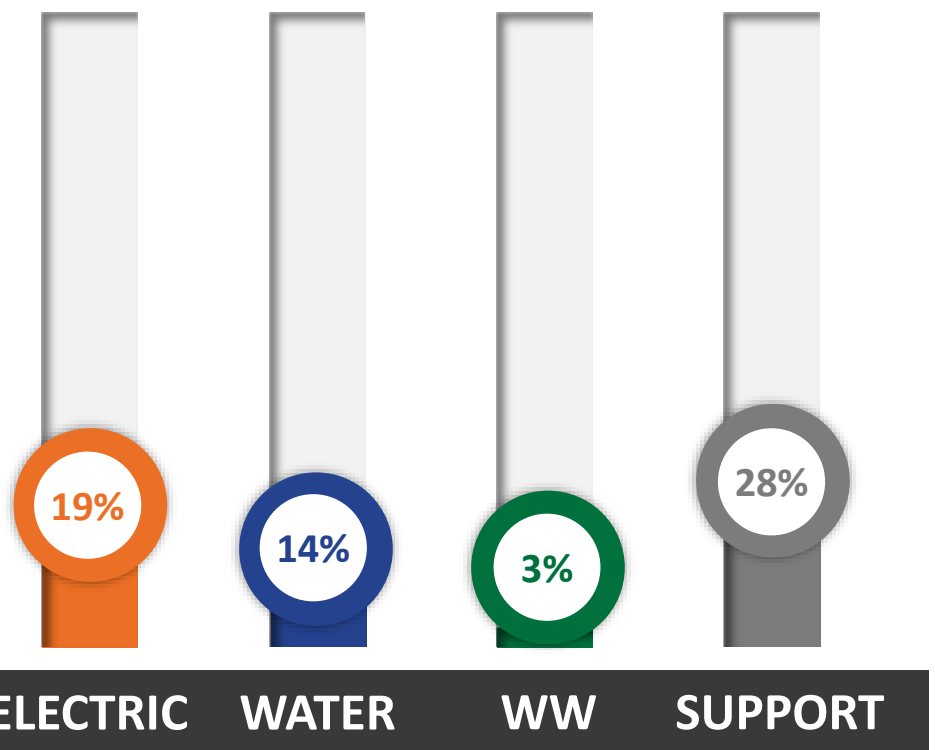
Difference between budget and year-end projected costs

**\$44,028,122**

# FY 2024 Spending Capital Projects

Item 3.

## YTD Actual Spending vs Budget












- Through Q1 expect spending to be ~25% of budget
- Electric Systems Extensions/ Meters/ Transformers activity and expenditures remain high Q1
- Water/Wastewater Construction delayed
  - Land acquisition
  - Material procurement
  - Re-bidding
  - Re-design
  - Developers
- McKenzie WRF Expansion heavy construction has not started
- Support spending slightly ahead of 25% due to Annex purchase and HQ land purchase



# Project Stage

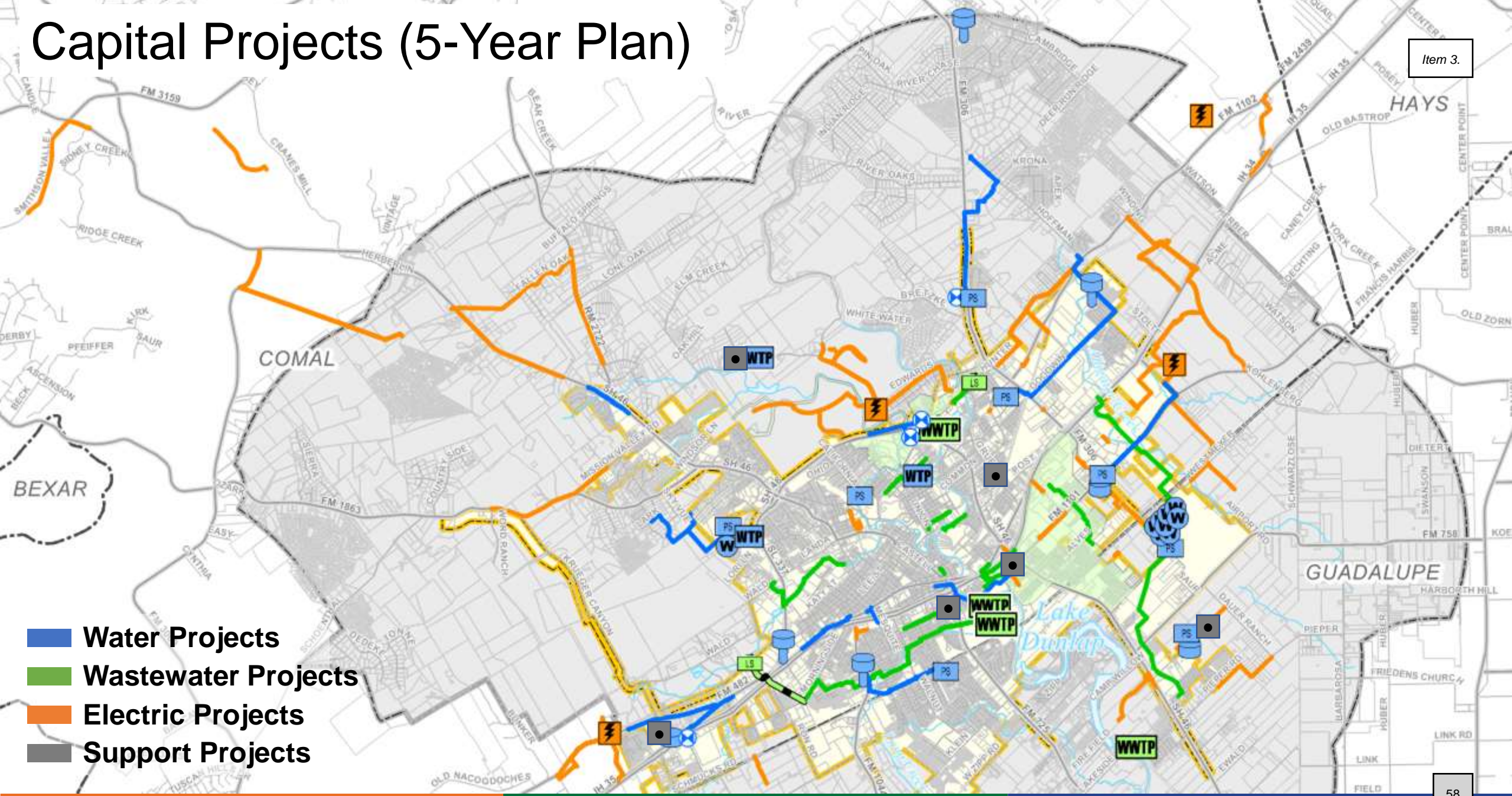
Item 3.

	NOT STARTED	PLANNING OR STUDY	DESIGN & LAND ACQ.	CONSTRUCTION OR EXECUTION	COMPLETE
					
 WATER	2	0	8	14	0
 WASTEWATER	1	0	11	7	0
 ELECTRIC	0	3	7	12	0
 SUPPORT	17	11	4	6	0
<b>TOTAL</b>	<b>20</b>	<b>14</b>	<b>30</b>	<b>39</b>	<b>0</b>
FY23 Q4 TOTAL	9	9	27	34	31

# Capital Projects (5-Year Plan)

Item 3.

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



- Current Traffic Impacts**
- Traffic Impacts Expected in the next 6 months**

### Mission/Westpointe WLS

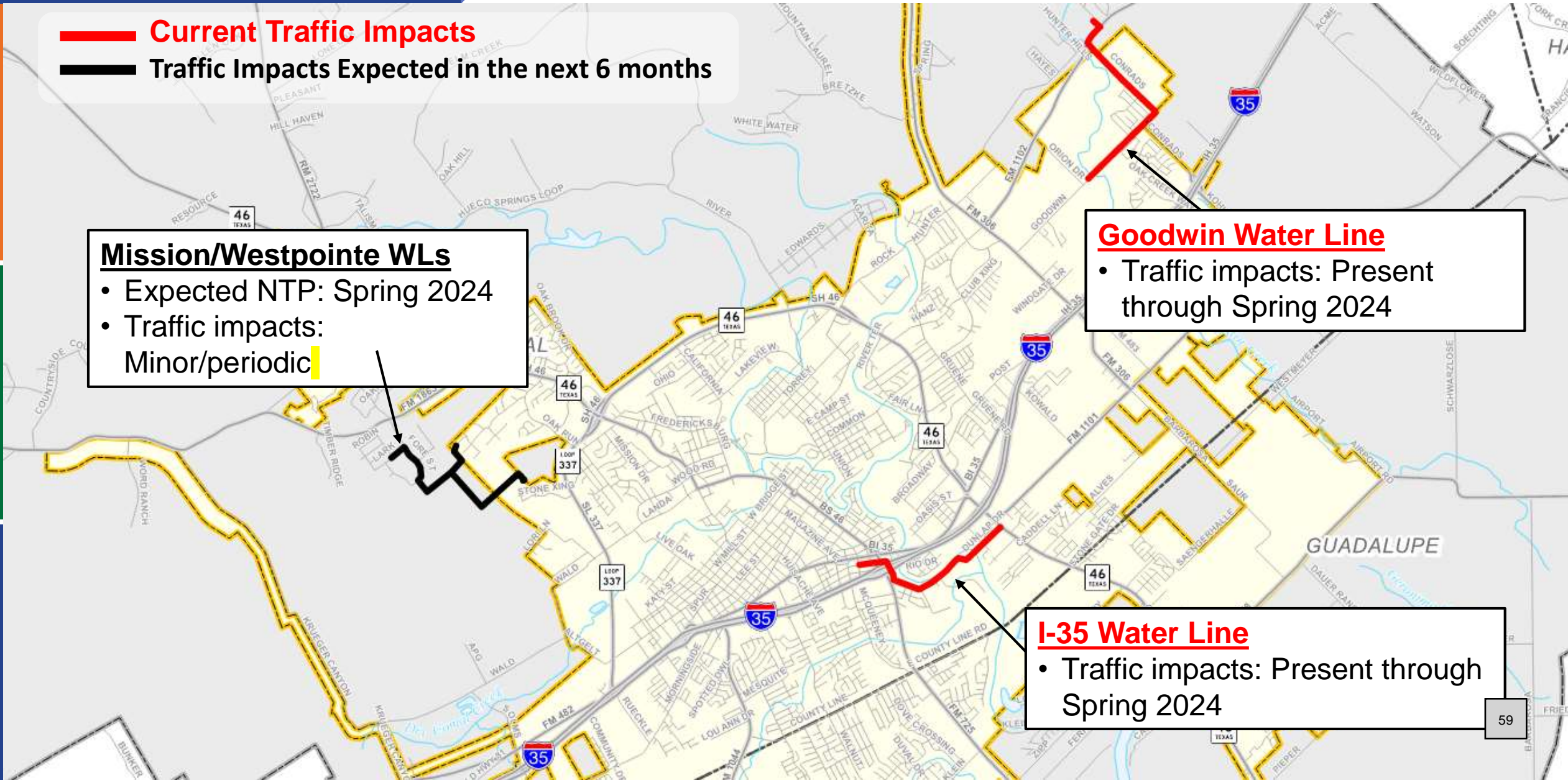
- Expected NTP: Spring 2024
- Traffic impacts: Minor/periodic

### Goodwin Water Line

- Traffic impacts: Present through Spring 2024

### I-35 Water Line

- Traffic impacts: Present through Spring 2024



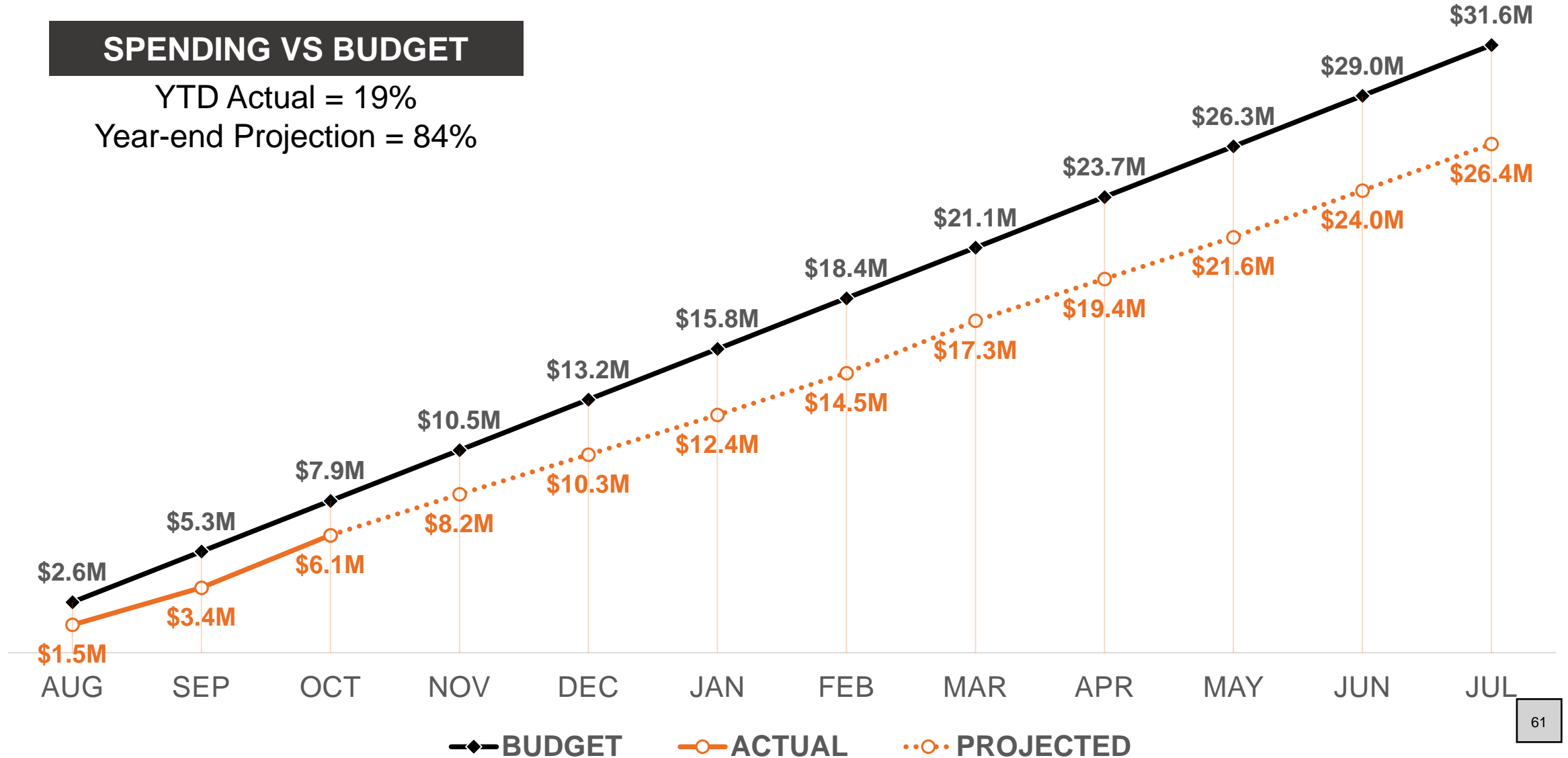
# CIP Performance and Accomplishments

# Electric – Spending vs Budget

Item 3.

## SPENDING VS BUDGET

YTD Actual = 19%  
Year-end Projection = 84%



- Substation Aging Infrastructure Project. Contract crews replaced the Henne T1 Radiator to galvanized steel, and in addition new cooling fans and new Load Tap Changer (LTC) controller are installed.
- Added 923 new metered customers Q1 FY24, mostly within developments previously completed.
- Energized 7 new single-family subdivisions and 7 new multi-family projects all within Q1 FY24.
- Secured several critical easements affecting feeder extension projects
  - Capitol Aggregates Easements (2 feeders)
  - Ladshaw/Kyndwood Easement (1 feeder)
  - Mayfair Parkway Easements (1 feeder)



## ELECTRIC

### DISTRIBUTION



### TRANSMISSION



### SUBSTATION



### FM 2722 Upgrade Project

Cost: \$1.8M

Expected Completion: January 2024

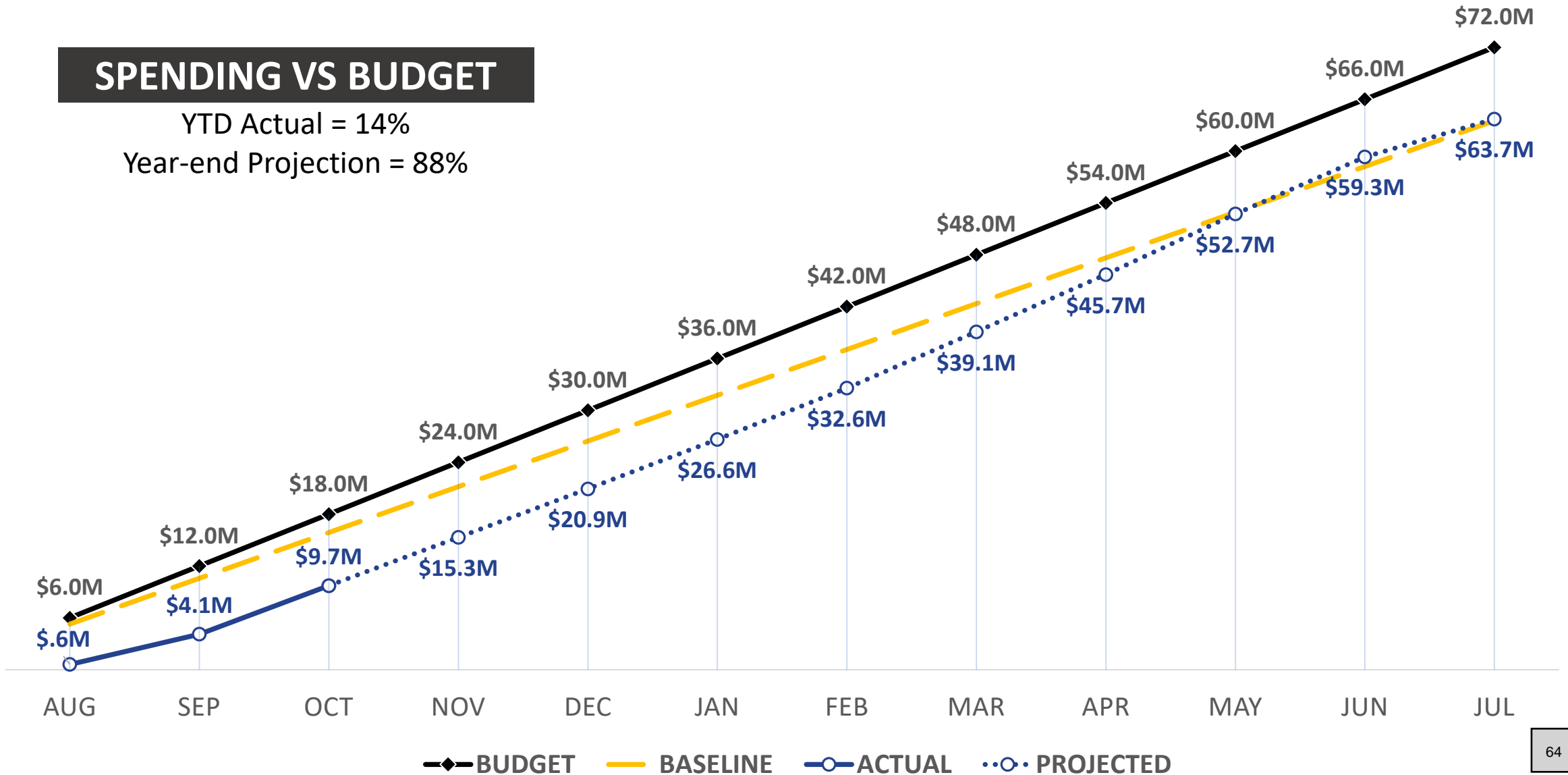
Purpose: Completes a system gap and creates a 10.8 mile bulk distribution main feeder loop for both capacity and switching capability. Also provides improved reliability to existing customers along FM 2722.

# Water – Spending vs Budget

Item 3.

## SPENDING VS BUDGET

YTD Actual = 14%  
Year-end Projection = 88%






# Q1 Water Accomplishments


- Open bids on Conrads EST
- Trinity WTP – existing facility shutdowns ranging from 4-48 hours from November through January to accommodate construction
- I-35 Water Line – construction ongoing, should be complete for area within Comal Park in January





# Feature Projects – Water


**WATER**

**SUPPLY** 

**TREATMENT** 

**DISTRIBUTION PUMPING** 

**TRANSMISSION** 

**ELEVATED STORAGE** 



## Goodwin Waterline

Cost: \$11M

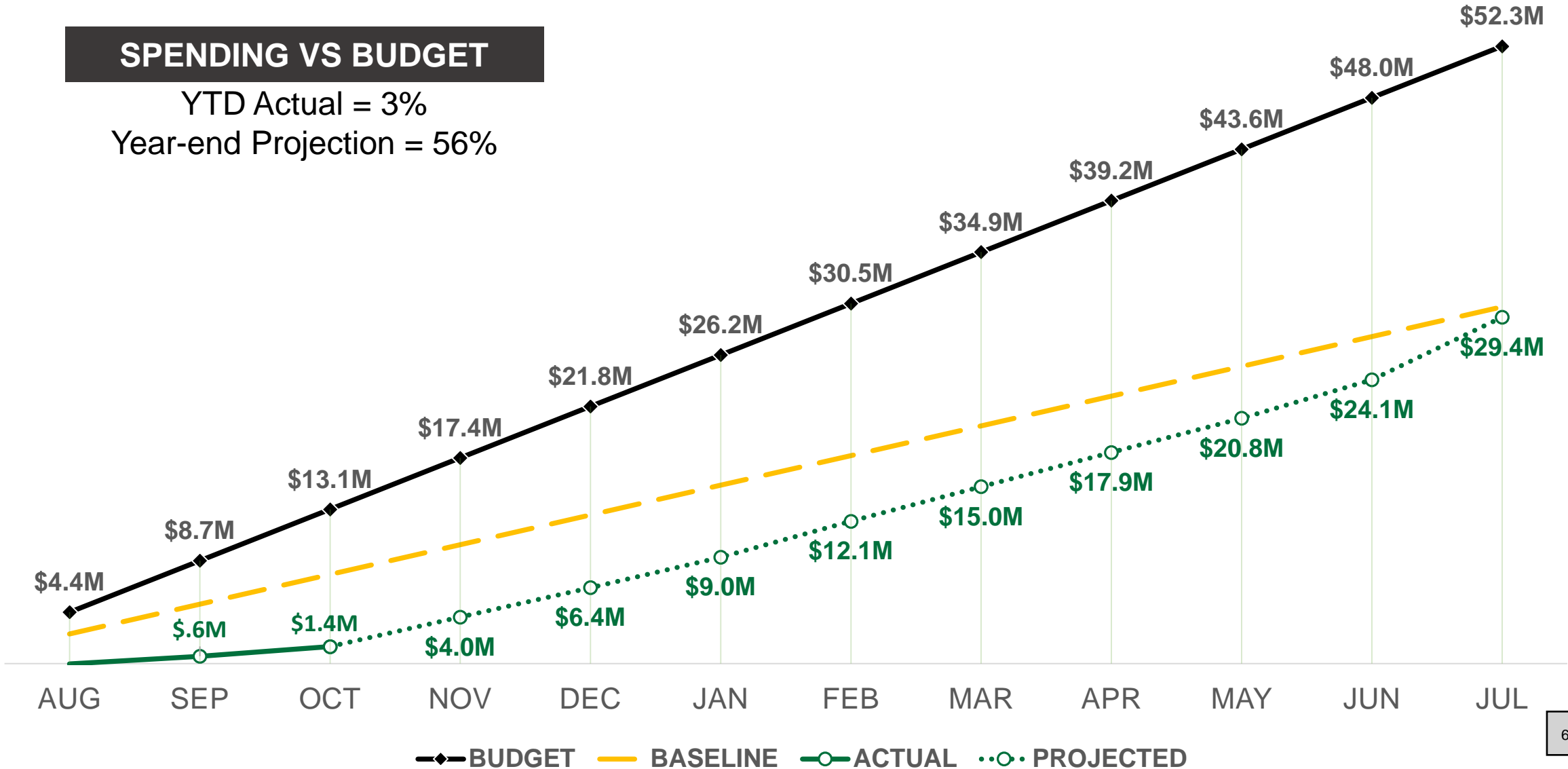
Expected Completion: Spring 2024

Purpose: Increase transmission capacity to the Kohlenberg Pressure Zone and directly to the Country Hills Pump Station serving future growth and providing efficiencies to the water system

# Wastewater – Spending vs Budget Item 3.

## SPENDING VS BUDGET

YTD Actual = 3%  
Year-end Projection = 56%



# Q1 Wastewater Accomplishments

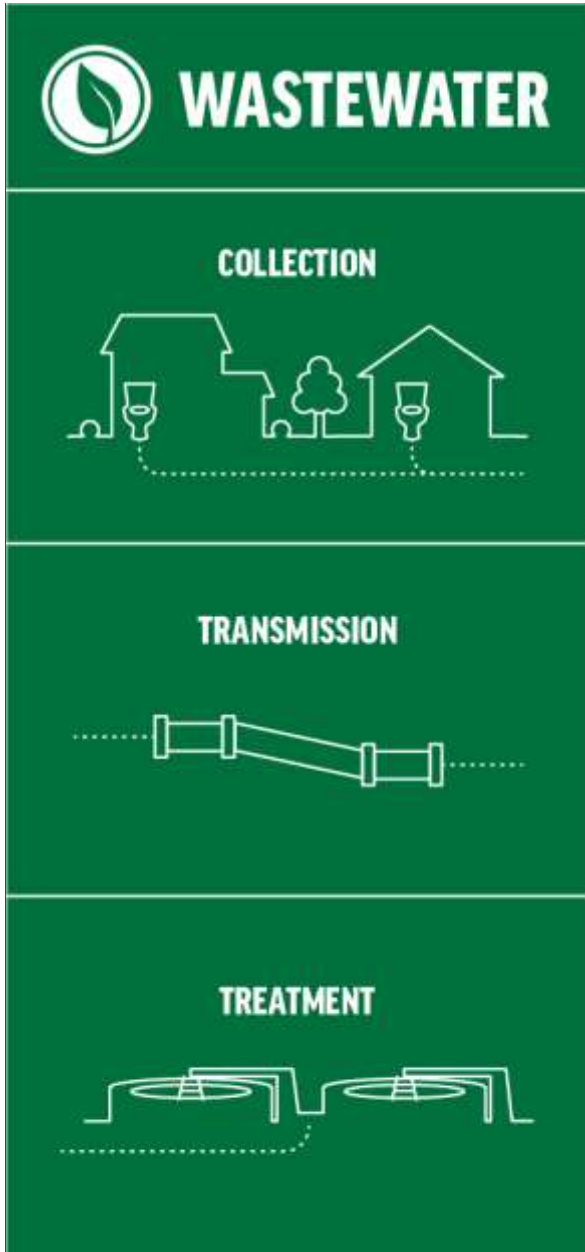
Item 3.

- Completed McKenzie WRF Outfall Repair
- Began construction on the McKenzie WRF Expansion and Kuehler Clarifier Replacement Projects



# Feature Projects – Wastewater

Item 3.



## Solms Lift Station

Construction Cost: \$1.7M

Expected Completion: Summer 2024

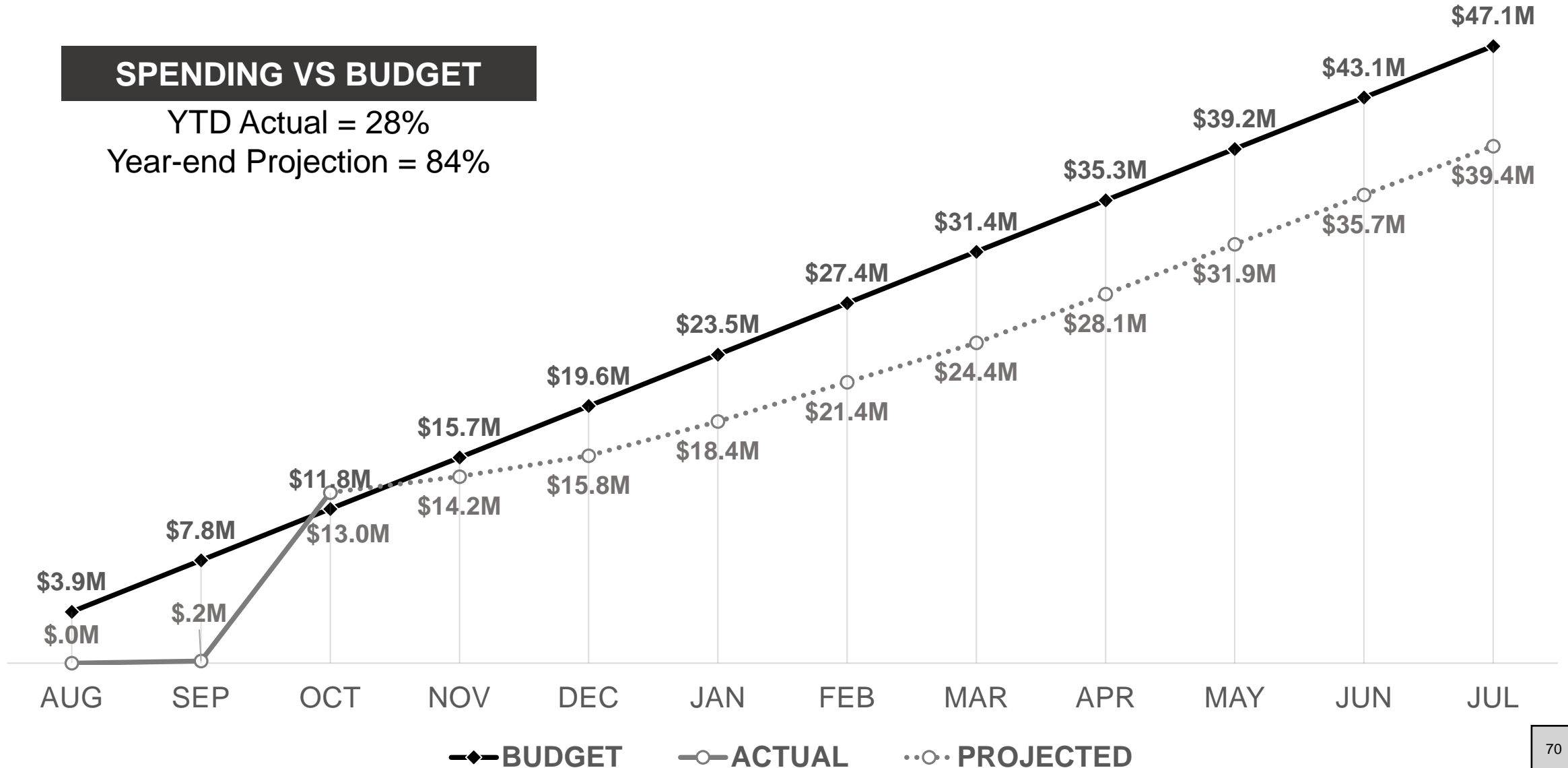
Purpose: Expand existing lift station to serve future customers. Also includes rehabilitation to replace aging components of the lift station.

# Support – Spending vs Budget

Item 3.

## SPENDING VS BUDGET

YTD Actual = 28%  
Year-end Projection = 84%



# Q1 Support Accomplishments

- HQ land was acquired and design to start Q2
- Backup Operations Center contract amendments were completed, and the design is almost complete
- Annex Design Build contractor was selected



# Feature Projects – Support

## SUPPORT

### FLEET & FACILITIES



### INFORMATION TECHNOLOGY



### SYSTEMS CONTROL



### DATA STRATEGY



### Wi-Fi Update

Cost: \$74,000

Expected Completion: January 2024

Purpose: Upgrade NBU company-wide Wi-Fi capabilities, ensuring reliable, resilient, and secure wireless network connectivity to NBU employee devices as well as NBU guests. Replaced 25 outdated wireless access points. Currently installing 20 additional wireless access points to fill in gaps where signal is limited.





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# QUESTIONS



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**Meeting Date:** January 25, 2024      **Agenda Type:** Items from Staff

**From:** Bob Figuly      **Reviewed by:** David Hubbard  
Director of Finance      Chief Administrative Officer

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

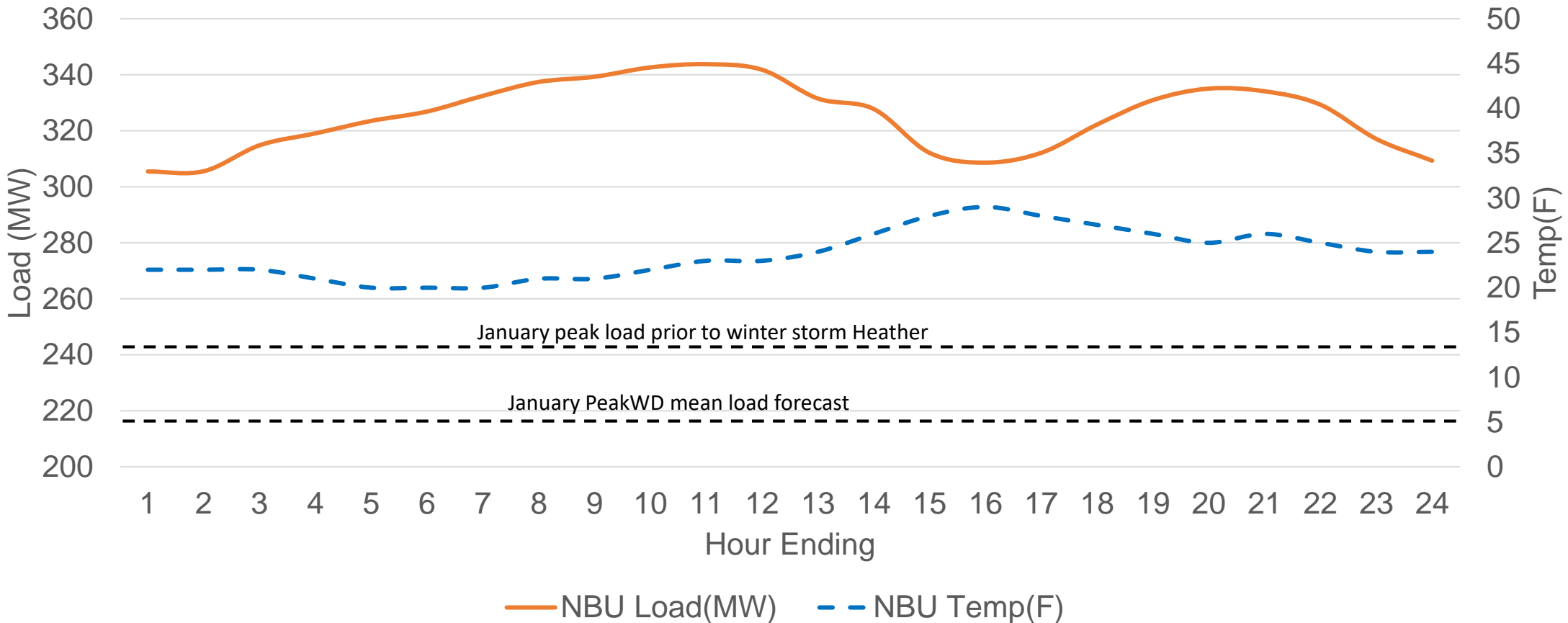
**RECOMMENDED ACTION:** Power Supply Update Including Update on Winter Storm Heather

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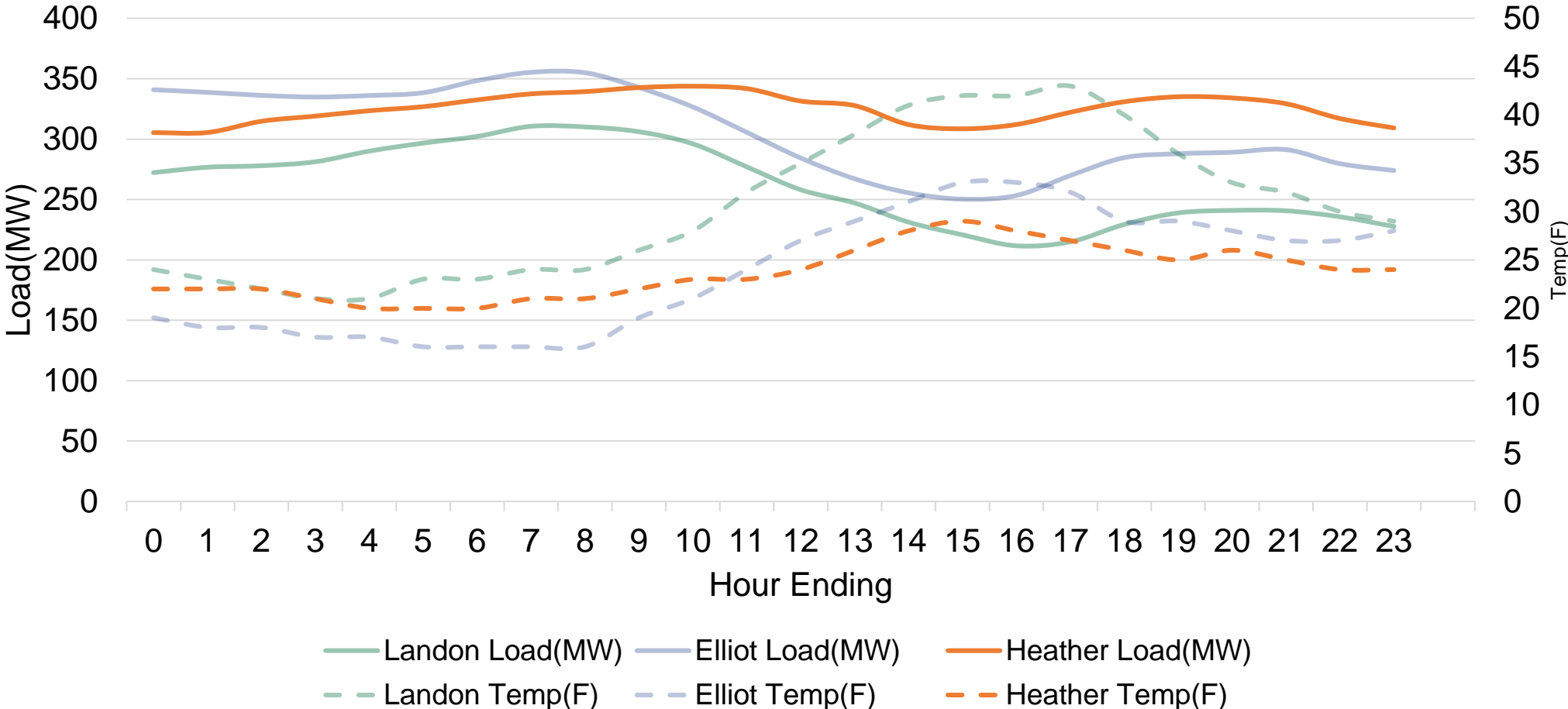
# Winter Storm Heather Review



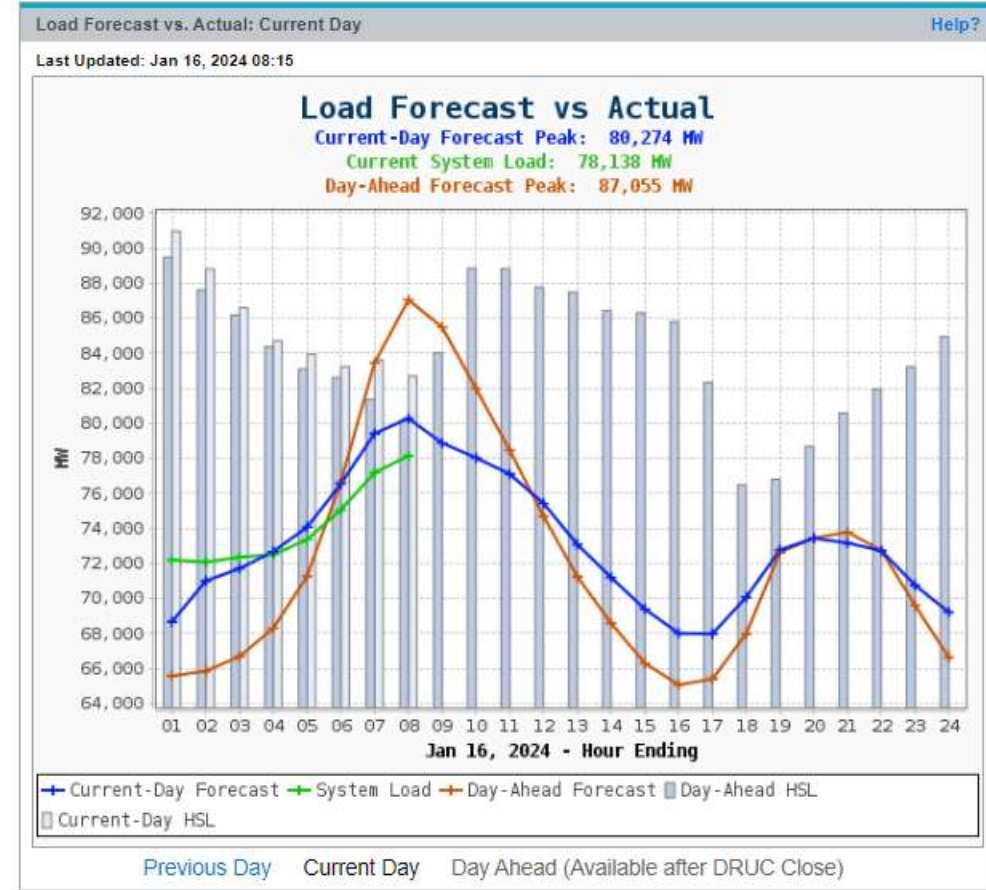
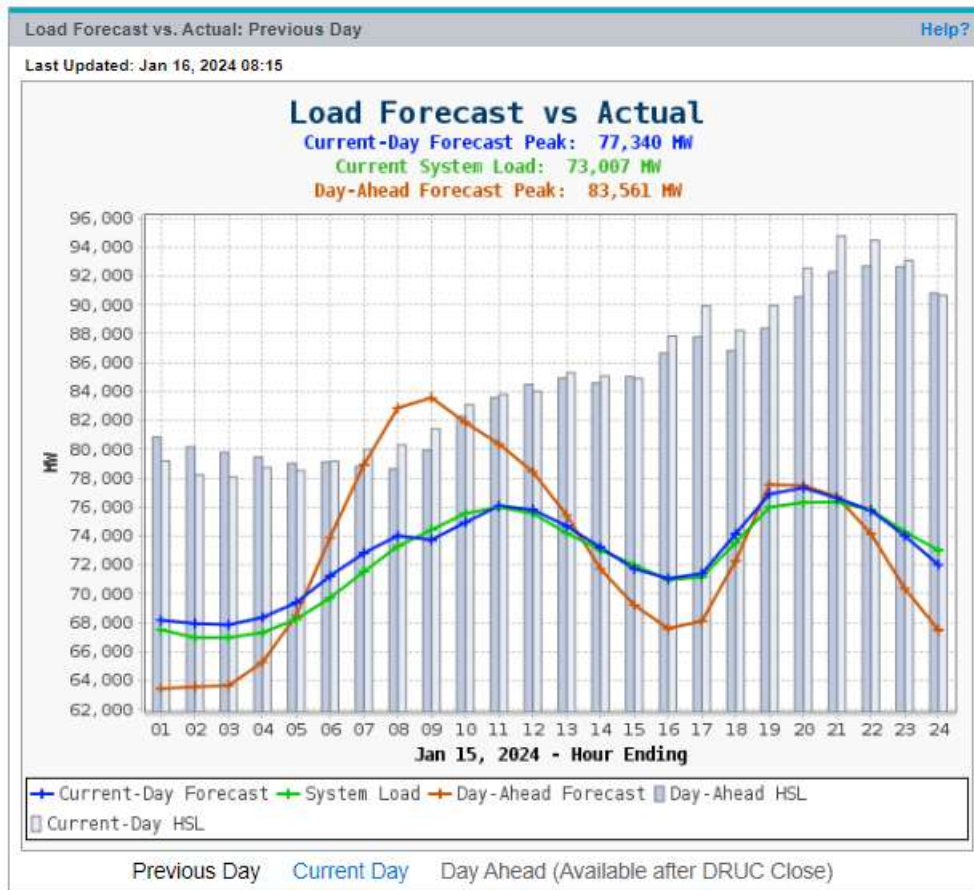
# NBU Load vs Temperature



# Past Winter Storm Comparisons



# ERCOT Forecast Error



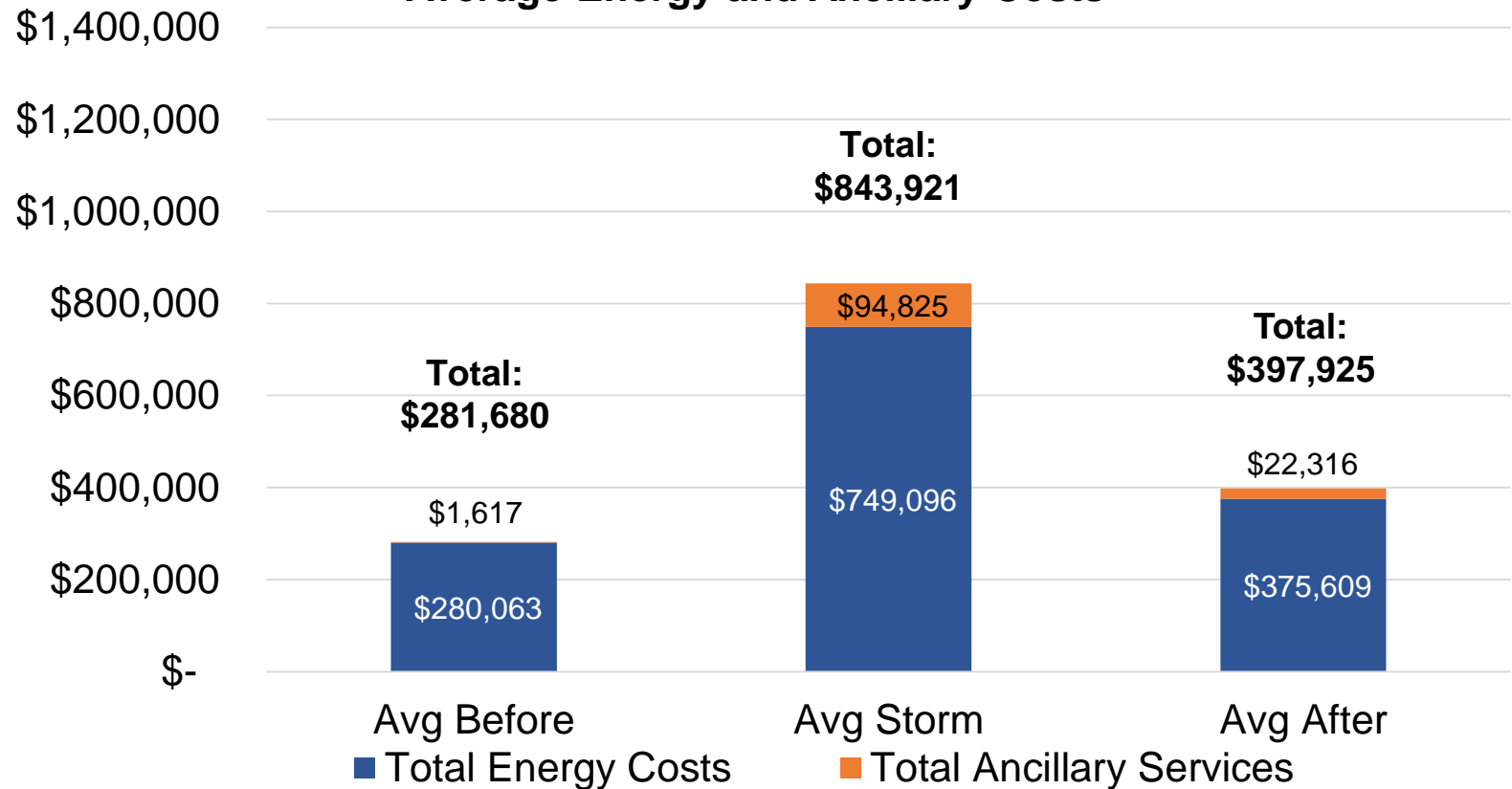
# Winter Storm Heather Review

NBU procured additional bilaterals hedges at a total cost of ~\$2.8M, resulting in a blended hedge cost of \$84.45/MW for the month, so far.

Ancillary Service costs during the event, from Sunday the 14th through Tuesday the 16th, amounted to ~\$300,000.

Total Energy and Ancillary costs for the four coldest days were \$3.14M.

### Average Energy and Ancillary Costs





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

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

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

**RECOMMENDED ACTION:** Approve Minutes of the NBU Regular Board Meeting of December 14, 2023

**BACKGROUND**

None

**FINANCIAL IMPACT**

None

**LINK TO STRATEGIC PLAN**

**Customers and Community**

**EXHIBITS**

- 1. December 14, 2023 Regular Board Meeting Minutes



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

**1:00 P.M.  
Thursday, December 14, 2023  
NBU Board Room  
263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130**

Board President Wayne Peters opened the meeting at 1:03 p.m. A quorum of the NBU Board was present.

**PRESENT**

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

**ABSENT**

None

**NBU PERSONNEL**

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

**NBU CONSULTANTS**

None

**PLEDGE AND INVOCATION**

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

**PUBLIC COMMENT**

Mr. Al Kaufman addressed the Board to show support and gratitude to Gretchen Reuwer for her years of service to New Braunfels Utilities.

**NBU EMPLOYEE RECOGNITIONS**

**1. Presentation of Service Pins**

Interim CEO Ryan Kelso recognized Teresa Bracey with 20 years and Gretchen Reuwer with 25 years of dedicated service to New Braunfels Utilities.

**2. Recognition of Kevin Self for Assisting a Community Member**

Interim CEO Ryan Kelso recognized employee Kevin Self for assisting a senior citizen who was in distress this summer.

**3. Recognition of the 2023 Rising Star Recipients**

Interim CEO Ryan Kelso recognized 2023 Rising Star Recipient Liz Waller. Recipient Brian McClure will be recognized at a future Board meeting.

4. **Recognition of the 2023 Innovation Award Recipient**  
Interim CEO Ryan Kelso recognized 2023 Innovation Award Recipient Erin Cleland.
5. **Recognition of the 2023 Ian Taylor Ethics Award Recipient**  
Interim CEO Ryan Kelso recognized 2023 Ian Taylor Ethics Award Recipient Jesse Luna.
6. **Recognition of the 2023 Outstanding Achievement Recipient**  
Interim CEO Ryan Kelso recognized 2023 Outstanding Achievement Recipient Jeff Morriss.

#### ITEMS FROM THE CHAIR

1. **Dissolution of NBU Board Committee – Ad hoc Committee – Board Compensation Committee**  
The Board dissolved the Board Compensation Ad hoc Committee.
2. **NBU Board Committee Assignments**  
Board President Wayne Peters reviewed and presented the list of committee assignments. They include: Audit Committee (John Harrell, Yvette Villanueva Barrera), Budget Committee (Judith Dykes-Hoffmann, Wayne Peters), Investment Committee (John Harrell, Yvette Villanueva Barrera), Legislative Committee (John Harrell, Yvette Villanueva Barrera), Public Information Act Committee (John Harrell, Judith Dykes-Hoffmann), Records Management Committee (Yvette Villanueva Barrera), Water Infrastructure Maintenance Committee (Judith Dykes-Hoffmann, Yvette Villanueva-Barrera), Ad hoc Community Advisory Panel Board Committee (Wayne Peters, Neal Linnartz, Chair of Community Advisory Panel), Ad hoc Facilities Master Plan Committee (John Harrell, Wayne Peters), Ad hoc Governance Committee (Judith Dykes-Hoffmann, Wayne Peters).
3. **Report from the Audit Committee**  
Board Trustee Yvette Villanueva Barrera reported that the NBU Audit Committee met on December 14, 2023, and John Harrell, Yvette Villanueva Barrera, Ryan Kelso, Dawn Schriewer, Connie Lock, Greg Brown, Ashley VanBooven and Kimberly Huffman were present in addition to Keith Simovic with Moss Adams. Topics discussed were an audit overview, required audit communications, best practices, upcoming accounting standards, and the red flag and cybersecurity incidents report.
3. **Report from the Investment Committee**  
Board Trustee John Harrell reported that the NBU Audit Committee met on December 14, 2023, and John Harrell, Yvette Villanueva Barrera, Ryan Kelso, Dawn Schriewer, Connie Lock, Ashley VanBooven, John Warren, Thomas Varner and Amy Chapple were present in addition to Duane Westerman with SAMCO. Topics discussed were a market update, proposed updates to the Financial Policy and the proposed Series 2024 bond issuance.
3. **Report from the Community Advisory Panel Board Committee**  
Board President Wayne Peters reported that the NBU CAP Board Committee met on December 7, 2023, and Wayne Peters, Mayor Neal Linnartz, Ryan Kelso, Laura Rivers, Laura Ayala, Darla Arnold, CAP Chair Justin Meadows, and CAP member Stuart Blythin were

present. Topics discussed were CAP roles and responsibilities of the board committee and the panel, the preliminary meeting agenda for the first meeting, tentative meeting schedule. The committee is also recommending Stuart Blythin as Vice Chair.

## ITEMS FROM STAFF

### 1. Interim CEO Update

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

- a. 2023 Downtown Spooktacular: NBU participated in this year's event and 30 employees volunteered and welcomed over 2,000 visitors.
- b. Pumpkin Patch Community Resource Fair: NBU Customer Service collaborated with the New Braunfels Food Bank and other local non-profits to support and assist over 185 customers with Utility Bill Assistance inquiries.
- c. Government Finance Officers Association (GFOA) Certificate of Achievement Award: NBU received the GFOA Certificate of Achievement Award for Excellence for the 33<sup>rd</sup> year in a row.
- d. New Braunfels Utilities and New Braunfels Food Bank Joint Food Drive Partnership & Thanksgiving Meal Distribution Event: 30 NBU Employees volunteered their time to assist the NB Food Bank. NBU collected 63 pounds of food donations and assisted in distributing 950 meals and delivering 180 meals.
- e. Emergency Management Tabletop Exercise: NBU Leadership participated in an Emergency Management Tabletop Exercise aimed at enhancing our preparedness and response capabilities in potential emergencies.
- f. New Braunfels Utilities Ethics Week: Ethics was held in November to highlight the significance of ethics in every role within NBU.
- g. Community Road Show Update: Mr. Kelso presented to the New Braunfels Downtown Association.
- h. Veterans Day Celebration and Parade: NBU employees volunteered to participate in the New Braunfels Veterans Day parade. In addition to the parade, a NBU Veterans Day celebration was held to honor the 45 Veterans that work for NBU.
- i. American Public Power Association - Excellence in Communication Web Social Submittal Award: The NBU Communications and External Affairs team was awarded the Excellence in Communication Award by the APPA for the 6<sup>th</sup> consecutive year.
- j. State of NBU Presentation to New Braunfels City Council: Mr. Kelso presented the State of NBU to the New Braunfels City Council on November 16<sup>th</sup>.
- k. Annual Holiday Tree Lighting: NBU crews assisted in installing holiday lights on the Main Plaza and Melissa Krause offered the opening remarks for the Tree Lighting ceremony.

- l. New Braunfels Food Bank Volunteer Activity for NBU Leadership Team: NBU Leadership staff assembled 472 bags of food for families for the holidays.
  - m. NBU University Update: NBU University will begin in January. This 5-month program is an opportunity for community members to learn more about NBU.
  - n. One Water Logo Winners: Angi Cure and Jada Boesch were recognized for their artwork for the One Water logo text and logo graphic designs.
  - o. Leadership Announcements: David Guerrero, Jr has joined NBU as the Resource Strategy Manager.
2. **Financial Update and Report**  
Accounting Manager Kimberly Huffman provided an update on the financial status of NBU.
  3. **Quarterly Investment Report**  
Finance Manager John Warren updated the board on the quarterly Investment Report.
  4. **Quarterly Update on the Headwaters at the Comal**  
Headwaters at the Comal Managing Director Nancy Pappas provided an update on the Headwaters at the Comal.
  5. **NBU Winter Weather Preparedness and Regulatory Update**  
Energy Analytics Supervisor Kristi Villasana provided an update on NBU's power supply program and a Winter weather update.

## CONSENT ITEMS FOR ACTION

**Board Trustee John Harrell made a motion and Board Vice President Judith Dykes-Hoffman 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, #23 and #24. The vote was unanimous.**

1. Approve Minutes of the NBU Special Board Meeting of October 19, 2023
2. Approve Minutes of the NBU Regular Board Meeting of October 26, 2023
3. Approve Minutes of the NBU Special Board Meeting of November 29, 2023
4. Approve the Change Order Log from September 15, 2023, through November 15, 2023
5. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through November 15, 2023
6. Approve the Electric Line of Business Alternative Procurements from September 15, 2023, through November 15, 2023
7. Approve 2023 Second Quarter Charge-Off Accounts

8. Approve the Guadalupe-Blanco River Authority Canyon Hydroelectric Cost Reconciliation for Fiscal Year 2023
9. Authorize Proposed Changes to the NBU Financial Policy
10. Authorize Interim CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Arcadis U.S., Inc. for the Water Resource Planning Project
11. Authorize Interim CEO or His Designee to Negotiate and Execute a Third Amendment to the Professional Services Agreement with Arcadis U.S., Inc for the Design of Phase 4 - Aquifer Storage and Recovery Support Project
12. Authorize Interim CEO or His Designee to Negotiate and Execute a Cooperative Contract with Holt Texas, Ltd., to Purchase One (1) Skid Steer Loader; One (1) Excavator; Three (3) Backhoe Loaders; and Two (2) Backhoe Loaders with Extended Boom
13. Authorize Interim CEO or His Designee to Negotiate and Execute a Cooperative Contract with Reliance Truck and Equipment, LLC. for One (1) Prebuilt 1050 TVO 2024 Closed Circuit TV Truck
14. Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for Program Management and Staff Augmentation for Engineering and Engineering Related Services in Support of New Braunfels Utilities' Water and Wastewater Capital Improvement Plan
15. Authorize Interim CEO or His Designee to Negotiate and Execute a Reuse Water Supply Contract with Sundance Property Owners Associations, Inc. for the Use of Reuse Water Provided by New Braunfels Utilities
16. Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Wallgren Environmental Service, Inc. DBA Pollution Control Services for Laboratory Testing Services for New Braunfels Utilities' Water and Wastewater Facilities in Connection with Regulatory and Compliance Testing Requirements
17. Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Guadalupe-Blanco River Authority for Biomonitoring Testing Services for New Braunfels Utilities' Water and Wastewater Facilities in Connection with Regulatory and Compliance Testing Requirements
18. Authorize Interim CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for Owner's Representative Services for the New Braunfels Utilities' Headquarters Project
19. Authorize Resolution #2023-180 Approving Revisions to the Records and Information Management Policy, Appointing the New Braunfels Utilities Records Manager as Records

Management Officer Pursuant to the Local Government Records Act, and Approving Other Matters in Connection Therewith

20. Authorize Interim CEO or His Designee to Negotiate and Execute an AIA Amendment to the Professional Services Agreement with Marmon Mok Architecture for Architectural Design Services for the New Braunfels Utilities' Headquarters Project
21. Authorize Interim CEO or His Designee to Negotiate and Execute an AIA Agreement with SpawGlass Contractors, Inc., Including Contingency, for the NBU Annex Facility Renovation Design Build
22. Authorize Interim CEO or His Designee to Negotiate and Execute a Cooperative Contract with Waypoint Business Solutions, LLC for the Replacement of Servers Within the Consolidated VxRail Cluster and the Backup System
23. Authorize Interim CEO or His Designee to Negotiate and Execute a Cooperative Agreement with SHI International Corp. for the Renewal of Microsoft EA Licensing to Maintain Critical Software Usage for NBU Staff
24. Approve Appointment of Stuart Blythin as Vice Chair of the Community Advisory Panel and Other Matters in Connection Therewith

## **ACTION ITEMS**

### **1. Discuss and Consider Approval of the NBU Annual Comprehensive Financial Report and Red Flag and Cybersecurity Incidents Report**

Board Vice President Judith Dykes-Hoffmann made a motion and Board Trustee Yvette Villanueva Barrera seconded the motion to approve the NBU Annual Comprehensive Financial Report and Red Flag and Cybersecurity Incidents Report. The vote was unanimous.

### **2. Discuss and Consider Adopting Resolution #2023-181 Relating to the Issuance of the "City of New Braunfels, Texas Utility System Revenue and Refunding Bonds, Series 2024" and Resolving Other Matters Related Thereto**

Mayor Neal Linnartz made a motion and Board Trustee John Harrell seconded the motion to adopt resolution #2023-181 relating to the issuance of the "City of New Braunfels, Texas Utility System Revenue and Refunding Bonds, Series 2024" and resolving other matters related thereto. The vote was unanimous.

### **3. Discuss and Consider Approval and Authorization to Select the Underwriting Team for the City of New Braunfels, Texas, Utility System Revenue and Refunding Bonds, Series 2024**

Board Vice President made a motion and Mayor Neal Linnartz seconded the motion to approve the authorization to select the underwriting team for the City of New Braunfels, Texas, Utility System Revenue and Refunding Bonds, Series 24. The vote was unanimous.

**4. Discuss and Consider Approval of a Professional Service Agreement with GHD, Inc DBA GHD Consulting Inc. for Asset Management Support Services**

Board Trustee John Harrel made a motion and Mayor Neal Linnartz seconded the motion to approve the Professional Services Agreement with GHD, Inc DBA GHD Consulting Inc. for Asset Management Support Services. The vote was unanimous.

**EXECUTIVE SESSION**

Board President Wayne Peters recessed the Open Session at 3:07 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included Power Supply Resources – Competitive Matters; Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege; and Personnel Matters. The Executive Session was opened at 3:11 pm and closed at 5:04 pm.

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

**ACTION ITEMS**

**1. Discuss and Consider Authorizing the Interim CEO or His Designee to Negotiate and Execute an Amended and Restated Utility Construction Cost Sharing Agreement Among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC, Amending Provisions of the Utility Construction Cost Sharing Agreement Dated February 8, 2022, Among the Same Parties**

Mayor Neal Linnartz made a motion and Board Vice President Judith Dykes-Hoffmann seconded the motion to approve authorizing the Interim CEO or His Designee to negotiate and execute an amended and restated utility Construction Cost Sharing Agreement among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC, amending provisions of the Utility Construction Cost Sharing Agreement Dated February 8, 2022, among the same parties. The vote was unanimous.

**2. Discuss and Consider Authorizing the Interim CEO or His Designee to Negotiate and Execute a Construction Contract with Landmark Structure I, L.P. for the Construction of the Conrads Elevated Storage Tank Project**

Board Vice President Judith Dykes-Hoffmann made a motion and Board Trustee John Harrell seconded the motion to approve authorizing the Interim CEO or His Designee to negotiate and execute a construction contract with Landmark Structure I, L.P for the construction of the Conrads Elevated Storage Tank Project. The vote was unanimous.

**ADJOURN**

There was no further business and Board President Wayne Peters adjourned the meeting at 5:10pm pm.

*Attest:*

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*Wayne Peters, President  
Approved*

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

*Date Approved: January 18, 2024*





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

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

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

**RECOMMENDED ACTION:** Approve Minutes of the NBU Special Board Meeting of December 18, 2023

**BACKGROUND**

None

**FINANCIAL IMPACT**

None

**LINK TO STRATEGIC PLAN**

**Customers and Community**

**EXHIBITS**

- 1. December 18, 2023 Special Board Meeting Minutes

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

**8:00 AM  
DECEMBER 18, 2023  
COURTYARD BY MARRIOT RIVER VILLAGE  
750 IH 35 NORTH, NEW BRAUNFELS, TX 78130**

Board President Wayne Peters opened the meeting at 8:21 a.m. A quorum of the NBU Board was present.

**PRESENT**

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

**ABSENT**

None

**NBU PERSONNEL**

David Hubbard and Laura Rivers

**PUBLIC COMMENT**

None

**EXECUTIVE SESSION**

Board President Wayne Peters recessed the Open Session at 8:25 a.m. and announced that the Board would go into an Executive Session meeting. The Executive Session included Personnel Matters. The Executive Session was opened at 8:30 a.m. and closed at 4:50 p.m.

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

**ADJOURN**

There was no further business and Board President Wayne Peters adjourned the Board of Trustees Special Meeting at 4:50 p.m.

---

*Wayne Peters, President*

***Attest:***

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*Ryan Kelso, Secretary of the Board*

*Date Approved: January 25, 2024*



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

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

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

**RECOMMENDED ACTION:** Approve Minutes of the NBU Special Board Meeting of January 18, 2024

**BACKGROUND**

None

**FINANCIAL IMPACT**

None

**LINK TO STRATEGIC PLAN**

**Customers and Community**

**EXHIBITS**

- 1. January 18, 2024 Special Board Meeting Minutes

**MINUTES  
NEW BRAUNFELS UTILITIES BOARD OF DIRECTORS  
STRATEGIC WORKSHOP MEETING**

**8:30 AM  
THURSDAY, January 18, 2024  
NEW BRAUNFELS FOOD BANK  
1620 S. SEGUIN AVENUE, NEW BRAUNFELS, TX 78130**

Board President Wayne Peters opened the meeting at 8:32 a.m. A quorum of the NBU Board was present.

**PRESENT**

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

**ABSENT**

None

**NBU PERSONNEL**

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

**ITEMS FROM THE CHAIR**

Wayne Peters recognized the Water Treatment and Compliance team for being recognized by the Texas Water Utilities Association for earning the Best Tasting Surface Water award.

**EXECUTIVE SESSION**

Board President Wayne Peters recessed the Open Session at 8:35 am and announced that the Board would go into an Executive Session meeting. The Executive Session included consultation with attorney regarding matters protected by attorney-client privilege, personnel matters: deliberate plan and strategy for implementation of executive employment agreement for Chief Executive Officer.

The Executive Session was opened at 8:36 am and closed at 8:53 am.

**STRATEGIC PLANNING DISCUSSION**

The New Braunfels Utilities (NBU) Board and staff will discuss the following matters related to planning for the future of NBU regarding its operations, management, facilities, governance, and strategic plans. Agenda items discussed including the following:

- 1. Presentation on Phasing Options for Construction of the Future NBU Headquarters Project to be Located South of the Intersection of Krueger Canyon Road and FM 482 and Northwest of the Intersection of Engel Road and IH-35 in Comal County, Texas**

Jacob Tschoepe presented information on the NBU Headquarters Project, including staffing projections for the Headquarters building, the cost for full facility build-out versus finish-out phasing options, and a draft of the general building schematics. An anticipated timeline schedule was also shared with the Board. Currently, staff is recommending that the facility be able to accommodate 725 employees by 2045 and move forward with a full build-out versus a phase-in.

Questions and commentary from the board included parking lot requirements, entrance/exit locations, and topography.

**2. Presentation on the Construction and Rehabilitation of the NBU Annex Located at 1448 S. Seguin Avenue, New Braunfels, Texas**

Jacob Tschoepe presented information on the NBU Annex project. Design-build teams have been selected. An early plan schematic was shared with the board. An anticipated timeline schedule was shared with the board, with construction tentatively to be completed by October 2024.

Questions and commentary from the board included pest control, city first responders' current building use, and departments that may be utilizing the building when finalized.

**3. Presentation on the Fiscal Year 2024 Strategic Plan, Annual Priorities, and Emerging Initiatives Updates**

Melissa Krause led the presentation on the Fiscal Year 2024 Strategic Plan, Annual Priorities, and Emerging Initiatives Updates. Executive and Leadership staff reviewed goals and annual priorities. Topics discussed included:

- a. Customer and Community: Dawn Schriewer presented information on the Customer Satisfaction Survey. Group discussed optimizing external communications, when possible.
- b. People and Culture: David Hubbard and Adriana Sanchez shared information on actions that have been implemented based on the Gallup employee engagement survey. Some items included family leave, TMRS contributions, holiday schedules, internal Employee Experience Team.
- c. Infrastructure and Technology: Gretchen Reuwer, Greg Brown and Mike Short presented information on FY 2024 goals.
- d. Financial Excellence: Dawn Schriewer provided information on our current bond rating.
- e. Safety and Security: Melissa Krause presented information on vehicle and equipment damage incidents.

- f. Stewardship: David Hubbard introduced Sarah Richards to share One Water Advisory Council information.

Melissa Krause then transitioned to specific information on the FY 2024 Annual Priorities. Topics discussed included:

- a. Electric Transportation (ET) Program Creation: Sarah Richards provided information on the NBU ET program. We are seeing growth in the program.
  - b. Water Efficiency: Sarah Williams shared that the department is working on creating measures to determine progress on water to mark progress.
  - c. Integrated Resource Plan (IRP): David Hubbard shared that we are currently working with TEA on the process for the IRP. The 1<sup>st</sup> Community Advisory Panel (CAP) meeting will be held on January 23<sup>rd</sup>, 2024. Bob Figuly shared that we are firming up the forecast moving forward and are currently on track to meet strategic plan deadlines.
  - d. Enterprise Asset Management: Ryan Kelso shared that the project management contract has been successfully executed, and staffing positions for that department have been filled.
  - e. Project Management: Ryan Kelso shared that the goal is to grow this initiative and build up core competencies to level up to larger projects. Training is underway for staff.
  - f. NBU HQ: Information was shared earlier in the meeting.
  - g. Emergency Management: Melissa Krause shared that the Safety Department is working on standardizing emergency plans. An emergency management coordinator position has been posted, and interviews will occur soon. Once filled, they will work to have 50% completion by the end of this fiscal year.
  - h. Power Supply: David Hubbard shared that TEA evaluated our program and offered some new strategies. We have created a roadmap based on their recommendations and ranked them on priorities. One of the priorities is a risk management process. An update to the board in April 2024, including KPI data.
4. Presentation and Discussion on the Proposed Fiscal Year 2025 Strategic Plan and Annual Priorities

Melissa Krause presented information on the Fiscal Year 2025 Strategic Plan and Annual Priorities. She provided the strategic plan timeline and then led a review of the FY 2025 strategic plan, including mission, core values and vision, and the guiding principles and definitions.

Executive and Leadership staff reviewed goals and annual priorities. Topics discussed included:

- a. **Customers and Community:** Melissa Krause shared the goal statement: We provide a customer-first focus and commit to innovative solutions to improve the customer experience. Goal Measure updated from:

“Customer Satisfaction Benchmark – Organizational characteristics by NBU’s vendor, Greatblue, above industry standard.”

To: “Community Engagement and Outreach to enhance community relations with meaningful conversations; Activate with  $\geq 10\%$  of the customer base.”

- b. The goal is to enhance the customer experience.

Questions and commentary for the board included:

Clarification on having a 3-year vs. a 5-year plan: is one better than the other? Dependent on the goals that need to be addressed.

Do we have a process for comments during an event to gather comments and concerns? What will we do with that feedback and compile? Moving forward, we will move from an annual survey to a real-time one that can address issues as they happen. We will work with communication to make the information relatable to customers and the community.

- c. **People and Culture:** David Hubbard shared the goal statement: We will care for our employees, build on our team-oriented culture, promote ethical behavior, and prepare our team to meet the challenges again.

Questions and commentary for the board included:

What do we do with that feedback from the survey? The Employee Experience Team reviews all survey answers to see what options can be implemented. Some of the options that were implemented this past year include Flash Friday communication for staff (both email and video links), the option to cash out vacation time, parental leave, 2:1 TMRS match, and coffee choice. Working on creating professional learning opportunities that focus on leadership (for example, Crucial Conversations) and soft skills to work on coaching for feedback with employees. We are also working on better communication on why survey requests may or may not be able to be implemented.

Goal #1 is measurable, but goal #2 does not seem to be. Was recommended to move to either Goal Statement or Goal Summary section. We can look at how to make that measurable/quantitative.

How has the work-from-home changed since COVID? We have some employees that are completely remote. However, the majority of employees are on a hybrid schedule.

Some of the impact of bringing staff back is based on office space. Hybrid schedules vary by department/manager.

- d. **Infrastructure and Technology:** The goal statement: We maintain reliable and resilient systems through responsible planning, asset management, and innovative technologies that align with the strategic direction of the organization.

Gretchen Reuwer covered utility infrastructure. The department is working with our Business Analyst department to incorporate the affordability index into a working dashboard. A view of the dashboard was shown to the board. This goal will also be added to Finance.

Greg Brown shared that the Information Technology department maintains a regular schedule for system checks for reliability on all NBU systems.

Mike Short covered information on the Infrastructure Leakage Index (ILI) and Wastewater Treatment Compliance Event measures. These measures will remain the same based on the recommended state standards.

- e. **Financial Excellence:** Dawn Schriewer shared the goal statement: We practice sound financial management to be responsible stewards of public funds.

Based on the Board's Financial Policy, we currently monitor our rates through our ratios and modify them as needed.

Questions and commentary for the board included:

Is maintaining a bond rating of A too low? Our current lowest rating is with S&P at an A+. While the goal measure is one rate lower than our current rating, we are good with maintaining based on determining factors. Will add in Goal Measure "Maintain bond rating." Fiscal year 2025 Infrastructure and Technology goals (for electric, water, and wastewater) will be added to Financial Excellence Goal Measure.

- f. **Safety and Security:** The goal statement is: We strive to place safety and security as the highest priorities for every employee and customer.

One of the measures includes managing preventable damage to vehicles at  $\leq 10$  incidents per 1,000,000 miles driven.

Questions and commentary for the board included:

Do we have any data on vehicle mileage and damage? We are currently looking at GPS equipment to assist with monitoring this information.

- g. **Stewardship:** The goal statement is: We commit to preserving and protecting community resources through planning, innovation, collaboration, and education.



David Hubbard and Sarah Richards have been working on creating a metric to implement water efficiency. This process may be easier in the long term and harder on annual basis. The goal is to make sure the matrix is capturing data that is feasible.

Melissa Krause briefly reviewed the additions to FY 2024/2025 Annual Priorities. One of the priorities that will be a primary focus will be optimizing the customer experience. The goal of this priority is make doing business with NBU an enjoyable experience, how we do business, and raise our customer experience across the company. We will be developing a roadmap with how we will move forward.

**The Board recessed for lunch at 12:03 pm and reconvened at 12:40 pm.**

**5. Presentation and Update on Levels of Service and Key Performance Indicator (KPI) Dashboard**

Jacob Tschoepe presented information on Levels of Service (LoS) and Key Performance Indicators (KPI). The goal is to create a workflow to create dashboards to monitor service and project performance.

Three examples of KPI data were shared: Customer Service, Water Systems Engineering, and Finance. KPI/Levels of Service (LoS) dashboard reflects current KPI, the current goal, and the current status.

Future goals include departmental dashboards, action plans, trending and historical data, industry benchmarks, data-driven decision-making and planning, LoS focused organization. Goals were discussed with the management team for feedback on the process.

Questions and commentary for the board included:

What is the industry average hold time? 6 minutes or less

Recommendation was made to modify measurement to include “average hold time,” as opposed to “max hold time.” Note: max hold time does hold value.

Is the hold time a tech issue? Is it an issue of staff being unable to access the information needed to assist customers? We are just now starting to evaluate our staff’s technology and software needs.

**6. Ethics Presentation on the Brownsville Public Utilities Board Forensic Examination Report Dated September 29, 2022, Relating to the Tenaska Project**

Rachel Leier presented information on the Brownsville Public Utilities Board (BPUB) Tenaska Project. This presentation highlighted the problems associated with the project and highlighted several ethical concepts and how unethical decisions can result in criminal investigation or loss of bond rating and credibility.

Questions and commentary for the board included:

What was the fallout for those involved? No real criminal penalties.

Beneficial to provide related presentation to Council and Board annually

## 7. Presentation and Discussion on NBU Board Annual Self-Evaluation

Board Vice President Judith Dykes-Hoffmann shared the historical progression of creating a Board Annual Self-Evaluation process. She provided a copy of the final self-evaluation responses to the board members. Responses from the board included: requesting a list of frequently used acronyms, ability to review materials/documents/information from board committee meetings, and related inquiries. Additionally, adding a “Board Moment” in the monthly board meeting agendas, receiving the proper information in order to provide critical oversight, to memorialize a list of board objectives that the board can work on, and for staff to use board responses from this evaluation to craft future presentation items.

### EXECUTIVE SESSION

Board President Wayne Peters recessed the Open Session at 2:16 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege - Discuss Legal Issues Relating to the Proposed Sale of 263 Main Plaza. The Executive Session was opened at 2:16 pm and closed at 3:35 pm.

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

### TOUR OF FACILITY

The NBU Board of Trustees participated in an informational tour of the future NBU Headquarters site to be Located South of the Intersection of Krueger Canyon Road and FM 482 and Northwest of the Intersection of Engel Road and IH-35 in Comal County, Texas.

### ADJOURN

There was no further business, and Board President Wayne Peters adjourned the Board Strategic Workshop at 5:06 pm.

*Attest:*

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*Wayne Peters, President  
Approved*

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

*Date Approved: January 25, 2024*



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

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

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

**RECOMMENDED ACTION:** Approve Amended Minutes of the NBU Regular Board Meeting of May 23, 2023

## **BACKGROUND**

The minutes of the May 23, 2023, NBU Regular Board meeting were previously approved at the June 29, 2023 board meeting. Due to a scrivener’s error present in the minutes, a correction is required to accurately reflect the discussions from the meeting.

After the “Executive Session” item in the minutes, the record should correctly reflect the following:

“The Regular Session resumed at 3:53 pm. Board Vice President Wayne Peters made a motion and Board Trustee John Harrell seconded the motion approve a total compensation package for the Interim Chief Executive Officer to be effective on July 1, 2023, in the amount of \$296,500, consisting of a \$286,000 base salary, a \$9,600 car allowance, and a \$900 phone allowance. The vote was unanimous.”

Originally, the minutes read, “..... total compensation package for the Interim Chief Executive Officer to be effective on July 1, 2023, in the amount of \$296,500, consisting of a \$286,000 base salary, a \$9,600 annual car allowance, and a \$900 annual phone allowance.”

NBU staff requests that the Board of Trustees approve the amended minutes of the May 23, 2023, board meeting.

## **FINANCIAL IMPACT**

None

## **LINK TO STRATEGIC PLAN**

### **Customers and Community**

## **EXHIBITS**

1. Amended Minutes – May 23, 2023 Regular Board Meeting

**AMENDED**  
**January 25, 2024**

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

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

Board President Judith Dykes-Hoffmann opened the meeting at 1:01 pm. A quorum of the NBU Board was present.

**PRESENT**

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

**ABSENT**

None

**NBU PERSONNEL**

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

**NBU CONSULTANTS**

Michael Vigeant of Great Blue Research and Nathan Pence of the Guadalupe-Blanco River Authority

**PLEDGE AND INVOCATION**

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

**PUBLIC COMMENT**

None

**ITEMS FROM THE CHAIR**

**AWARDS AND RECOGNITIONS**

- American Public Power Association Diamond Reliable Public Power Provider**
  - 1. Designation**

CEO Ian Taylor announced that NBU has earned the American Public Power Association's Reliable Public Power Provider (RP3) designation, which recognized utilities demonstrating high proficiency in reliability, safety, workforce development, and system improvement.
  - 2. American Public Power Association 2022 Safety Awards of Excellence**

CEO Ian Taylor announced that NBU earned APPA's Safety Award of Excellence for safe operating practices. NBU earned second place in the category for utilities with between 250,000 and 999,999 worker-hours of annual worker exposure.

## **NBU EMPLOYEE RECOGNITIONS**

### **1. Presentation of Service Pins**

CEO Ian Taylor recognized Michael Finn with 20 years of dedicated service to New Braunfels Utilities.

## **ITEMS FROM STAFF**

### **1. CEO'S Update**

CEO Ian Taylor shared that the New Braunfels Home and Garden Show took place on April 1<sup>st</sup> and 2<sup>nd</sup> at the New Braunfels Civic Center. Staffed by NBU experts with a wide range of utility knowledge, the NBU booths were visited by over 200 people. On April 11<sup>th</sup> and April 14<sup>th</sup>, NBU Electric and Water Operations team members visited Lamar Elementary School and Voss Farms Elementary School for career day events. Mr. Taylor also shared that Public Service Recognition Week took place from May 7<sup>th</sup> through 13<sup>th</sup>. Throughout the week, NBU staff enjoyed Bahama Bucks Snow Cones and a gathering at the Service Center for pizza and games.

### **2. Financial Update and Report**

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

### **3. Quarterly Investment Report**

Finance Manager John Warren provided an update on the quarterly Investment Report.

### **4. Quarterly Power Supply Update**

Energy Risk and Settlements Manager Missy Quent provided the quarterly power supply update.

### **5. Quarterly Communications Report**

Communications and External Affairs Manager Pam Quidley provided the quarterly communications update.

## **CONSENT ITEMS FOR ACTION**

**Board Trustee John Harrell made a motion and Board Vice President Wayne Peters 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, and #15. The vote was unanimous**

1. Approve Minutes of the NBU Regular Board Meeting of April 27, 2023
2. Approve Minutes of the NBU Special Board Meeting of May 18, 2023
3. Approve a Public Calamity Declaration Relating to Supply Chain Disruptions Resulting from the Covid-19 Pandemic for Purchases over \$250,000
4. Approve the Public Calamity Exemption Log from March 15, 2023, through April 15, 2023
5. Approve the Change Order Log from March 15, 2023, through April 15, 2023
6. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2022, through April 15, 2023

7. Approve the Electric Line of Business Alternative Procurements from March 15, 2023, through April 15, 2023
8. Approve 2022 Fourth Quarter Charge-Off Accounts
9. Accept the Quarterly Strategic Plan Update
10. Accept the Quarterly Headwaters at the Comal Update
11. Ratify the Third Amendment to the Work Authorization with Quiddity Engineering, LLC for the North and South Kuehler Wastewater Treatment Plant Expansion Project, and Authorize CEO or His Designee to Negotiate and Execute a Fourth Amendment to the Work Authorization with Quiddity Engineering, LLC for the Design of the Kuehler Water Reclamation Facility Expansion Project
12. Authorize CEO or His Designee to Negotiate and Execute a First Amendment to the Amended and Restated Professional Services Agreement with Quiddity Engineering, LLC for the Design of the Sam C. McKenzie, Jr. Water Reclamation Facility Expansion Project
13. Authorize CEO or His Designee to Negotiate and Execute a Construction Contract with Pesado Construction Company for the Construction of the Trinity Wellfield Expansion – Site Improvements Project
14. Ratify the Price Changes for the Purchase of One (1) 12 Yard Sewer Combo Unit Purchased from Santex Truck Centers, Ltd.
15. Consider Appointing Water Treatment and Compliance Manager Brent Lundmark to the Headwaters at the Comal Board of Directors

#### **PRESENTATION ITEMS**

1. **Presentation on the NBU Customer Satisfaction Survey Results for Fiscal Year 2023 from Great Blue Research**  
Michael Vigeant presented on the NBU Customer Satisfaction Survey Results for Fiscal Year 2023 from Great Blue Research
2. **Presentation and Update from Guadalupe-Blanco River Authority Regarding the Guadalupe River Habitat Conservation Plan**  
Nathan Pence with the Guadalupe-Blanco River Authority presented on the Guadalupe River Habitat Conservation Plan
3. **Presentation and Update on NBU’s Summer Outlook for Energy Resource Adequacy**  
Director of Power Supply Bob Figuly presented on NBU’s Summer outlook for energy resource adequacy

#### **EXECUTIVE SESSION**

Board President Judith Dykes-Hoffmann recessed the Open Session at 2:23 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included Power Supply Resources – Competitive Matters; Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege; and Personnel Matters. The Executive Session was opened at 2:42 pm and closed at 3:50 pm.

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

The Regular Session resumed at 3:53 pm. Board Vice President Wayne Peters made a motion and Board Trustee John Harrell seconded the motion approve a total compensation package for the Interim Chief Executive Officer to be effective on July 1, 2023, in the amount of \$296,500, consisting of a \$286,000 base salary, a \$9,600 car allowance, and a \$900 phone allowance. The vote was unanimous.

**ACTION ITEMS**

**Discuss and Consider Authorizing CEO or His Designee to Negotiate and Execute a First Amendment to a Utility Construction Cost Sharing Agreement Among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC**

Board Trustee Yvette Villanueva Barrera made a motion and Board Vice President seconded the motion to authorize the CEO or his designee to negotiate and execute a First Amendment to a Utility Construction Cost Sharing Agreement among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC and Beaverhead NB, LLC

**ADJOURN**

There was no further business and Board President Judith Dykes-Hoffmann adjourned the meeting at 3:55 pm.

  
\_\_\_\_\_  
*Judith Dykes-Hoffmann, President*  
*Approved*

**Attest:**  
  
\_\_\_\_\_  
*Ian Taylor, Secretary of the Board*  
*Chief Executive Officer*

*Date Approved: June 29, 2023*

*Amended and Approved: January 25, 2024*



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

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

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

**RECOMMENDED ACTION:** Approve the Change Order Log from November 15, 2023, through December 15, 2023

## **BACKGROUND**

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

Listed below are the change orders submitted to the Purchasing Manager for the period of November 15, 2023, through December 15, 2023.

## **FINANCIAL IMPACT**

Change orders less than \$50,000:

- Trinity Expansion Treatment Plant, Owner's contingency: GST, Building and Generator Elevation Changes, Change order No. 4, Cost increase of \$32,266.06.
- Trinity Expansion Treatment Plant, Owner's contingency: Existing GST repairs and painting, PLW Waterworks, LLC, Change order No. 5, Cost increase of \$44,883.24.
- Well 4 to Grandview Pump Station and Discharge Line Upgrades, Additional Grandview clearing, well 4 sunshade, deduct temp power pole relocation allowance, Pesado Construction Company, Change order No. 8, Cost increase \$12,671.70.

Change orders more than \$50,000:

- McKenzie WRF Expansion, Owners Contingency of \$50,000, remaining \$90,284 from Board. Dispose of existing Alum Tank, replace with new 5,200 Gal tank, and including FRP ladder, railing,



fall protection rail, piping reconnections, electrical and heat tracing, MGC Contractors, Inc., Change Order #1, Cost of \$90,284.00.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

**EXHIBITS**

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None



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

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

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

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

## BACKGROUND

The Board of Trustees approved the NBU Purchasing Policy on October 31, 2019. The Purchasing Policy defines the process for obtaining approval of 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 December 15, 2023.

## **FINANCIAL IMPACT**

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No new contracts were executed during this period, so there is no financial impact.

## **LINK TO STRATEGIC PLAN**

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**Customers and Community**

**People and Culture**

**Stewardship**

## **EXHIBITS**

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

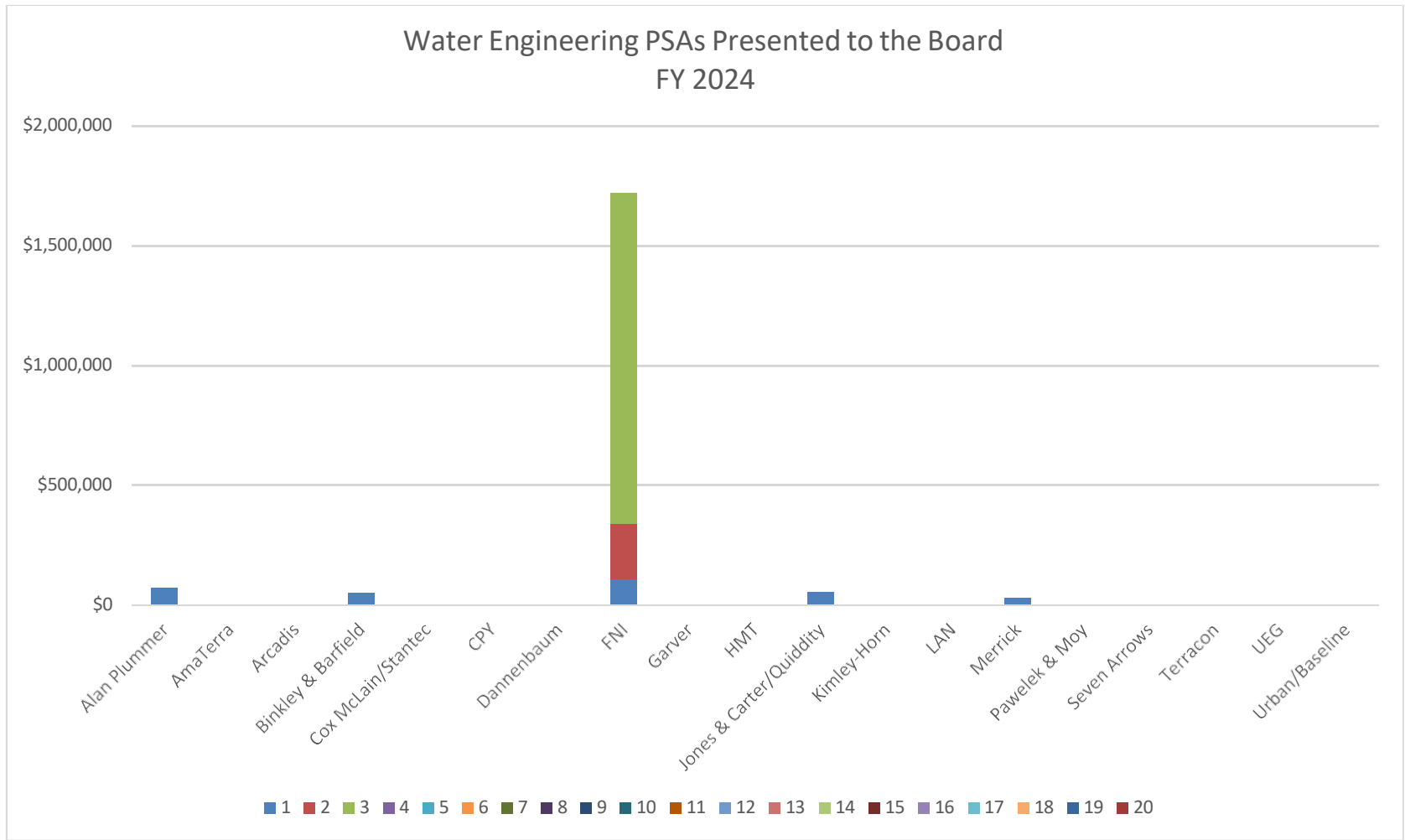
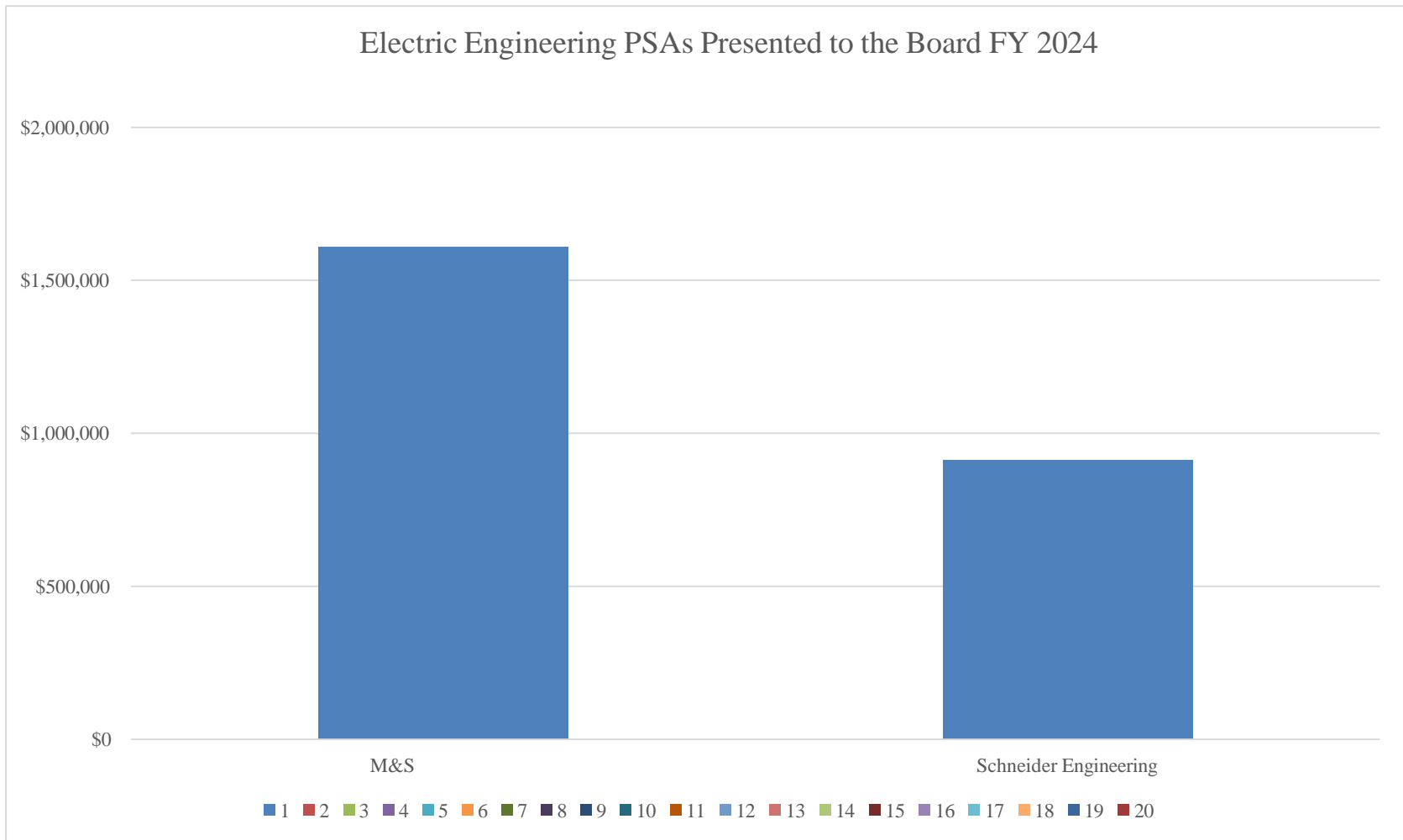


Exhibit A – Report for Water Engineering Contracts December 2023

Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
Castell Ave Rehabilitation (CNB)	Binkley and Barfield Inc.	\$ 50,892.00	8/31/2023	Engineering	Amendment	9/1/2023
Solms Lift Station Expansion	Merrick & Company	\$ 30,988.00	8/31/2023	Engineering	Amendment	9/1/2023
Well 4 to Grandview Pump Station and Discharge Line Upgrate	Freese and Nichols, Inc.	\$ 108,850.00	8/31/2023	Engineering	Amendment	9/7/2023
Kuehler WRF Access Road - Courtyard Drive	Quiddity Engineering, LLC	\$ 66,410.00		Engineering	Amendment	10/3/2023
South Kuehler Interceptor Phase 1	Quiddity Engineering, LLC	\$ 52,780.00	9/28/2023	Engineering	Amendment	10/3/2023
24-Inch McQueeney Road Parallel Water Line (Downtown)	Alan Plummer and Associates, Inc.	\$ 70,000.00	9/28/2023	Engineering	Amendment	10/3/2023
FM 306 Pump Station & Discharge Line	Freese and Nichols, Inc.	\$ 228,917.00	9/28/2023	Engineering	Amendment	10/3/2023
San Antonio St Rehabilitation Phase 3 (CNB)	Quiddity Engineering, LLC	\$ 341,540.00		Engineering	PSA	11/3/2023
Water Tank Rehabilitations	Freese and Nichols, Inc.	\$ 1,380,592.00	10/26/2023	Engineering	PSA	11/13/2023



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



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

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

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

**RECOMMENDED ACTION:** Approve the Electric Line of Business Alternative Procurements from November 15, 2023, through December 15, 2023

## **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 November 15, 2023, through December 15, 2023, using the electric line of business alternative procurement process.

## **FINANCIAL IMPACT**

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

- Inventory Materials, The Electric Cooperative, Graybar, Cost of \$ 274,540.00, see Exhibit A, Quote E1735XLS, for reference.
- Distribution Breaker Upgrades, Electric Substations, distribution breaker upgrades for the Hortontown, Comal, and Kohlenberg Substations, KBS Electrical Distributor, Cost of \$848,162.00.

## **LINK TO STRATEGIC PLAN**

**Customers and Community**

**People and Culture**

**Stewardship**



**EXHIBITS**

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1. Exhibit A – Quote E1735XLS

Item 7.

Item	class no.	Description	Qty	UOM	GRAYBAR	TEC
					029750	097207
1	285-108-00017	PADMOUNT SWITCHGEAR DEADFRONT SS ENCLOSURE 25KV -MD209	4	EA		\$40,995.00
		<b><u>(FEDERAL PACIFIC # PSE-9-54222-AS2-CC-E3-F4-HR)</u></b>	TOTAL			\$163,980.00
			DELIVERY			36-38 WKS
2	280-080-00019	1000MCM PRIMARY UD WIRE 260 MIL. 1/6 NEUTRAL	8000	FT	\$13.82079	
		<b><u>(2000 FR. PER WOOD REEL - PER NBU SPECS)</u></b>	TOTAL		\$110,566.32	
			DELIVERY			16-18 WKS



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

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

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

**RECOMMENDED ACTION:** Authorize Interim 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 Trinity Water Treatment Plant and Pump Station Expansion Project

## **BACKGROUND**

On June 24, 2021, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Services Agreement (the “Original Agreement”) with Freese and Nichols, Inc. (“FNI”) for professional engineering services for the Trinity Water Treatment Plant and Pump Station Expansion Project (the “Project”). On April 28, 2022, the Board approved a Professional Services Contract Amendment (the “First Amendment”) for additional preliminary engineering, final design, permitting and coordination with stakeholders, preparation of supporting engineering documents for Texas Water Development Board funding, bid, and construction services. On October 25, 2022, NBU approved the First Supplemental Services Authorization (the “First SSA”) to prepare a Water Pollution Abatement amendment, and topographical survey of a new drainage easement.

NBU and the Professional have identified a need for additional services not contemplated in the Agreement to complete construction. As a result, NBU staff requests that the Board approve the Second Amendment to the Agreement (the “Second Amendment”), which includes additional construction phase services to include (i) pre-commissioning planning, testing, and development of a commissioning plan, (ii) commissioning administration, testing, and support, (iii) system training, and (iv) increasing the compensation for the additional services by \$394,525.00.

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

NBU staff began construction in January 2023 and construction completion is expected by June 2025.

## **FINANCIAL IMPACT**

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The total financial impact for the Second Amendment is \$394,525.00. The total contract amount for the Agreement, the First Amendment, and the Second Amendment with FNI for the Project is \$3,684,151.00, 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**

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**Infrastructure and Technology**

**Financial Excellence**

**Stewardship**

## **EXHIBITS**

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1. Second Amendment to the Professional Services Agreement with FNI

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(TRINITY WATER TREATMENT PLANT AND PUMP STATION EXPANSION)**

This **SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Second Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal 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 July 12, 2021 (the “Original Agreement”), for project management, design, bid, and construction phase services, field services, and permitting and coordination with certain stakeholders (the “Original Services”) for the Trinity Water Treatment Plant and Pump Station Expansion Project (the “Project”) to be completed by June 8, 2024;

WHEREAS, the Parties entered into the First Amendment to the Original Agreement on April 29, 2022, to add additional preliminary engineering, final design, permitting and coordination with stakeholders, bid, and construction services to prepare supporting engineering documents to submit to the Texas Water Development Board (“TWDB”) for the Project (the “First Amendment”) to be completed by June 8, 2024;

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;

WHEREAS, NBU entered into a Supplemental Services Authorization on October 25, 2022, for preparation of a stand-alone water pollution abatement plan amendment for the Project and for acquisition of a topographical survey for the metes and bounds exhibit of a new drainage easement north of the Project (the “Authorization” and, together with the Original Agreement and the First Amendment, the “Agreement”);

WHEREAS, the Parties have identified a need for additional construction phase services not contemplated in the Agreement, to include (i) pre-commissioning planning, testing and development of a commissioning plan, (ii) commissioning administration, testing and support, (iii) and system training, as all of the foregoing are more fully described in Exhibit “A” attached hereto (the “New Services” and, together with the Original Services, the “Services”);

WHEREAS, the New Services require an increase in the 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) authorize additional compensation for the New Services.

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

#### AGREEMENT

Section 1. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this 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 is intentionally left blank.)*

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

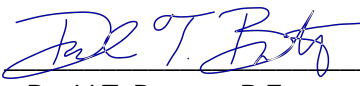
**NBU:**

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

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

**THE PROFESSIONAL:**

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

By:  \_\_\_\_\_  
Name: David T. Bennett, P.E.  
Title: Principal

**Exhibit A**

**Services**

NO CHANGE

**Water Treatment Plant**

NO CHANGE

**Water Pump Station**

NO CHANGE

**Raw Water Pipeline**

NO CHANGE

**Water Storage Tank**

NO CHANGE

**Wastewater Lift Station**

NO CHANGE

**Finished Water Line**

NO CHANGE

**Programmable Logic Controller (“PLC”)**

NO CHANGE

**SERVICES**

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



**Task 1. Project Management**

1. NO CHANGE

**Task 2. Preliminary Engineering Phase**

2. NO CHANGE

**Task 3. Final Design Phase**

3. NO CHANGE

**Task 4. Field Services**

4. NO CHANGE

**Task 5. Permitting & Stakeholders**

5. NO CHANGE

**Task 6. Bid Phase Services**

6. NO CHANGE

**Task 7. Construction Phase Services**

7. Upon completion of the bid phase services, the Professional shall proceed with construction phase administration services described herein.

- 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. NO CHANGE

- 7.9. NO CHANGE

- 7.10. The Professional shall provide the pre-commissioning, commissioning and system/process training services described herein.

- 7.10.1. Pre-Commissioning

- 7.10.1.1. Pre-Commissioning Planning

- 7.10.1.1.1. Pre-Commissioning Workshops. The Professional shall lead pre-commissioning workshops with the Project stakeholders to advance

the commissioning planning efforts. Workshops shall be held monthly starting three months prior to the scheduled commissioning. One workshop shall be in person and two shall be held virtually.

7.10.1.1.2. The Professional shall develop a commissioning plan for the Project (“Commissioning Plan”). The Commissioning Plan shall consider equipment-specific conditions and constraints and shall include: objective(s), necessary activities, sequence of activities, roles and responsibilities, risks and mitigation strategies, and safety considerations.

7.10.1.1.3. The Professional shall split the Project into manageable functional and performance test packages (“FAPTPs”) and develop these packages. FAPTPs will include: name and tag number of all equipment to be started up concurrently or in the same package; all pre-startup requirements including responsibilities for the Project contractor (“Contractor”), owner, and engineer; requirements for process mechanical, electrical, instrumentation, and automatic control needs; detailed description of step-by-step procedures for startup, as well as sequence of startup for equipment. Up to twelve (12) FAPTPs will be developed, which may include the following:

- 7.10.1.1.3.1. Raw Water Flow Control Valve and Pretreatment;
- 7.10.1.1.3.2. Pall Equipment;
- 7.10.1.1.3.3. Chemical Feed Systems;
- 7.10.1.1.3.4. Backwash Transfer System;
- 7.10.1.1.3.5. Backwash Recycle System;
- 7.10.1.1.3.6. Ground Storage Tank;
- 7.10.1.1.3.7. Booster Pump Station;
- 7.10.1.1.3.8. New SCADA/Communications;
- 7.10.1.1.3.9. Enclave Lift Station;
- 7.10.1.1.3.10. Mission Hills;
- 7.10.1.1.3.11. Replacement PLC: Chemical PLCs and Well PLCs; and
- 7.10.1.1.3.12. Generators and Automatic Transfer Switches (“ATS”).

7.10.1.1.4. Scheduling Support. The Professional shall work with the Contractor’s Project Team to develop recommended baseline schedules for training and commissioning.

7.10.1.2. Pre-Commissioning Field Testing. The Professional shall monitor the status of pre-commissioning field testing/documentation for each FAPTP to verify conformance with operative construction contract documents and completion prior to startup of the associated equipment/processes.

## 7.10.2. Commissioning

### 7.10.2.1. Commissioning Administration

- 7.10.2.1.1. Commissioning Coordination. The Professional shall coordinate with the Contractor and NBU to oversee the contractor's implementation of the FAPTPs.
- 7.10.2.1.2. Recurring Status Meetings. The Professional shall participate in weekly virtual commissioning team meetings to monitor the progress and coordinate the upcoming commissioning activities.

### 7.10.2.2. Commissioning Testing

- 7.10.2.2.1. The Professional shall witness the Contractor's execution of commissioning field and factory testing for each FAPTP. Witnessing of the commissioning testing includes:
  - 7.10.2.2.1.1. Raw Water Flow Control Valve and Pretreatment Functional Demonstration Testing ("FDT"): Mechanical Process Engineers – 1 day on site; Electrical Controls Engineers – 1 day on site;
  - 7.10.2.2.1.2. Pall Water Equipment: Mechanical Process Engineers – 8 days on site; Electrical Controls Engineers – 3 days on site;
  - 7.10.2.2.1.3. Chemical Feed Equipment: Mechanical Process Engineers – 3 days on site;
  - 7.10.2.2.1.4. Backwash Transfer System: Mechanical Process Engineers – 5 days on site; Electrical Controls Engineers – 2 days on site;
  - 7.10.2.2.1.5. Backwash Recycle System: Mechanical Process Engineers – 5 days on site; Electrical Controls Engineers – 2 days on site;
  - 7.10.2.2.1.6. Ground Storage Tank: Mechanical Process Engineers – 1/2 day on site;
  - 7.10.2.2.1.7. Booster Pump Station Functional Demonstration Testing: Mechanical Process Engineers – 5 days on site; Electrical Controls Engineers – 6 days on site;
  - 7.10.2.2.1.8. New SCADA Communications FDT: Electrical Controls Engineers – 1 day on site;

- 7.10.2.2.1.9. Enclave Lift Station FDT: Electrical Controls Engineers – 1/2 day on site;
  - 7.10.2.2.1.10. Mission Hills FDT: Electrical Controls Engineers – 1/2 day on site;
  - 7.10.2.2.1.11. PLC Factory Witness Testing: Electrical Controls Engineer – 2 Trips, 6 days on site;
  - 7.10.2.2.1.12. PLC FDT: Electrical Controls Engineer – 9 days on site; and
  - 7.10.2.2.1.13. Generator and ATS FDT: Electrical Controls Engineer – 4 days on site.
- 7.10.2.2.2. Contractor shall submit commissioning documentation for each FAPTP. The Professional shall review each commissioning field testing submittal for conformance with the operative construction contract documents.
  - 7.10.2.2.3. The Professional shall monitor the status of each FAPTP to verify completion of commissioning field testing.
  - 7.10.2.2.4. The Professional shall provide support, as needed, to monitor and provide guidance for any issues that may arise during the commissioning field testing.

### 7.10.3. System/Process Training

- 7.10.3.1. Based on the Facility Integration and Operations Memorandum, the Professional shall provide system training for the Project. The Professional shall prepare an agenda for the training workshop and a slide deck to accompany the training session. A copy of the slide deck shall be provided to the Owner in PDF format. The training shall be recorded and provided to the Owner as an MPEG-4 (.mp4) video file.

## **SUPPLEMENTAL SERVICES**

NO CHANGE

## **TIME OF COMPLETION**

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.

**Services**

NBU shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$3,321,624.

Task	Cost			Total
	Original Agreement	First Amendment	Second Amendment	
Task 1: Project Management	\$172,605	\$0	\$0	<b>\$172,605</b>
Task 2: Preliminary Design Phase	\$265,294	\$101,952	\$0	<b>\$367,246</b>
Task 3: Final Design Phase	\$847,345	\$297,276	\$0	<b>\$1,144,621</b>
Task 4: Field Services	\$53,434	\$131,161	\$0	<b>\$184,595</b>
Task 5: Permitting & Stakeholders	\$82,640	\$84,936	\$0	<b>\$167,576</b>
Task 6: Bid Phase	\$38,415	\$13,636	\$0	<b>\$52,051</b>
Task 7: Construction Phase	\$808,348	\$30,057	\$394,525	<b>\$1,232,930</b>
<b>Total</b>	<b>\$2,268,081</b>	<b>\$659,018</b>	<b>\$394,525</b>	<b>\$3,321,624</b>

**Supplemental Services**

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$362,527, as modified below; provided, however, that NBU must provide written approval in the form of a supplemental services agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.

Supplemental Services Cost Breakdown			
Task	Original Agreement	First Supplemental Services	Balance
Board Approved Funds Available for Supplemental Services	\$362,527	\$0	\$362,527
Supplemental Task 1: WPAP Amendment		(\$38,400)	(\$38,400)
Supplemental Task 2: Topographic Survey		(\$5,100)	(\$5,100)
<b>Total</b>	<b>\$362,527</b>	<b>(\$43,500)</b>	<b>\$319,027</b>



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

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

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

**RECOMMENDED ACTION:** Authorize Interim CEO or his Designee to Negotiate and Execute a Construction Contract with Pesado Construction Company, Inc. for the Construction of the Mission to Westpointe Connection Water Line Project

## **BACKGROUND**

On October 13, 2023, New Braunfels Utilities (“NBU”) issued a request for bids for the Mission to Westpointe Connection Water Line Project, which includes (i) construction of approximately 8,300 linear feet of 16-inch and 24-inch water main, including trenching/backfill, trench safety, fittings, valves, connections and other appurtenances, from the intersection of Lark Lane and Chaparral Drive to Westpointe Drive in New Braunfels, Texas; (ii) preparation of right-of-way including clearing and grubbing and construction staking; (iii) storm water pollution prevention; (iv) groundwater control; (v) traffic control; (vi) tree protection/removal/replacement; (vii) site restoration; and (viii) all other appurtenances necessary to complete the project (the “Project”). The Project will provide additional supply capacity/flexibility in the Mission Pressure Zone as a needed pipeline for the expanded Trinity Membrane Treatment Plant capacity.

On November 7, 2023, NBU received nine (9) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of Pesado Construction Company, Inc. (“Pesado”) for the Project. Although Skyblue Utilities, Inc. was the apparent low bidder, the project team found through a thorough review of bid packages that Pesado Construction submitted a more comprehensive and qualitative lowest responsible bid. Therefore, Pesado is recommend for selection as the lowest responsible bidder who provides the best value to NBU based on the selection criteria, including their cost of work, their experience and reputation, their safety record, and their past performance on similar projects with NBU. Pesado’s proposal includes a base bid of \$4,399,825.00, which is the second lowest base bid out of the nine (9) respondents.

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

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

## **FINANCIAL IMPACT**

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The total financial impact of the Contract with Pesado for the Project is \$4,399,825.00. The Project is budgeted within the fiscal year 2024 NBU Board approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency of \$200,000, which is approximately 4.5% of the total contract amount, will be added to the project construction budget. The total contract amount plus contingency is \$4,599,825.00.

## **LINK TO STRATEGIC PLAN**

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### **Infrastructure and Technology**

### **Financial Excellence**

### **Stewardship**

## **EXHIBITS**

---

1. Construction Contract with Pesado
2. Letter of Recommendation from Plummer
3. Bid Tab – (RFB 02675)

Bid Tab	
<b><i>Bidder</i></b>	<b><i>Total Cost</i></b>
Aaron Concrete Contractors	\$ 6,733,912.00
BRCT, LLC	\$ 6,296,650.00
CC Carlton	\$ 4,981,380.00
DNT Construction	\$ 5,791,152.50
E-Z Bell Construction, LLC	\$ 5,745,926.00
Pesado Construction Company	\$ 4,399,825.00
Qro Mex Construction Company	\$ 4,812,818.00
Skyblue Utilities, Inc.	\$ 4,389,193.58
Spieß Construction Co. Inc.	\$ 4,759,710.00



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

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

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

**RECOMMENDED ACTION:** Authorize Interim CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the I-35 Interceptor Project

## **BACKGROUND**

In compliance with the New Braunfels Utilities (“NBU”) Purchasing Policy approval limits, NBU executed a Professional Services Agreement (the “Original Agreement”) with Kimley-Horn and Associates, Inc. (“Kimley-Horn”) on July 8, 2020 for professional engineering services for the I-35 Interceptor Project (the “Project”). On September 30, 2021, the Board approved a Professional Services Contract Amendment (the “First Amendment”) to add additional project management, routing, design, permitting, and easement acquisition services, extend the time of completion for the Project, remove supplemental services relating to subsurface utility engineering and easement surveying, and reallocation of the related compensation in the amount of \$36,000 from the Supplemental Services to the Services.

NBU requires additional services for easement acquisition, drainage study analysis, access improvements design, and services for the Rio bar screen analysis that are not included in the Original Agreement or First Amendment. As a result, NBU staff requests that the Board approve a Second Amendment to the Agreement (the “Second Amendment”), which includes (i) additional project management support, (ii) easement acquisition survey and support services, (iii) retaining wall analysis and design for access improvements, and (iv) odor control study and analysis pertaining to the NBU facilities at the property located at 470 Rio Drive, New Braunfels, Texas (the “Rio Bar Screen”), (the “New Services”). The New Services will modify the related compensation for an increase of \$199,000.

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 of the Second Amendment is \$199,000. The total contract amount for the Agreement and the Second Amendment with Kimley-Horn for the Project is \$1,095,000.00. The Project is budgeted within the fiscal year 2024 through fiscal year 2027 NBU Board approved Capital Improvements Projects Budget.

**LINK TO STRATEGIC PLAN**

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

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

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(IH-35 INTERCEPTOR PROJECT)**

This **SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Second Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal 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 July 8, 2020 (the “Original Agreement”), for project management, routing and conceptual design, preliminary design, final design, bid phase services, construction phase services, and permitting services (collectively the “Original Services”) for the construction of the North Kuehler IH-35 15-, 18-, 21-, and 24-inch Interceptor Project (the “Project”) to be completed by June 7, 2023;

WHEREAS, NBU and the Professional entered into a First Amendment to Professional Services Agreement dated October 1, 2021, to (i) add additional project management, routing, design, permitting, and easement acquisition services, (ii) extend the time of completion to June 27, 2026, and define the time of completion for the new services, (iii) remove supplemental services relating to subsurface utility engineering and easement surveying and reallocate the related compensation, and (iv) include additional compensation (the “First Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, NBU and the Professional have identified the need for the additional services described in the attached Exhibit A, including (i) additional project management support, (ii) easement acquisition survey and support services, (iii) retaining wall analysis and design for access improvements, and (iv) odor control study and analysis pertaining to the NBU facilities at the property located at 470 Rio Drive, New Braunfels, Texas (the “Rio Bar Screen”), and (the “New Services” and, together with the Original Services, the “Services”);

WHEREAS, the New Services require 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) include additional compensation for the New Services.

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

## AGREEMENT

Section 1. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this 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 and replaced in its entirety 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 \_\_\_\_\_, 2023.


**NBU:**

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

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: Interim CEO

**THE PROFESSIONAL:**

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

By:   
Name: SEAN MASON  
Title: ASSOCIATE

**EXHIBIT A – SCOPE OF SERVICES**

NO CHANGE

**Task 1 – Project Management****Design Management**

NO CHANGE

**Data Collection**

NO CHANGE

**MEETINGS**

The Professional shall conduct the following meetings in connection with Task 1:

1. NO CHANGE
2. Progress Meetings:
  - a. the Professional shall conduct up to thirty (30) progress meetings with NBU.

**DELIVERABLES**

NO CHANGE

**Task 2 – Routing and Conceptual Design**

NO CHANGE

**MEETINGS**

NO CHANGE

**DELIVERABLES**

NO CHANGE

**ITEMS PROVIDED BY NBU**

NO CHANGE

**Task 3 – Preliminary Design**

NO CHANGE

**MEETINGS**

NO CHANGE

**DELIVERABLES**

NO CHANGE

**ITEMS PROVIDED BY NBU**

NO CHANGE

**Task 4 – Final Design**

NO CHANGE

**MEETINGS**

NO CHANGE

**DELIVERABLES**

NO CHANGE

**ITEMS PROVIDED BY NBU**

NO CHANGE

**Task 5 – Bid Phase Services**

NO CHANGE

**Task 6 – Construction Phase Services**

NO CHANGE

**Task 7 – Permitting Services and Easement Acquisition Support**

The Professional shall perform the permitting and easement acquisition support services required for the Project as described herein.

1. NO CHANGE
2. NO CHANGE
3. NO CHANGE
4. NO CHANGE
5. NO CHANGE

6. Up to five (5) additional permanent or temporary easements and revisions to said easements due to coordination with and requests from existing property owners if requested easements lay outside the original survey boundary for the Project. Additionally, survey will

stake up to three (3) different alignment options for the property owners.

**MEETINGS**

NO CHANGE

**DELIVERABLES**

NO CHANGE

**Task 8 – Drainage Study Analysis and Access Improvements Design**

NO CHANGE

**PRELIMINARY TECHNICAL MEMORANDUM**

1. NO CHANGE

**DESIGN**

1. NO CHANGE

2. NO CHANGE

3. NO CHANGE

4. NO CHANGE

5. NO CHANGE

6. NO CHANGE

7. NO CHANGE

8. NO CHANGE

9. NO CHANGE

10. NO CHANGE

11. retaining wall plan and profile (2 sheets) for 536 Lake Front Avenue, New Braunfels, Texas

12. retaining wall details (1 sheet)

13. retaining wall notes (1 sheet)

**PROFESSIONAL'S DESIGN ASSUMPTIONS:**

NO CHANGE

**MEETINGS**

NO CHANGE

**DELIVERABLES**

NO CHANGE

### **Task 9 – Rio Bar Screen Analysis**

The Professional shall perform an odor control study, analyze, and provide a recommendation and conceptual design for improvements at the Rio Bar Screen. The Professional understands that NBU is considering options for modifying or replacing the existing bar screen to address hydraulic restrictions and odor issues at the facility and within the conveyance system. Currently, the accessibility to the existing wastewater line is limited by steep grades and private property improvements. The Professional shall follow the City of New Braunfels' drainage criteria manual in performing the drainage analysis.

1. **Background Review:** Review plan and profile information for the existing and proposed connecting interceptors. Review plans, operations, maintenance information for the Rio Bar Screen facilities, and historical odor monitoring data.
2. **Field Investigation:**
  - a. Conduct a one (1) day site visit to observe odor and hydraulic conditions at the Rio Bar Screen facility.
  - b. Collect two (2) rounds of grab samples for dissolved sulfide and gas phase odor compounds (hydrogen sulfide, ammonia/amines, mercaptans) to characterize and compare the odor condition at up to five (5) locations within the study area.
  - c. Conduct continuous hydrogen sulfide monitoring and differential pressure monitoring for a period of one (1) week to characterize the potential for odor emissions at the same five locations. Review the hydrogen sulfide data remotely prior to retrieval of the monitoring equipment and collect a second round of grab samples during diurnal peak hydrogen sulfide conditions at the end of the one week monitoring period.
  - d. **Ambient Monitoring:** Perform one (1) week of continuous ambient hydrogen sulfide monitoring at one secure location within the study area. The location will be selected based on the review of background information, NBU input, and observations made during the field investigation. The monitor will be installed during the field investigation site visit. Data will be incorporated into the odor control evaluation.
3. **Odor Control Evaluation:** Based on the results of the background review and field investigation, identify potential sources and contributing factors to odor emissions within the study area to include:
  - a. Evaluate up to two (2) treatment alternatives (including liquid and vapor phase treatment), identify the required design/performance criteria to meet the odor control goals.
  - b. Prepare up to two (2) exhibits for proposed odor control equipment.



- c. Prepare up to two (2) opinions of probable construction cost (“OPCC”) for the odor control improvements.
  - d. Recommend a preferred odor control strategy to mitigate odor emissions and complaints associated with the Rio Bar Screen.
4. Hydraulic and Screen Evaluation: Based on the background review and field investigation, identify hydraulic/screen restrictions in the study area.
- a. Evaluate up to two (2) hydraulic alternatives, identify the required design/performance criteria to meet the screening goals, and provide equipment recommendations.
  - b. Prepare up to two (2) opinions of probable construction cost (“OPCC”) for the hydraulic/screen improvements.
  - c. Prepare one (1) exhibit for proposed screen conceptual design exhibit (plan and section view).
  - d. Recommend a screen and hydraulic strategy to mitigate existing hydraulic issues associated with the Rio Bar Screen.
5. Technical Memorandum: Summarize the results of the field investigation and odor control evaluation and hydraulic/screen evaluation in a technical memorandum (“TM”).

### **MEETINGS**

The Professional shall conduct the following meetings in connection with Task 9:

- 1. up to two (2) meetings with NBU staff and operations.

### **DELIVERABLES**

The Professional shall submit the following deliverables to NBU in connection with Task 9:

- 1. three (3) hard copies and a PDF of the draft TM, exhibits, and OPCCs; and
- 2. five (5) hard copies and a PDF of the final TM, exhibits, and OPCCs.

### **SUPPLEMENTAL SERVICES**

NO CHANGE

### **TIME OF COMPLETION**

The Professional commenced work on the Services upon execution of the Original Agreement and

agrees to complete the Services in accordance with the schedule below.

Task	Beginning Date	Ending Date
Notice to Proceed	NO CHANGE	
Task 1 – Project Management	NO CHANGE	NO CHANGE
Task 2 – Routing and Conceptual Design	NO CHANGE	NO CHANGE
Task 3 – Preliminary Design	NO CHANGE	NO CHANGE
Task 4 – Final Design	NO CHANGE	December 31, 2024
Task 7 – Permitting Services and Easement Acquisition Support	NO CHANGE	August 28, 2025
Task 8 – Drainage Study Analysis and Access Improvements Design	NO CHANGE	April 4, 2025
Task 9 – Rio Bar Screen Analysis	December 15, 2023	April 30, 2024
Task 5 – Bid Phase Services	NO CHANGE	NO CHANGE
Task 6 – Construction Phase Services	NO CHANGE	NO CHANGE

**EXHIBIT B - COMPENSATION**

NBU agrees to pay the Professional for the Services and 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 \$1,055,000.

<b>Project Phase</b>	<b>Original Agreement Amount</b>	<b>First Amendment</b>	<b>Second Amendment</b>	<b>Total Amount</b>
<b>Task 1 – Project Management</b>	\$20,000	\$52,000	\$20,000	\$92,000
<b>Task 2 – Routing and Conceptual Design</b>	\$31,000	\$15,000	\$0	\$46,000
<b>Task 3 – Preliminary Design</b>	\$118,000	\$160,000	\$0	\$278,000
<b>Task 4 – Final Design</b>	\$52,000	\$40,000	\$0	\$92,000
<b>Task 5 – Bid Phase Services</b>	\$10,000	\$2,000	\$0	\$12,000
<b>Task 6 – Construction Phase Services</b>	\$58,000	\$20,000	\$0	\$78,000
<b>Task 7 – Permitting Services and Easement Acquisition Support</b>	\$9,000	\$190,000	\$60,000	\$259,000
<b>Task 8 – Drainage Study Analysis and Access Improvements Design</b>	\$0	\$79,000	\$30,000	\$109,000
<b>Task 9 – Rio Bar Screen Analysis</b>	\$0	\$0	\$89,000	\$89,000
<b>Total</b>	<b>\$298,000</b>	<b>\$558,000</b>	<b>\$199,000</b>	<b>\$1,055,000</b>

### **Supplemental Services**

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement not to exceed \$40,000 as modified below; provided, however, that NBU must provide written approval in the form of a supplemental services agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.

<b>Project Phase</b>	<b>Original Contract Amount</b>	<b>First Amendment</b>	<b>Second Amendment</b>	<b>Total Amount</b>
<b>Supplemental Task 1 – Professional Services</b>	\$40,000	\$0	\$0	\$40,000
<b>Supplemental Task 2 – Subsurface Utility Engineering</b>	\$15,000	(\$15,000)	\$0	\$0
<b>Supplemental Task 3 – Easement Survey</b>	\$21,000	(\$21,000)	\$0	\$0
<b>Total</b>	\$76,000	(\$36,000)	\$0	\$40,000



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

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

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

**RECOMMENDED ACTION:** Authorize Interim CEO or His Designee to Negotiate and Execute Second Amendment to the Professional Services Agreement with Periscope Holdings, Inc. for Purchasing Support Services for the NBU Purchasing Department

**BACKGROUND**

On January 27, 2022, New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Service Agreement (the “Agreement”) with Periscope Holding, Inc (“Periscope”) for project management services for the creation of, and modification to, NBU’s purchasing procedures/processes, organizational structure, and technology. Periscope also provides external staffing in support of current purchasing projects being requested of the NBU Purchasing Department. This agreement was amended in June of 2022 to allow Periscope to have access to secure NBU applications. The agreement’s term is approaching its end in February of 2024.

NBU staff requests that the Board of Trustees approve the Second Amendment to the original Agreement, which extends the contract for five months to allow for an additional support period as Purchasing reduces the use of external staff and transitions to a self-reliant system. The new contract end date will be July of 2024.

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

**FINANCIAL IMPACT**

There is no financial impact, the Agreement total amount not to exceed of \$2,287,521.00 shall remain the same.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Financial Excellence**

**Stewardship**

**EXHIBITS**

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1. Second Amendment to the Professional Service Agreement with Periscope

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(NIGP CONSULTING SERVICES 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 **PERISCOPE HOLDINGS, INC.**, a Delaware corporation authorized to transact business in the State of Texas (the “Professional”) (collectively, “the Parties”).

**RECITALS**

WHEREAS, the Parties entered into a Professional Services Agreement dated February 9, 2022 (the “Original Agreement”), for purchasing project management and support services (the “Project”) to be completed by February 1, 2024;

WHEREAS, the Parties entered into a First Amendment to the Original Agreement on July 5, 2022, to grant the Professional access to secure NBU applications, including electronic files to obtain background and historical information concerning projects (the “First Amendment” and, together with the Original Agreement, the “Agreement”) to be completed by February 1, 2024;

WHEREAS, the Parties desire to amend the Agreement to extend the term of the Agreement to July 31, 2024;

WHEREAS, this Second Amendment will not result in an increase to the not to exceed amount of compensation described in Exhibit B of the Agreement;

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

WHEREAS, NBU and the Professional agree to amend the Agreement to extend the term to July 31, 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. Amendment to Section 1. Term of Agreement. Section 1 of the Agreement, is hereby amended, in part, to extend the final day of the term of the Agreement from February 1, 2024, to July 31, 2024.

Section 2. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 3. Entire Agreement. This Second Amendment, together with the Agreement, sets forth the entire understanding of the Parties and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 4. Binding Effect. This Second Amendment will extend to and be binding upon the Parties and their respective successors and permitted assigns.

Section 5. 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 6. 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 is intentionally left blank)*



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

**NBU:**

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

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: Interim CEO

**THE PROFESSIONAL:**

**PERISCOPE HOLDINGS, INC.,**  
a Delaware Corporation authorized to  
transact business in the State of Texas

By: \_\_\_\_\_  
Name: Mark Eigenbauer  
Title: President



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

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

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

**RECOMMENDED ACTION:** Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Service Agreement with DataProse, LLC, for Utility Bill Provider Services

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**BACKGROUND**

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The New Braunfels Utilities (“NBU”) billing function utilizes a Utility Bill Provider to print and mail monthly billing statements for current NBU customers. Utility billing includes monthly bills, final billing statements for customers terminating service with NBU, summary bills for customers with multiple accounts, dunning statements for unpaid accounts, and inserts and unique bill messages to include with the statements. The services also include virtual storage to view billings online.

On August 7, 2023, NBU staff solicited Request for Proposal (RFP) 02698 from vendors for Utility Bill Provider services. NBU received three proposals that were reviewed and evaluated. Once evaluation was completed by Customer Service and Purchasing, it was determined that Dataprose, LLC. was the most qualified firm. This Professional Services Agreement (the “Agreement”) will be effective on the latest date (the “Effective Date”) of February 1, 2024, and will remain in full force and effect for a period of one (1) year from February 1, 2024, to January 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 January 31, 2029.

**FINANCIAL IMPACT**

The total financial impact of the Agreement with DataProse, LLC is not to exceed \$420,000.00 for each term and not to exceed \$2,100,00.00 for the duration of the entire Agreement. These funds are currently budgeted within NBU’s Fiscal Year 2024 through Fiscal Year 2029 NBU Board Approved 2024 budget.

**LINK TO STRATEGIC PLAN**

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**Customers and Community**

**Financial Excellence**

**EXHIBITS**

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1. Professional Service Agreement with DataProse, LLC

## 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 **DATAPROSE, LLC**, a Delaware limited liability company authorized to transact business in the State of Texas (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

### Section 1. Term of Agreement.

This Agreement will be effective on the latest date subscribed below (the “Effective Date”) and will remain in full force and effect for a period of one (1) year from February 1, 2024, to January 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 January 31, 2029.

### Section 2. Scope of Services.

- (A) The Professional shall perform the services described in Exhibit A (the “Services”) within the timeframe specified therein. The scope of work described in the Services constitutes the “Project.”
- (B) The quality of Services provided hereunder shall be of the level of professional quality performed by professionals regularly rendering this type of service.
- (C) The Professional shall perform the Services in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Professional may rely upon the accuracy of reports and surveys provided to it by NBU except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

### Section 3. Compensation.

- (A) Amount. The Professional shall be paid the amount set forth in Exhibit B as described herein.
- (B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All

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

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

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

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

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

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

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

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

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

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

Section 10. Insurance.

(A) General.

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

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

applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.

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

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

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



- ii. 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.
- iii. Workers’ Compensation and Employer’s Liability Insurance. The Professional shall maintain Workers’ Compensation insurance to cover the Professional’s employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

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

#### Section 11. Termination.

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

(B) For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party’s nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under

the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the nondefaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Professional for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.

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

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

## Section 12. Miscellaneous.

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

(B) Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The

provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.

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

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

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

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

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

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

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

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

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

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

(M) Offset.

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

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

If to NBU:

New Braunfels Utilities  
 Attn: Chief Financial Officer  
 263 Main Plaza  
 New Braunfels, TX 78130

With copy to:

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

If to the Professional:

DataProse, LLC  
 Attn: Harry Vasquez, MBA  
 1122 W Bethel Rd #100  
 Coppell, TX 75019

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

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

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

(Q) Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation

of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

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

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

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

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

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

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

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

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

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or

below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

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

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

#### Section 16. Information Technology

(A) Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the Professional with non-exclusive, limited access to NBU's information technology infrastructure. The Professional understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Professional shall reasonably enforce such policies, standards, regulations and restrictions with all the Professional's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Professional's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Professional agrees that the requirements of

this Section shall be incorporated into all subcontractor agreements entered into by the Professional. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

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

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

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

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

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

Section 18. Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited. The Professional represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section



2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this the 12th day of December, 2023.

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

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

**PROFESSIONAL:**  
**DATAPROSE, LLC,**  
a Delaware limited liability company  
authorized to transact business in the State of Texas

By: Brian Snyder  
Name: Brian Snyder  
Title: CSO

## Exhibit A

### Services

The Professional shall be responsible for printing and mailing monthly billing statements for current NBU customers, final billing statements for customers terminating service with NBU, summary bills for customers with multiple accounts, dunning statements for unpaid accounts. The Professional shall also provide inserts and unique bill messages to include with the statements as specified herein.

#### **A. Monthly Bills, Final Bills, and Bills for Multiple Accounts:**

NBU personnel shall provide the Professional with the billing data files from the NorthStar Customer Information System for processing monthly billing statements, final billing statements, and summary bills. The monthly billing statements are processed in four billing cycles, which include four batches per cycle, and shall be sent by NBU to the Professional sixteen (16) days a month on the invoice date. Final billing statements are similar to monthly billing statements but include final charges for customers terminating service with NBU. NBU shall provide the final billing statements to the Professional in separate billing batches. NBU provides summary bills to customers who have several accounts. In addition to the individual bills for each account, the summary bills also include a summary page of all the charges by type and an overview of the balance history. NBU shall send the summary bill file to the Professional on the last business day of the month.

#### **B. Dunning Statements:**

NBU personnel shall also provide the Professional with the billing data files for unpaid accounts from the NorthStar Customer Information System for processing dunning statements. The dunning statements are processed in five billing cycles, four of which include four batches per cycle and one that includes one batch per cycle. NBU shall provide the dunning statements to the Professional up to seventeen (17) days a month on the next business day after the invoice due date.

#### **C. Bill Inserts:**

NBU shall contact the Professional to notify them of the need to include an insert along with the billing statements seven (7) days prior to the date of bill print. The Professional shall provide NBU with a unique product code for each insert. NBU shall also notify the Professional when the inserts have been shipped. NBU may ask the Professional to design and/or print inserts, which shall be billed to NBU separately, subject to the condition that such sums have already been included in the not to exceed amount set out in Exhibit B.

#### **D. Unique Bill Messages:**

NBU shall provide unique bill messages to the Professional that are not limited by text character.

NBU shall communicate unique bill messages to the Professional in writing seven (7) days before the bill message shall be included on the bills. The Professional shall provide a proof of the unique bill message to NBU four (4) days before the message shall be included on the bills, which NBU shall approve in writing within two (2) days of receiving a proof.

**E. Other Requirements:**

The Professional shall be responsible for processing, printing, and mailing the information provided by NBU in the electronic data file. The Professional shall also be responsible for providing group bill mailing by like customer number, stuffing envelopes with bills and any additional inserts (provided in the manner described herein), and mailing bills, miscellaneous letters and dunning statements to customers. The Professional shall post bills and dunning statements within twenty-four (24) hours of billing date, first class, US Domestic Mail, bulk rate, sorted, bar-coded, and coding accuracy support system (CASS) certified. The data file shall contain all information needed to properly bill NBU customers, including the customer information and data for billable items. The format of the bill or invoice to be sent to NBU customers may be revised at the request of NBU, via the Customer Service department, and will be approved and authorized by NBU sixty (60) days in advance of deployment. With respect to miscellaneous letters, NBU personnel shall provide the Professional with a miscellaneous letter file formatted as a PDF. The miscellaneous letters will be processed as often as weekly, or at the discretion of NBU, to communicate with current and former customers.

The Professional shall be required to provide the following:

1. The Professional shall print the customer account number in optical character recognition (OCR) compatible fonts on the front of the bill and a scan line [bar code and or Quick Response (QR) code] on the back of the bill. The barcode shall conform to NBU requirements for size and format for easy reading with NBU's equipment.
2. The Professional shall print bills on 8 ½ x 11 paper with the paper perforated to allow for a portion of the bill to be used as a receipt and the other portion returned with payments.
3. The Professional shall print on both sides of the bill.
4. The Professional shall have two colors print, not including black print.
5. The Professional shall have at least two distinct bill formats available for any single print file.
6. The Professional shall print detail and summary pages for group bill mailing by like customer number.
7. The Professional shall allow the customer to view their bill online and print their bill.
8. The Professional shall email NBU customers to advise them each time a bill is available for viewing.
9. NBU shall be able to search and view twenty-four (24) months of bills online.

10. The Professional shall allow NBU to download the converted file that was used to print the bills back to NBU for our historical records, possible reprints, and storage. Along with the file containing the bill, a meta file must be included for each file with information on how to break the file into multiple files based on each separate bill.
11. The Professional shall forward address corrections to NBU as necessary for each billing cycle.
12. The Professional shall confirm the receipt of each data file within one hour of NBU sending the file.
13. The Professional shall provide NBU with a report that contains the total number of bills printed and the total dollar value of bills printed, including the same information for dunning statements. This report shall assist NBU in ensuring that no format conversion errors occur during any mailout. This report shall be available to NBU twelve (12) hours prior to delivery of the bills and dunning statements to the United States Postal Service.
14. In the event of a delay in printing or mailing, the Professional shall notify NBU within twelve (12) hours of the occurrence and provide the reason for the delay.
15. The Professional shall make changes to the billing and dunning statements as requested by NBU through the Professional's change management form.
16. The Professional shall mass mail letters as required, such as final notices or any others that may be required.

## Exhibit B

## Compensation

NBU shall pay the Professional a not to exceed amount of \$420,000.00 for the Services for each Term and a total not to exceed amount of \$2,100,000.00 for the duration of the entire Agreement.

Services/Items	Price
<b>Statement Containers Include Data Processing, Fold, Insert, Presort, and Delivery to USPS</b>	
Customer Bills: 8.5x11 CMYK, Full Color, Duplex	\$0.079 per piece
Final Bills: 8.5x11, CYMK, Full Color, Duplex	\$0.079 per piece
Summary Bills: 8.5x11, CYMK, Full Color, Duplex	\$0.079 per piece
Dunning Statements: 8.5x11, CYMK, Full Color, Duplex	\$0.079 per piece
Miscellaneous Statements: 500 or more pieces	\$0.498 per piece
Miscellaneous Statements: 499 or less pieces	\$0.63 per piece
<b>Estimated Postage – Based on a 1-3 ounce piece and the lowest possible 5-digit zip code rate. Actual Postage will apply as determined by the USPS.</b>	
<b>Additional Services</b>	
Additional Inserts – Cost to Insert (Newsletter, Reports, Buck Slips, etc.)	\$0.003 each
Additional Bill Inserts – 8.5x3.5 – 70# gloss book, 4/4, Qty. 60,000	\$0.023 each
Insert Restrictions – The smallest size we can insert is 3.5x5 and the largest is 8.5x3.75 finished size (into #10 envelope). This would include larger inserts that need to be folded down to size. The maximum number of inserts we can accept at one time is 7.	
Additional Impressions	\$0.03 each
Oversized Bills (8-99 pages) - Includes 9x12” Envelope - Inserting of statements more than 8 pages	\$0.35 each
Oversized Bills (100 + pages) Includes the window box	\$4.00 each
Offline Folding for Flat Client- Supplied Inserts	\$0.01 each
API – Allows clients already utilizing the S&V service of their eBill payment vendor, a back-end path to access PDF’s from DataProse system. This product is a connector service between the client application or website and the indexed billing PDF’s.	\$75.00 per month
Search and View Bill Archive	\$0.016 each
Bill Suppressions	\$0.05 per Suppression
NCOALink – Address corrections made from the USPS National Change of Address database. Corrections are provided in standard reports so records can be updated and prevent future charges.	\$0.25 per Correction
Additional Programming – Client Requested/Approved Change Requests	\$125.00 per hour
Special Handling – Overnight + FedEx or UPS Delivery	Cost Each





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

From: Nancy Pappas Reviewed by: Melissa Krause  
Managing Director,  
Headwaters at the Comal Chief Strategic Communications Officer

Submitted by: Melissa Krause Approved by: Ryan Kelso  
Chief Strategic Communications Officer Interim Chief Executive Officer

**RECOMMENDED ACTION:** Authorize Interim CEO to Execute a (i) First Amendment to the Professional Services Agreement between New Braunfels Utilities and Environmental Research Group, LLC, formerly AmaTerra Environmental, Inc., and (ii) an Assignment of Agreement for Cultural Services for Headwaters Construction Phase II

**BACKGROUND**

On July 8, 2022, New Braunfels Utilities (“NBU”) and AmaTerra Environmental, Inc. (“AmaTerra”) entered into a Professional Services Agreement (the “Agreement”) to provide project management, cultural resource coordination, and field investigation services for work in conjunction with Phase Two of the Headwaters at the Comal construction project. The investigation work was to be completed by December 29, 2023.

Due to construction timeline delays, there is a need to extend the term of the agreement to December 31, 2024, with no financial implications.

In addition, timely to this First Amendment (the “First Amendment”) to the Professional Services Agreement request, AmaTerra Environmental, Inc. was acquired by Environmental Research Group, LLC. (“ERG”). ERG assumed all of the duties, and obligations of AmaTerra under the Assignment of Agreement as referenced in Exhibit A.

We request consideration for the NBU Board of Trustees to authorize execution of the First Amendment to the Professional Services Agreement and Assignment of Agreement.

**FINANCIAL IMPACT**

None

**LINK TO STRATEGIC PLAN**

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**Stewardship**

**EXHIBITS**

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1. First Amendment to the Professional Service Agreement with ERG

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(CULTURAL SERVICES FOR HEADWATERS CONSTRUCTION PHASE II)**

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 **ENVIRONMENTAL RESEARCH GROUP, L.L.C.**, a Wyoming limited liability company authorized to transact business in the State of Texas (the “Professional”) (collectively, “the Parties”).

**RECITALS**

WHEREAS, NBU and AmaTerra Environmental, Inc., a Texas corporation (“AmaTerra”), entered into a Professional Services Agreement dated July 8, 2022 (the “Agreement”), for the provision of project management, cultural resource coordination, and field investigation services (as more fully described in the Agreement, the “Services”) to NBU during phase two of the Headwaters construction project to be completed by December 29, 2023 (the “Project”);

WHEREAS, contemporaneously with its execution of this First Amendment, AmaTerra assigned all of its right, title and interest in and to the Agreement to the Professional, which assumed all of the duties and obligations of AmaTerra under the Agreement, as set out in the Assignment of Agreement (“Assignment”) attached hereto as Exhibit A;

WHEREAS, the Agreement provides that NBU must consent to any proposed assignment of the Agreement;

WHEREAS, NBU executed the Assignment for the limited purpose of manifesting its consent thereto;

WHEREAS, NBU and the Professional desire to amend the Agreement to extend the term of the Agreement from December 29, 2023, to December 31, 2024;

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

WHEREAS, NBU and the Professional agree to amend the Agreement to extend the term of the Agreement from December 29, 2023, to December 31, 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. Amendment to Exhibit A. Exhibit A of the Agreement, is hereby amended, in part, to extend the date by which the Services must be complete from December 29, 2023, to December 31, 2024.

Section 2. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 3. Entire Agreement. This First Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 4. Binding Effect. This First Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 5. Severability. If any term or provision of this First Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this First Amendment shall not be affected thereby, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 6. Governing Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

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**IN WITNESS WHEREOF**, the Parties hereto, upon lawful approval and authority, have executed this First Amendment on this the 8<sup>th</sup> day of December, 202<sup>3</sup>.

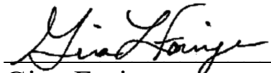
**NBU:**

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

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: Interim CEO

**THE PROFESSIONAL:**

**ENVIRONMENTAL RESEARCH GROUP, LLC.,**  
a Wyoming limited liability corporation  
authorized to transact business in the State of Texas

By:  \_\_\_\_\_  
Name: Gina Foringer  
Title: President

**Exhibit A**  
**Assignment of Agreement**



Environmental Research Group, LLC  
 6049 Falls Road | Baltimore, MD 21209  
 Phone 410.366.5170 | ergllc@envrg.com



**ASSIGNMENT OF AGREEMENT**

Environmental Research Group, L.L.C., a Wyoming limited liability company authorized to transact business in Texas (“ERG”) acquired AmaTerra Environmental, Inc., a Texas corporation (“AmaTerra”) in a stock purchase effective 23 March 2023. AmaTerra is now wholly-owned by ERG.

AmaTerra hereby assigns, transfers and conveys its interest in and to the Professional Services Agreement dated July 8, 2022, as thereafter modified or amended (“Agreement”), with New Braunfels Utilities, a Texas municipally owned utility (“NBU”) to its parent company, ERG. ERG accepts the rights under the Agreement and assumes all obligations to NBU under the Agreement.

ERG shall take the place of “AmaTerra” under the Agreement upon execution of this assignment. Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged and in full force and effect.

NBU executes this Assignment of Agreement for the limited purpose of manifesting its consent to the assignment of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Agreement to be executed by their duly authorized representatives, as of the day and year set forth below.

AmaTerra Environmental, Inc., a Texas Corporation

ERG Research Group, LLC, a Wyoming limited liability company authorized to transact business in Texas

By: Mason Miller  
 Mason Miller, Operations Manager

By: Gina Foringer  
 Gina Foringer, President

Date signed: January 3, 2024

Date signed: 3 Jan 2024

New Braunfels Utilities, a Texas municipally owned utility

By: \_\_\_\_\_  
 Ryan Kelso, Interim CEO

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



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

**From:** Justin Green      **Reviewed by:** Gretchen Reuwer  
 Electric Operations Manager      Director of Electric Services and Compliance

**Submitted by:** Gretchen Reuwer      **Approved by:** Ryan Kelso  
 Director of Electric Services and Compliance      Interim Chief Executive Officer

**RECOMMENDED ACTION:** Authorize Interim CEO or His Designee to Negotiate and Execute a First Amendment to the Vendor Services Agreement with Opin, LLC dba American FR for a Web-Based Uniform Purchase Program

## **BACKGROUND**

On June 25, 2020, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Vendor Services Agreement (the “Original Agreement”) with Opin, LLC, dba American FR (“American FR”) for a web-based uniform purchase program (the “Agreement”). The Agreement specifies the web-based uniform purchasing program will include an available stock of NBU specified items, delivery of items, item return/replace/repair services, alteration services, and sales and customer support services (the “Services”).

Due to an increase in market cost, NBU staff requests that the Board approve the First Amendment to the Original Agreement (the “First Amendment”), increasing the compensation for the additional costs not to exceed \$19,200.00 annually and \$38,500.00 for the duration of the Agreement.

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

## **FINANCIAL IMPACT**

The total financial impact for the First Amendment is \$38,500.00. The total contract amount for the Agreement and the First Amendment with American FR for the Services is not to exceed \$481,250.00.



**LINK TO STRATEGIC PLAN**

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**People and Culture**

**Safety and Security**

**EXHIBITS**

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1. First Amendment to the Vendor Services Agreement with American FR

**FIRST AMENDMENT TO VENDOR SERVICES AGREEMENT  
(AMERICAN FR UNIFORM)**

This **FIRST AMENDMENT TO VENDOR SERVICES AGREEMENT** (the “First Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **OPIN, LLC, DBA AMERICAN FR AND SAFETY**, a South Carolina limited liability company authorized to transact business in Texas (the “Vendor”) (collectively, “the Parties”).

**RECITALS**

WHEREAS, NBU and the Vendor entered into the Vendor Services Agreement dated July 2, 2020 (the “Agreement”), for web-based uniform purchase program to include an available stock of NBU specified items, delivery of items, item return/replace/repair services, alteration services, and sales and customer support services (the “Services”); and

WHEREAS, due to the increase in the number of employees at NBU, NBU requires an increase in the Services;

WHEREAS, the Vendor has maintained its original prices but the added Services require an increase in the original not-to-exceed compensation amount;

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

WHEREAS, NBU and the Vendor desire to amend the Agreement to modify the original not-to-exceed compensation amount.

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

**AGREEMENT**

Section 1. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted in its entirety and replaced by Exhibit 1 to this First Amendment as of the effective date of this First Amendment.

Section 2. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 3. Entire Agreement. This First Amendment, together with Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 4. Binding Effect. This First Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 5. Severability. If any term or provision of this First Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this First Amendment shall not be affected thereby, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 6. Governing Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

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

**IN WITNESS WHEREOF**, the Parties hereto, upon lawful approval and authority, have executed this First Amendment on this the 9th day of January, 2024.

**NBU:**

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

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

**VENDOR:**

**OPIN, LLC, DBA AMERICAN FR AND SAFETY**  
a South Carolina limited liability company authorized to  
transact business in the State of Texas

By: Ashley Pope  
Name: Ashley Pope  
Title: President, American FR & Safety

**EXHIBIT 1**

Exhibit B

Compensation

NBU shall pay the Vendor for goods and services as described in this Agreement throughout the term not to exceed \$96,250 annually and \$481,250 for the duration of the Agreement.

Items purchased by NBU shall be in accordance with the description and fee schedule as stated below.

<b>Descriptions</b>	<b>Item Unit Price (EA)</b>
<b>T-Shirts (long sleeve, khaki, with collar)</b>	
Bulwark SET2	\$59.00
LAPCO	\$61.00
Carhartt 100235	\$71.00
Ariat 10022328	\$63.00
Wrangler FR161	\$83.00
<b>Henley Shirts (long sleeve, khaki, FR, &lt;8 oz., 8 cal rating)</b>	
Bulwark SEL2	\$74.00
LAPCO FRT-HJE	\$63.00
Carhartt 100237	\$74.00
Ariat 10022598	\$63.00
Wrangler FR3W8	\$68.50
<b>Button Down Shirts (long sleeve, khaki, FR, &lt; 8 oz., 8 cal rating)</b>	
Bulwark SLW2	\$65.00
LAPCOIXX7	\$61.50
Carhartt FRS003	\$71.00
Ariat 10012251	\$73.00
Wrangler FR3W5	\$73.00
<b>Denim Pants (FR, 8 cal rating)</b>	
Bulwark PEJ2DD	\$48.50
LAPCO P-INDMIO	\$51.00
Carhartt FRBIO0	\$63.50

<b>Ariat 10012555</b>	<b>\$71.25</b>
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<b>Wrangler FR3W0S0</b>	<b>\$52.25</b>
<b>Hooded Sweatshirts (FR, 8 cal rating)</b>	
<b>Bulwark (pullover) SEH8</b>	<b>\$157.29</b>
<b>LAPCO (pullover) SWHFR14NY</b>	<b>\$134.50</b>
<b>Carhartt (pullover) 102907</b>	<b>\$196.71</b>
<b>Ariat (pullover) 10023989</b>	<b>\$147.25</b>
<b>Wrangler (pullover) FRI 71</b>	<b>\$139.00</b>
<b>Bulwark (zippered) SEH4</b>	<b>\$162.50</b>
<b>LAPCO (zippered) SWHFR14ZNY</b>	<b>\$163.50</b>
<b>Carhartt (zippered) 102908</b>	<b>\$211.00</b>
<b>Ariat (zippered) 10023979</b>	<b>\$147.25</b>
<b>Tiger Workwear (zippered) HODCO-XXX-ZIPF-XXX</b>	<b>\$105.00</b>



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

**From:** Laura Rivers      **Reviewed by:** Laura Rivers  
 Chief of Staff      Chief of Staff

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

**RECOMMENDED ACTION:** Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Britton Strategies LLC., for the Community Advisory Panel for Planning, Facilities and Project Management Services

## **BACKGROUND**

This Professional Services Agreement (the ‘‘Agreement’’) between New Braunfels Utilities (‘‘NBU’’) and Britton Strategies LLC is to provide facilitation services for all Community Advisory Panel (the ‘‘CAP’’) related meetings, and leadership strategic planning consultations.

On August 31, 2023, the NBU Board of Trustees approved Resolution #2023-176 establishing the Community Advisory Panel, which is tasked with reviewing certain NBU initiatives, including but not limited to, NBU’s Integrated Resource Plan (the ‘‘IRP’’), the drought ordinance, and the Fiscal Year 2026-2027 Rate Plan.

Properly staffing and supporting the CAP is necessary to meet the ever-growing demands of an expanding marketplace, customer expectations, and the challenges facing the utility.

NBU staff request that the Board of Trustees approve the Agreement with Britton Strategies LLC.

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

## **FINANCIAL IMPACT**

The term for this agreement begins on February 1, 2024, with one automatic renewal, not to extend past January 31, 2026. This agreement will not exceed \$554,784, for CAP services and \$211,652, for additional services, for a total of \$766,436.

## **LINK TO STRATEGIC PLAN**

### **Customers and Community**

**EXHIBITS**

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1. Professional Services Agreement with Britton Strategies LLC



## 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 **BRITTON STRATEGIES LLC**, a Texas limited liability company (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Term of Agreement. This Agreement will be effective on the latest date subscribed below (the “Effective Date”) and will remain in full force and effect for a period of one (1) year from February 1, 2024, to January 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 one (1) successive one-year term (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 January 31, 2026.

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Insurance.

(A) General.

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

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

applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.

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

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

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

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

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

#### Section 11. Termination.

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

Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

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

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

Section 12. Miscellaneous.

- (A) Independent Contractor. The Professional acknowledges that the Professional is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Professional shall not represent, either expressly or through implication, that the Professional is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Professional.
- (B) Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- (C) Compliance with Laws. The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish satisfactory proof of compliance to NBU.
- (D) Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.
- (E) Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- (F) Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- (G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.



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

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

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

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

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

(M) Offset.

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

(N) Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the

party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities  
 Attn: Chief Administrative Officer  
 263 Main Plaza  
 New Braunfels, TX 78130

With copy to:

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

If to the Professional:

Britton Strategies LLC  
 ATTN: Chief Executive Officer  
 306 W. Elsmere Place  
 San Antonio, TX 78212

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

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

- (P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- (Q) Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- (R) Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- (S) Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- (T) Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- (U) Exhibits. Except as specified in Subsection (V) of this Section, all exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- (V) Conflicting Terms. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern. The Exhibits are intended to detail the technical scope of services, fee schedule, and the term of the contract only and shall not dictate Agreement terms.
- (W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
- (X) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

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

(Z) Reference to Contractual Relationship for General Marketing Purposes. Without limitation of the Professional's obligations hereunder to safeguard NBU's Confidential Information, it is understood and agreed that the Professional shall be permitted to reference its engagement by NBU to clients or potential clients without embellishment. The Professional shall not use the NBU logo or include the representation on social media accounts or written marketing or solicitation materials.

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

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

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

Section 16. Information Technology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 22. Texas Public Information Act. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to

cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in Section 12(P).

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

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

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

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

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

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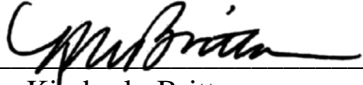


**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

**PROFESSIONAL:**  
**BRITTON STRATEGIES LLC,**  
a Texas limited liability company

By:   
Name: Kimberly Britton  
Title: Chief Executive Officer

## Exhibit A

### Services

The Professional shall provide planning services, project management services, and facilitation services for the NBU community advisory panel (“CAP”) and as further described herein.

#### I. Objectives

1. The Professional shall provide immediate planning services for NBU CAP meetings.
2. The Professional shall provide program project management services for all CAP meetings and presentations.
3. The Professional shall provide in-person facilitation services for all CAP meetings.
4. The Professional shall serve as point of contact for all CAP members.
5. The Professional shall provide monthly and annual reports concerning operation of CAP.

#### II. Scope of Services

1. Planning Services: The Professional shall provide immediate planning services for NBU CAP meetings. These services shall include working with NBU staff and contacts to discuss topics to be presented, develop objective statements for CAP, organize the flow of topics for greatest impact, plan the structure of CAP meetings, and create meeting agendas. The Professional shall demonstrate considerable experience in providing the professional, research, and operational services described herein.
  - a. NBU plans to schedule meetings on an as-needed basis. It is anticipated that during a project, meetings shall be held monthly. All CAP meetings shall be open to the public and posted in accordance with the Texas Open Meetings Act. NBU plans to try to maintain no more than one (1) meeting per month.
  - b. Topics to be presented to the CAP include but are not limited to the following: rates, integrated resource planning, drought management, and general utility service education.
2. Project Management Services: The Professional shall provide project management services to ensure all materials for CAP meetings are prepared in a timely manner. These services shall include working with NBU staff and contractors to create timelines and due dates for all meeting materials to be created, allowing for review by NBU leadership, and early distribution to CAP members for review prior to meetings. The Professional shall attend review meetings with NBU leadership prior to all CAP meetings.
3. In-Person Facilitation Services: The Professional shall provide in-person facilitation services for all CAP meetings. These services shall include (i) during the entirety of meetings, steering presenters and attendees to remain on-topic; and (ii) post-presentation, formulating any formal acknowledgment statements from CAP members. Acknowledgement statements shall be formal statements from CAP that they received and

reviewed information presented along with any formal statements they would like to make about the information.

4. Reporting Services: The Professional shall provide written assessments within five (5) business days following all CAP meetings and annual written assessments within fifteen (15) business days following the final CAP meeting for each calendar year that will identify wins, opportunities, enablers for future success, and constraints preventing future success.

### **III. Deliverables**

The Professional shall provide the following deliverables associated with the Services to NBU:

1. a project plan for how to accomplish the objectives and scope of work within thirty (30) days of contract start;
2. meeting planning services as requested by NBU;
3. meeting facilitation services as requested by NBU;
4. presentation creation services as requested by NBU;
5. a recap and summary of previous month's CAP meeting(s) within the time specified in Section II.4. of this Exhibit A;
6. an annual report that looks at the holistic CAP process and includes feedback from CAP members and any information or recommendations about the effectiveness of CAP meetings to capture public input within the time specified in Section II.4. of this Exhibit A; and
7. touch point meetings as requested by NBU.

### **IV. Deliverable Acceptance Process**

NBU shall accept the deliverables in the following process:

1. The Professional shall present the deliverables to NBU's Chief of Staff for review and approval;
2. NBU shall review the deliverables and provide feedback to the Professional;
3. The Professional shall revise and resubmit the updated deliverables to NBU's Chief of Staff; and
4. Once it provides final approval, NBU shall accept the deliverables.

### **V. Project Schedule**

The Professional shall be available to provide CAP planning and facilitation services for the entire Term of the Agreement.

1. NBU plans to begin the CAP meetings in January 2024 with monthly meetings eleven (11) times throughout the year (each a "Scheduled CAP Meeting"). A list of meeting topics for the

each of the Scheduled CAP meetings has already been created by NBU staff for the first 1.5 years of meetings.

2. In addition to the Scheduled CAP Meetings, upon the request of NBU, the Professional shall conduct one additional CAP meeting annually (each an “Auxiliary CAP Meeting”), at a date and time reasonably specified by NBU and accepted by the Professional, to address topics specified by NBU.

## **VI. Additional Services**

1. The Professional shall provide planning and facilitation services for NBU leadership retreats.
  - a. The Professional shall provide aid in the planning and facilitation of NBU leadership retreats in connection with at least two (2) single-day retreats annually and one (1) multi-day retreat not exceeding four (4) consecutive days annually. These services involve topic selection for retreats, topic scheduling, and facilitation to guarantee topic adherence and comprehensive coverage. The Professional shall provide post-retreat summaries detailing any decisions to NBU within five (5) business days of such retreat.
  - b. The Professional shall provide ongoing consulting services, which entails routine check-ins to monitor project progression, enact necessary alterations, and provide expert counsel on emerging challenges or prospects. The Professional will emphasize transparent communication throughout the process, provide regular updates, share progress reports, and establish clear channels for communication among participants.

### 2. Scope of Additional Services

#### 1. Workshop Preparation

The Professional shall conduct interviews with key personnel to inform the structure, preparation of participants, tone desired, content required, and visuals needed. Most importantly, the Professional shall identify the desired outcome(s) of any retreat.

#### 2. Framework

The Professional shall (i) develop each agenda, (ii) gather needed information, reports, materials and visuals for success of the meeting, (iii) draft communications to participants, and (iv) establish discussion formats and decision-making structures to be utilized during the session(s).

#### 3. On-Site

The Professional shall lead retreat participants through each agenda while keeping everyone on task and engaged and ensuring objectives are achieved while infusing fun along the way.

#### 4. Post-Workshop

The Professional shall compile and provide the list of action items and assignments as agreed during each retreat. The Professional shall also present a summary of impressions and recommendations based on the retreat activities in

a post-retreat discussion with NBU leadership, within thirty (30) business days following a retreat.

5. Ongoing

The Professional facilitators shall be available for routine check-ins with NBU leadership to help problem-solve hurdles, address challenges, and generally serve as resources with neutral perspectives.

Exhibit B  
Compensation

**Services**

NBU agrees to pay the Professional for the Services described in Exhibit A the following: (i) during the Initial Term of this Agreement in an amount not to exceed \$277,392, (ii) during the Renewal Term of this Agreement in an amount not to exceed \$277,392, and (iii) a total not to exceed amount of \$554,784 for the duration of the Agreement.

<b>Services/Items</b>	<b>Price</b>
CAP Planning Services for Scheduled CAP Meetings per year	\$73,625
CAP Meeting Facilitation Services for Scheduled CAP Meetings per year	\$136,267
Planning and Facilitation Services for Auxiliary CAP Meeting Year 1	\$67,500
Planning and Facilitation Services for Auxiliary CAP Meeting Year 2	\$67,500
Total:	\$554,784

**Additional Services**

NBU agrees to pay the Professional for the Additional Services described in Section VI of Exhibit A at the hourly rates set forth below: (i) during the Initial Term of this Agreement in an amount not to exceed \$105,826, (ii) during the Renewal Term of this Agreement in an amount not to exceed amount of \$105,826, and (iii) a total not to exceed amount of \$211,652 for the duration of the Agreement.

<b>Additional Services/Items</b>	<b>Rate</b>
Non-Contact Hours	\$350-425 / Hour
Contact Hours	\$525 - \$675 / Hour

Non-Contact Hours are defined as hours the Professional shall be working on the scope without NBU present.

Contact Hours are defined as hours that the Professional shall be working directly with NBU.



**Meeting Date:** January 25, 2024      **Agenda Type:** Consent Item for Action

**From:** Kenneth Allen      **Reviewed by:** Michael Short, P.E.  
 Fleet and Facilities Manager      Director of Water Services and Compliance

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

**RECOMMENDED ACTION:** Authorize the Interim CEO or His Designee to Negotiate and Execute a Cooperative Contract with Lonestar Freightliner Group, LLC., for One (1) Western Star 47X GAPVAX Unit

## **BACKGROUND**

To modernize the fleet’s electrical maintenance equipment, New Braunfels Utilities (“NBU”) identified the need to purchase one (1) Western Star 47X GAPVAX Unit. Due to an overabundance of fiber optic cable in the ground, this unit utilizes air and/or water to dig holes for electric poles while preventing disruption to the fiber optic cables.

As a result, NBU has selected to purchase the equipment from Lonestar Freightliner Group, LLC., through The Texas Interlocal Purchasing System (TIPS), a department of Texas Education Service Center Region 8 (the “Contract”). NBU’s use of the TIPS contract satisfies the competitive bidding requirements under Texas law.

NBU staff requests that the Board of Trustees approve the Contract with Lonestar Freightliner Group, LLC for the heavy-duty equipment.

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

## **FINANCIAL IMPACT**

The total financial impact of the Contract for the equipment is \$634,249. The purchase of the equipment is budgeted in the fiscal year 2024 Capital Equipment Budget.

## **LINK TO STRATEGIC PLAN**

### **Infrastructure and Technology**

## **EXHIBITS**

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1. TIPS Vendor Agreement with Lonestar Freightliner Group, LLC.
2. 221001 RFP Specifications Proposal
3. NBU Non-IT Cooperative Additional Terms and Conditions
4. TIPS Quote - NBU 47X GAPVAX UNIT 4



## TIPS VENDOR AGREEMENT

Between Lonestar Freightliner Group LLC and  
(Company Name)

**THE INTERLOCAL PURCHASING SYSTEM (TIPS),**  
a Department of Texas Education Service Center Region 8 for  
TIPS RFP 221001 Heavy Duty Equipment

### General Information

The Vendor Agreement ("Agreement") made and entered into by and between The Interlocal Purchasing System (hereinafter "TIPS") a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686 and the TIPS Vendor. This Agreement consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth shall control unless otherwise agreed by the parties in writing and by signature and date on the attachment.

A Purchase Order ("PO"), Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed between the Vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some, but not all, of the possible addendums.

## Terms and Conditions

### Freight

All quotes to Members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating "No Charge", "\$0", "included in price" or other similar indication. Otherwise, all shipping, freight or delivery charges shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member unless alternative shipping terms are agreed by TIPS as a result of the proposal award. Shipping method is determined by the vendor and the Member/Customer at the time of the quote/purchase by the Member/Customer and satisfactory shipping methods and costs are agreed upon at that time.

### Warranty Conditions

All new supplies equipment and services shall include ***manufacturer's minimum standard warranty*** unless otherwise agreed to in writing. Vendor shall be legally permitted to sell all products offered for sale to TIPS Members if the offering is included in the Request for Proposal ("RFP") category. All goods proposed and sold shall be new unless clearly stated in writing.

### Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.

#### **Agreements**

Agreements for purchase will normally be put into effect by means of a contract, agreement, or purchase order(s) executed by authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used at the Member's discretion. Vendor accepts and understands that when a purchase order or similar purchase document is sent from a customer through TIPS to the Vendor, TIPS is recording the purchase and verifying whether the purchase is within the parameters of the TIPS Contract only. Vendor agrees that TIPS is not a legal party to the purchase order or similar purchase document and TIPS is not responsible for identifying fraud, mistakes, or misrepresentations for the specific order. Vendor agrees that any purchase order or similar purchase document issued from a customer to Vendor, even when processed through TIPS, constitutes a legal contract between the customer and Vendor only. A Vendor that accepts a purchase order or similar purchase document and fulfills an order, even when processed through TIPS, is representing that the vendor has carefully reviewed the purchase order or similar purchase document for legality, authenticity, and accuracy.

#### **Tax exempt status**

Most TIPS Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the TIPS Member shall apply.

#### **Assignments of Agreements**

No assignment of this Agreement may be made without the prior notification of TIPS. Written approval of TIPS shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company, where permitted by TIPS.

#### **Disclosures**

- Vendor and TIPS affirm that they, or any authorized employees or agents, have not given, offered to give, nor intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
- The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

#### **Term of Agreement and Renewals**

The Agreement with TIPS is for approximately three years with an option for renewal for an additional one consecutive year. If TIPS offers the renewal extension year, the Vendor will be notified by email to the primary contact of the awarded Vendor and shall be deemed accepted by the Vendor unless the awarded Vendor notifies TIPS of its objection to the additional term in writing. TIPS may or may not exercise some or all of the available extension(s) provided in the original solicitation beyond the base three-year term. Whether or not to offer some

or all of the extension is at the sole discretion of TIPS.

**“Start Date” for Term Calculation Purposes Only:** Regardless of actual award/effective date of Contract, for Agreement “term” calculation purposes only, the Agreement “Start Date” is the last day of the month that “Award Notifications” are anticipated as published in the Solicitation.

**Example:** *In this example, if the anticipated “Award Date” published in the Solicitation is May 22, 2022, but extended negotiations delay award until June 27, 2022, the end date of the resulting initial “three-year” term, (which is subject to an extension(s)) will still be May 31, 2025 for purposes of this example.*

**“Termination Date”:** The scheduled Agreement “termination date” shall be the last day of the month of the month of the original solicitation’s anticipated “Award Date” plus three years.

**Example:** *In this example, if the original term is approximately three years, and the solicitation provides an anticipated award date of May 22, 2022, the expiration date of the original three-year term shall be May 31, 2025 for purposes of this example.*

**Extensions:** Any extensions of the original term shall begin on the next day after the day the original term expires unless otherwise specified.

**Example Following the Previous Example:** *In this example, if TIPS offers a one-year extension, the expiration of the extended term shall be May 31, 2026 unless otherwise specified.*

TIPS may offer to extend Vendor Agreements to the fullest extent the original Solicitation permits.

**Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.**

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order, executed Agreement or other written instruction issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

**Shipments**

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties.

**Invoices**

Each invoice or pay request shall include the Vendor’s TIPS Contract number, the TIPS Member’s purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the

shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

### **Payments**

The TIPS Member will make payments directly to the Vendor, the Vendor Assigned Dealer or as agreed by the Vendor and the TIPS Member after receiving invoice and in compliance with applicable payment statute(s), whichever is the greater time or as otherwise provided by an agreement of the parties.

### **Pricing**

Price increases will be honored according to the terms of the solicitation and vendor proposal. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer.

### **Participation Fees and Reporting of Sales to TIPS by Vendor**

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the Solicitation. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Fees are due on all TIPS purchases reported by either Vendor or Member. Fees are due to TIPS upon payment by the Member to the Vendor, Reseller or Vendor Assigned Dealer. Vendor, Reseller, or Vendor Assigned Dealer agrees that the participation fee is due to TIPS for all Agreement sales immediately upon receipt of payment including partial payment, from the Member Entity and must be paid to TIPS at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently, or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS. Thus, when an awarded Vendor, Reseller or Vendor Assigned Dealer receives any amount of payment, even partial payment, for a TIPS sale, the legally effective fee for that amount is immediately due to TIPS from the Vendor and fees due to TIPS should be paid at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently.

### **Reporting of Sales to TIPS by Vendor**

Vendor is required to report all sales under the TIPS contract to TIPS. When a public entity initiates a purchase with a TIPS Awarded Vendor, if the Member inquires verbally or in writing whether the Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether or not the Member is seeking a TIPS purchase. Once verified, the Vendor must include the TIPS Contract number on any communications and related sales documents exchanged with the TIPS Member entity. To report sales, the Vendor must login to the TIPS Vendor Portal online at [https://www.tips-usa.com/vendors\\_form.cfm](https://www.tips-usa.com/vendors_form.cfm) and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at [accounting@tips-usa.com](mailto:accounting@tips-usa.com). The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to properly report or render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. Any overpayment of participation fees to TIPS by a Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. It is the Vendor's responsibility to identify which sales are TIPS Agreement sales and pay the correct participation fee due for TIPS Agreement sales. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date of overpayment will be non-refundable. Region 8 ESC and TIPS reserve the right to extend the

six (6) month deadline to notify if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

#### **Indemnity**

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC REGION 8.** Per Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

#### **State of Texas Franchise Tax**

By signature hereon, the Vendor hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

#### **Miscellaneous**

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

#### **Purchase Order Pricing/Product Deviation**

If a deviation of pricing/product on a Purchase Order or contract modification occurs between the Vendor and the TIPS Member, TIPS must be notified within five (5) business days of receipt of change order.

#### **Termination for Convenience of TIPS Agreement Only**

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded Vendor may terminate the agreement with ninety (90) days prior written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the TIPS Member customer pursuant to this agreement. TIPS Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

#### **TIPS Member Purchasing Procedures**

Usually, purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and

should indicate on the order that the purchase is per the applicable TIPS Agreement Number. Orders are typically emailed to TIPS at tipspo@tips-usa.com.

- Awarded Vendor delivers goods/services directly to the participating member.
- Awarded Vendor invoices the participating TIPS Member directly.
- Awarded Vendor receives payment directly from the participating member.
- Fees are due to TIPS upon payment by the Member to the Vendor. Vendor agrees to pay the participation fee to TIPS for all Agreement sales upon receipt of payment including partial payment, from the Member Entity or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS.

#### **Licenses**

Awarded Vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded Vendor. Awarded Vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded Vendor whose license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

#### **Novation**

If awarded Vendor sells or transfers all assets, rights or the entire portion of the assets or rights required to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. TIPS will consider Contract Assignments on a case by case basis. TIPS must be notified within five (5) business days of the transfer of assets or rights.

#### **Site Requirements (only when applicable to service or job)**

**Cleanup:** When performing work on site at a TIPS Member's property, awarded Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

**Preparation:** Awarded Vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded Vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

**Registered sex offender restrictions:** For work to be performed at schools, awarded Vendor agrees that no employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the TIPS Member. Awarded Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion. Awarded Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

#### **Safety Measures**

Awarded Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor

shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

### **Smoking**

Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes or policies.

### **Marketing**

Awarded Vendor agrees to allow TIPS to use their name and logo within TIPS website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. The Vendor may submit an acceptable use directive for Vendor's names and logos with which TIPS agrees to comply. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to TIPS@TIPS-USA.COM.

### **Supplemental Agreements**

The TIPS Member entity participating in the TIPS Agreement and awarded Vendor may enter into a separate Supplemental Agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement such as but not limited to, invoice requirements, ordering requirements, specialized delivery, etc. Any Supplemental Agreement or contract developed as a result of this Agreement is exclusively between the TIPS Member entity customer and the Vendor. TIPS, its agents, TIPS Members and employees not a party to the Supplemental Agreement with the TIPS Member customer, shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a Vendor submitting a Proposal requires TIPS and/or TIPS Member to sign an additional agreement, those agreements shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS' Agreement with Vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS review and approval may be at any time during the life of this Vendor Agreement. TIPS permits TIPS Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement so long as they do not materially conflict with this Agreement.

### **Survival Clause**

All applicable sales, leases, Supplemental Agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

### **Legal obligations**

It is the responding Vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in the applicable Solicitation that resulted in this Vendor Agreement and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

### **Audit rights**

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing or TIPS transaction documentation with TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third- party auditing firm to investigate any possible non- compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to Region 8 ESC or TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the TIPS Member.

#### **Force Majeure**

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

#### **Choice of Law**

The Agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

#### **Venue, Jurisdiction and Service of Process**

Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue for any dispute resolution process, other than litigation, between TIPS and the Vendor shall be located in Camp or Titus County, Texas.



### **Project Delivery Order Procedures**

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded Vendor under this Agreement when the TIPS Member desires goods or services awarded to the Vendor. Notification may occur via phone, the web, courier, email, fax, or in person. Upon notification of a pending request, the awarded Vendor shall acknowledge the TIPS Member's request as soon as possible, but must make contact with the TIPS Member within two working days.

### **Status of TIPS Members as Related to Vendors Contract Information**

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

### **Vendor's Resellers as Related to This Agreement**

Vendor's Named Resellers ("Resellers") under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized Vendor's Resellers under this Agreement are the responsibility of the awarded Vendor. If Resellers fail to report sales to TIPS under your Agreement, the awarded Vendor is responsible for their contractual failures and shall be billed for the fees. The awarded Vendor may then recover the fees from their named reseller as the law allows.

### **Support Requirements**

If there is a dispute between the awarded Vendor and TIPS Member, TIPS or its representatives may, at TIPS sole discretion, assist in conflict resolution if requested by either party. TIPS, or its representatives, reserve the right to inspect any project and audit the awarded Vendor's TIPS project files, documentation and correspondence related to the requesting TIPS Member's order. If there are confidentiality requirements by either party, TIPS shall comply to the extent permitted by law.

### **Incorporation of Solicitation**

The TIPS Solicitation which resulted in this Vendor Agreement, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same, and all associated documents and forms made part of the solicitation process, including any addenda, are hereby incorporated by reference into this Agreement as if copied verbatim.

### **SECTION HEADERS OR TITLES**

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

### **STATUTORY REQUIREMENTS**

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

You certify that your company is not listed on and does not and will not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within three (3) business day of the change by a letter on Vendor’s letterhead from and signed by an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

Attention: General Counsel  
ESC Region 8/The Interlocal Purchasing System (TIPS)  
4845 Highway 271 North  
Pittsburg, TX,75686  
And by an email sent to bids@tips-usa.com

**Insurance Requirements**

The undersigned Vendor agrees to maintain the below minimum insurance requirements for TIPS Contract Holders:

<b>General Liability</b>	\$1,000,000 each Occurrence/ Aggregate
<b>Automobile Liability</b>	\$300,000 Includes owned, hired & non-owned
<b>Workers' Compensation</b>	Statutory limits for the jurisdiction in which the Vendor performs under this Agreement.
<b>Umbrella Liability</b>	\$1,000,000

When the Vendor or its subcontractors are liable for any damages or claims, the Vendor’s policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the Member. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor’s insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor’s required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

## Special Terms and Conditions

- **Orders:** All Vendor orders received from TIPS Members must be emailed to TIPS at tipspo@tips-usa.com. Should a TIPS Member send an order directly to the Vendor, it is the Vendor’s responsibility to forward a copy of the order to TIPS at the email above within 3 business days and confirm its receipt with TIPS.
- **Vendor Encouraging Members to bypass TIPS agreement:** Encouraging TIPS Members to purchase directly from the Vendor or through another agreement, when the Member has requested using the TIPS cooperative Agreement or price, and thereby bypassing the TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.

- **Order Confirmation:** All TIPS Member Agreement orders are approved daily by TIPS and sent to the Vendor. The Vendor should confirm receipt of orders to the TIPS Member (customer) within 3 business days.
- **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing when effective. TIPS shall be notified when prices change in accordance with the award.
- **Back Ordered Products:** If product is not expected to ship within the time provided to the TIPS Member by the Vendor, the Member is to be notified within 3 business days and appropriate action taken based on customer request.

The TIPS Vendor Agreement Signature Page is inserted here.

# TIPS Vendor Agreement Signature Form

RFP 221001 Heavy Duty Equipment

Company Name Lonestar Freightliner Group LLC

Address 2051 Hughes Rd

City Grapevine State TX Zip 76051

Phone 254-752-9735 Fax \_\_\_\_\_

Email of Authorized Representative jason.wade@tntxtruck.com

Name of Authorized Representative Jason Wade

Title Fleet Sales

Signature of Authorized Representative 

Date 11/15/2022

TIPS Authorized Representative Name David Fitts

Title Executive Director

TIPS Authorized Representative Signature David Wayne Fitts

Approved by ESC Region 8 David Wayne Fitts

Date 1/26/2023



**221001**

**Lonestar Truck Group Texarkana  
Lonestar Freightliner Group, LLC  
Supplier Response**

**Event Information**

Number: 221001  
Title: Heavy Duty Equipment  
Type: Request for Proposal  
Issue Date: 10/6/2022  
Deadline: 11/17/2022 03:00 PM (CT)  
Notes:

**IF YOU CURRENTLY HOLD TIPS CONTRACT 191001 HEAVY DUTY EQUIPMENT ("191001"), YOU MUST RESPOND TO THIS SOLICITATION TO PREVENT LAPSE OF CONTRACT UNLESS YOU HOLD ANOTHER CURRENT TIPS CONTRACT THAT COVERS ALL OF YOUR HEAVY DUTY EQUIPMENT OFFERINGS. THIS AWARDED CONTRACT WILL REPLACE YOUR EXPIRING TIPS CONTRACT 191001.**

**IF YOU HOLD ANOTHER TIPS CONTRACT OTHER THAN 191001 WHICH COVERS ALL OF YOUR HEAVY DUTY EQUIPMENT OFFERINGS AND YOU ARE SATISFIED WITH IT, THERE IS NO NEED TO RESPOND TO THIS CONTRACT UNLESS YOU PREFER TO HOLD BOTH CONTRACTS.**

## Contact Information

Address: Region 8 Education Service Center  
4845 US Highway 271 North  
Pittsburg, TX 75686  
Phone: +1 (866) 839-8477  
Email: bids@tips-usa.com

Item 16.

## Lonestar Truck Group Texarkana Information

Item 16.

Contact: Joe Combs  
Address: 109 Lone Star Crossing  
Nash, TX 75569  
Phone: (903) 793-8444 x50400  
Fax: (903) 794-1480  
Email: joe.combs@tntxtruck.com  
Web Address: TNTXTRUCK.COM

By submitting your response, you certify that you are authorized to represent and bind your company.

Jason Wade

jason.wade@tntxtruck.com

Signature

Email

Submitted at 11/17/2022 12:58:54 PM (CT)

## Requested Attachments

### Agreement Signature Form

Vendor Agreement Form - Signed.pdf

If you have not taken exception or deviation to the agreement language in the solicitation attributes, download the AGREEMENT SIGNATURE FORM from the "ATTACHMENTS" tab. This PDF document is a fillable form. Download the document to your computer, fill in the requested company information, print the file, SIGN the form, SCAN the completed and signed AGREEMENT SIGNATURE FORM, and upload here.

If you have taken exception to any of the agreement language and noted the exception in the deviations section of the attributes for the agreement, complete the AGREEMENT SIGNATURE FORM, but DO NOT SIGN until those deviations have been negotiated and resolved with TIPS management. Upload the unsigned form here, because this is a required document.

### All Other Certificates

Certification of Corporate Offerer Signed.pdf

All Other Certificates (if applicable) must be scanned and uploaded. If vendor has more than one other certification scan into one document. (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

### Pricing Form 2

Option Pricing By Model - Replaces Pricing Form 2.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.  
DO NOT UPLOAD encrypted or password protected files.

### Reference Form

221001 Reference\_Form.xls

The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

### Conflict of Interest Form CIQ- ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

Conflict of Interest Form - NA.pdf

ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

Conflict of Interest Form for Vendors that are required to submit the form. The Conflict of Interest Form is included in the Base documents or can be found at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.

### Proposed Goods and Services

Proposed Goods And Services.pdf

Please upload one or more documents or sheets describing your offerings, line cards, catalogs, links to offerings OR list links to your offerings that illustrate the catalog of proposed lines of goods and or services you carry and offer under this proposal. It does not have to be exhaustive but should, at a minimum tell us what you are offering. It could be as simple as a sheet with your link to your online catalog of goods and services.

## D/M/WBE Certification OPTIONAL

None  
Item 16.

D/M/WBE Certification documentation may be scanned and uploaded if you desire to claim your status as an identified enterprises. (Disadvantaged Business Enterprise, Minority Business Enterprise and/or Woman Business Enterprise) If vendor has more than one certification scan into one document. (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

## Warranty

No response

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

## Vendor Agreement

Vendor Agreement Form - Signed.pdf

The vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.  
DO NOT UPLOAD encrypted or password protected files.

## Pricing Form 1

Lonestar Freightliner Group 221001 Pricing Form 1.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.  
DO NOT UPLOAD encrypted or password protected files.

## Supplementary

Lonestar Freightliner Group-TAG Company Profile.pdf

Supplementary information may be scanned and uploaded. (Company information, brochures, catalogs, etc.) (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

## Logo and Other Company Marks

No response

If you desire, please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the Supplementary section or another non-required section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

## Certification of Corporate Offerer Form- COMPLETE ONLY IF OFFERER IS A CORPORATION

Certification of Corporate Offerer Signed.pdf

COMPLETE AND UPLOAD FORM IN ATTACHMENTS SECTION ONLY IF OFFERER IS A CORPORATION

## Disclosure of Lobbying Activities Standard Form LLL

No response

ONLY IF you answered "I HAVE Lobbied per above" to attribute #66, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

## Confidentiality Claim Form

Confidentiality Claim Form - Signed.pdf

REQUIRED CONFIDENTIALITY FORM. PLEASE READ CAREFULLY AND FOLLOW THE INSTRUCTIONS. Complete the form according to your company requirements, make any desired attachments and upload to the appropriate section under "Response Attachments" THIS FORM DETERMINES HOW ESC8/TIPS RESPONDS TO LEGAL PUBLIC INFORMATION REQUESTS.

## Current W-9 Tax Form

W9-LFG 2022 with updated DBAs.pdf

You are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

## Bid Attributes

### 1 Yes - No

Disadvantaged/Minority/Women Business Enterprise - D/M/WBE/Federal HUBZone (Required by some participating governmental entities). Vendor certifies that their firm is a D/M/WBE or HUBZone? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.

NO



**2 Yes - No**

Item 16.

Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at <https://comptroller.texas.gov/purchasing/vendor/hub/>.

Proof may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.

No

**3 Yes - No**

The Vendor can provide services and/or products to all 50 US States?

No

**4 States Served:**

If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)

Texas, New Mexico, Louisiana, Arkansas, Oklahoma, Tennessee, Kentucky, Missouri, Arkansas

**5 Company and/or Product Description:**

This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)

Lonestar Freightliner Group LLC  
Medium and Heavy Duty Trucks and Trailers

**6 Primary Contact Name**

Primary Contact Name

Jason Wade

**7 Primary Contact Title**

Primary Contact Title

Fleet Sales

**8 Primary Contact Email**

Primary Contact Email

jason.wade@tntxtruck.com

**9 Primary Contact Phone**

Enter 10 digit phone number. (No dashes or extensions)

Example: 8668398477

2547529735

**10 Primary Contact Fax**

Enter 10 digit phone number. (No dashes or extensions)

Example: 8668398477

2547544393

<b>1</b> <b>1</b>	<b>Primary Contact Mobile</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="2548557657"/>	<b>Item 16.</b>
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<b>1</b> <b>2</b>	<b>Secondary Contact Name</b> Secondary Contact Name <input type="text" value="Cheryl Staples"/>
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<b>1</b> <b>3</b>	<b>Secondary Contact Title</b> Secondary Contact Title <input type="text" value="Controller"/>
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<b>1</b> <b>4</b>	<b>Secondary Contact Email</b> Secondary Contact Email <input type="text" value="cheryl.staples@tntxtruck.com"/>
----------------------	--

<b>1</b> <b>5</b>	<b>Secondary Contact Phone</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="8775447461"/>
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<b>1</b> <b>6</b>	<b>Secondary Contact Fax</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="No response"/>
----------------------	---

<b>1</b> <b>7</b>	<b>Secondary Contact Mobile</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="9797783640"/>
----------------------	---

<b>1</b> <b>8</b>	<b>Admin Fee Contact Name</b> Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS. <input type="text" value="Cheryl Staples"/>
----------------------	--

<b>1</b> <b>9</b>	<b>Admin Fee Contact Email</b> Admin Fee Contact Email <input type="text" value="cheryl.staples@tntxtruck.com"/>
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2  
0

**Admin Fee Contact Phone**

Item 16.

Enter 10 digit phone number. (No dashes or extensions)  
Example: 8668398477

8775447461

2  
1

**Purchase Order Contact Name**

Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.

9797783640

2  
2

**Purchase Order Contact Email**

Purchase Order Contact Email

jason.wade@tntxtruck.com

2  
3

**Purchase Order Contact Phone**

Enter 10 digit phone number. (No dashes or extensions)  
Example: 8668398477

2547529735

2  
4

**Company Website**

Company Website (Format - www.company.com)

www.tntxtruck.com

2  
5

**Entity D/B/A's and Assumed Names**

Please identify all of your entity's assumed names and D/B/A's. Please note that you will be identified publicly by the legal name under which you responded to this solicitation unless you organize otherwise with TIPS after award.

Lonestar Truck Group Waco, Lonestar Truck Group Texarkana, Lonestar Truck Group Temple, Lonestar Truck Group Bryan, Lonestar Truck Group Abilene, Lonestar Truck Group Wichita Falls, Lonestar Truck Group San Angelo, Lonestar Truck Group Tyler, Lonestar Truck Group Albuquerque, Lonestar Truck Group Shreveport, TAG Truck Centers

2  
6

**Primary Address**

Primary Address

2051 Hughes Rd

2  
7

**Primary Address City**

Primary Address City

Grapevine

2  
8

**Primary Address State**

Primary Address State (2 Digit Abbreviation)

TX

2  
9

**Primary Address Zip**

Primary Address Zip

76051

**3**  
**0** **Search Words:**

Item 16.

Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)

Lonestar Freightliner Group LLC, Lonestar Truck Group, TAG Truck Centers, TNTX, Freightliner dealer by state, Western Star dealer by state

**3**  
**1** **Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?**

Most of our members receive Federal Government grants or other funding and they make up a significant portion of their budgets. The Members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that include provisions from the federal regulations in 2 CFR part 200, etc. Your answers will determine if your award will be designated as eligible for TIPS Members to utilize federal funds with your company.

Do you want TIPS Members to be able to spend Federal funds, at the Member's discretion, with you?

Yes

**3**  
**2** **Yes - No**

Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:

(A) has its principal place of business in Texas;

OR

(B) employs at least 500 persons in Texas?

This question is required as a data gathering function for information to our members making purchases with awarded vendors. It does not affect scoring with TIPS.

Yes

**3**  
**3** **Company Residence (City)**

Vendor's principal place of business is in the city of?

Grapevine

**3**  
**4** **Company Residence (State)**

Vendor's principal place of business is in the state of?

TX

3  
5

**Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION**

Item 16.

Remember this is a **MINIMUM** discount percentage. So, be sure that the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGHOUT THE LIFE OF THE CONTRACT.

CAUTION: BE CERTAIN YOU CAN HONOR THIS **MINIMUM** DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD NOW OR DURING THE LIFE OF THE CONTRACT.

What is the **MINIMUM** percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the solicitation specifications document), website, store or shelf pricing or when adding new goods or services to your offerings during the life of the contract? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale. Please note that any specific greater discount offered for a particular product, brand, or service listed in Vendor's proposal will control and Vendor will be required to honor that greater specific discount, in excess of the minimum discount, for that particular product, brand, or service for the life of the contract.

Must answer with a number between 0% and 100%.

3  
6

**MINIMUM Discount Term**

Does the vendor agree to at least offer, for the life of the Agreement, the Minimum Discount Percentage off list or catalog proposed by Vendor in response to the Attribute entitled "Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION"? TIPS will utilize this response to satisfy the Long Term Cost scoring evaluation criteria. A "YES" answer will be awarded the maximum 10 points for this criterion out of the 100 total points and a "NO" answer is awarded 0 points.

3  
7

**Yes - No**

If awarded on this TIPS Contract, for the duration of the Contract, Vendor agrees to provide, upon request, their then current catalog pricing, as defined in the solicitation and below, to TIPS upon request for any goods and services offered on Vendor's TIPS Contract.

"Catalog" means the available list of tangible personal property or services, in the most current listing, regardless of date, during the life of the contract, that takes the form of a catalog, price list, schedule, shelf price or other form that:

- A. is regularly maintained by the manufacturer or Vendor of an item; and
- B. is either published or otherwise available for inspection by a customer during the purchase process;
- C. to which the minimum discount proposed by the proposing Vendor may be applied.

3  
8

**TIPS Administration Fee**

Item 16.

By submitting a proposal, Vendor agrees to remit to TIPS the required TIPS Administration Fee, as designated in the solicitation or as otherwise agreed in writing. If Authorized Resellers are named, Vendor agrees to guarantee remittance of the TIPS Administration fee by or for the Authorized Reseller. TIPS/ESC Region 8 is required by Texas Government Code Section 791 to be compensated for its work. Thus, submission of this proposal requires agreement to this term.

3  
9

**TIPS Administration Fee Paid by Vendor - Not Charged to Customer**

Vendor understands and agrees that it owes TIPS a TIPS Administration Fee (published in the RFP/RCSP document) on every TIPS sale made under an awarded TIPS Contract. Vendor further understands and agrees that Vendor shall submit pricing with this proposal which includes and accounts for the TIPS Administration Fee and **shall never** separately charge the TIPS Member Customer the TIPS fee or add the TIPS Administration Fee line item to an invoice or similar purchase document. Submission of this proposal is Vendor's certification that Vendor agrees to this mandatory term.

4  
0

**Additional Discounts?**

Do you offer additional discounts to TIPS members for large order quantities or large scope of work?

Yes

4  
1

**Years in Business as Proposing Company**

Years in business as proposing company?

4  
2

**Resellers:**

Does the vendor have resellers that it will name under this contract? Resellers are defined as other companies that sell your products under an agreement with you, the awarded vendor of TIPS.

EXAMPLE: BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller.

(If applicable, Vendor should add all Authorized Resellers within the TIPS Vendor Portal upon award).

No

4  
3

**Right of Refusal**

The proposing vendor has the right not to sell under the awarded agreement with a TIPS member at vendor's discretion unless required by law.

**4** **NON-COLLUSIVE BIDDING CERTIFICATE**

Item 16.

4 By submission of this bid or proposal, the Bidder certifies that:

- 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;
- 2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor:
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
- 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

**4** **CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ - Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?**

5 Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO

If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS. The Form CIQ is one of the attachments to this solicitation.

There is an optional upload for this form provided if you have a conflict and must file the form

**4** **Filing of Form CIQ**

6 If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above?

**4** **Regulatory Standing**

7 I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question.

**4** **Regulatory Standing**

8 Regulatory Standing explanation of no answer on previous question.

**Antitrust Certification Statements (Tex. Government Code § 2155.005)**

By submission of this bid or proposal, the Bidder certifies that:

I affirm under penalty of perjury of the laws of the State of Texas that:

- (1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;
- (2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- (3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;
- (4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.



**Suspension or Debarment Instructions**

Instructions for Certification:

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

**Suspension or Debarment Certification**

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

Yes

5  
2

### Non-Discrimination Statement and Certification

Item 16.

In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

(Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities)

All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender.

Not a negotiable term. Failure to agree by answering YES will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

Yes, I certify (Yes)

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### 2 CFR PART 200 Contract Provisions Explanation

Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members:

The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

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**2 CFR PART 200 Contracts**

Item 16.

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation-adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?

Yes

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**2 CFR PART 200 Termination**

Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

Yes

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**2 CFR PART 200 Clean Air Act**

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires that the proposer certify that during the term of

an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

Yes

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**2 CFR PART 200 Byrd Anti-Lobbying Amendment**

Item 16.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

Yes

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**2 CFR PART 200 Federal Rule**

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$250,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify that it is in compliance with the Clean Air Act?

Yes

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**2 CFR PART 200 Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

Yes

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## 2 CFR PART 200 Rights to Inventions

Item 16.

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor agree?

Yes

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## 2 CFR PART 200 Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of 2 CFR Part 200.322, “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does vendor agree?

Yes

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2** 2 CFR PART 200 Ban on Foreign Telecommunications

Item 16.

Federal grant funds may not be used to purchase equipment, services, or systems that use “covered telecommunications” equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications” means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use “covered telecommunications”, as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor agree?

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3** 2 CFR PART 200 Contract Cost & Price

For contracts more than the simplified acquisition threshold currently set at \$250,000, a TIPS Member may, in very rare circumstances, be required to negotiate profit as a separate element of the price pursuant to 2 C.F.R. 200.324(b). Under those circumstances, Vendor agrees to provide information and negotiate with the TIPS Member regarding profit as a separate element of the price. However, Vendor certifies that the total price charged by the Vendor shall not exceed the Vendor’s TIPS pricing and pricing terms proposed.

Does Vendor Agree?

**FEMA Fund Certifications**

Submission of this proposal is Vendor's certification that Vendor agrees to this term. Vendor certifies that **IF and when** Vendor accepts a TIPS purchase paid for in full or part with FEMA funds, Vendor certifies that:

(1) Vendor agrees to provide the TIPS Member, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to and rights to reproduce any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Vendor agrees to provide the FEMA Administrator or an authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. Vendor acknowledges and agrees that no language in this contract or the contract with the TIPS Member is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) The Vendor shall not use the Department of Homeland Security's seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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(3) The Vendor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(4) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

(5) The Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Vendor's actions pertaining to this contract.

**Certification of Compliance with the Energy Policy and Conservation Act**

When appropriate and to the extent consistent with the law, Vendor certifies that it will comply with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq; 49 C.F.R. Part 18) and any mandatory standards and policies relating to energy efficiency which are contained in applicable state energy conservation plans issued in compliance with the Act.

Does Vendor agree?

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**Certification Regarding Lobbying**

Item 16.

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

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**If you answered "I HAVE lobbied" to the above Attribute Question**

If you answered "I HAVE lobbied" to the above Attribute question, you must download the Lobbying Report "Standard From LLL, disclosure Form to Report Lobbying" which includes instruction on completing the form, complete and submit it in the Response Attachments section as a report of the lobbying activities you performed or paid others to perform.

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**Subcontracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.



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**ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?**

Item 16.

ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement,

do you agree to comply with the following federal requirements?

Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

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**Indemnification**

The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from

indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as

ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for

any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently

performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on

behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in

the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to

indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated

damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified

with "to the extent permitted by the Constitution and laws of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree

to these terms?

Yes, I Agree (Yes)

**7 Remedies**

1

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Do you agree to these terms?

**7 Remedies Explanation of No Answer**

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**7 Choice of Law**

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The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles. THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Do you agree to these terms?

**7 Venue, Jurisdiction and Service of Process**

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Any proceeding, involving Region 8 ESC or TIPS, arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Any dispute resolution process other than litigation shall have venue in Camp County or Titus County Texas.

Do you agree to these terms?

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**Infringement(s)**

Item 16.

The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.

Do you agree to these terms?

Yes, I Agree

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**Infringement(s) Explanation of No Answer**

*No response*

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**Contract Governance**

Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

Yes, I Agree (Yes)

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**Payment Terms and Funding Out Clause**

Payment Terms:

TIPS or TIPS Members shall not be liable for interest or late payment fees on past-due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

Do you agree to these terms?

Yes, I Agree (Yes)

**7 Insurance and Fingerprint Requirements Information**

Item 16.

**9 Insurance**

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

Fingerprint

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834 & 22.08341. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion:

- (1) will have continuing duties related to the contracted services; and
- (2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at [NCJU@txdps.state.tx.us](mailto:NCJU@txdps.state.tx.us) and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474.

See form in the next attribute to complete entitled:  
Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

**Texas Education Code Chapter 22 Contractor Certification for Contractor Employees**

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

I certify that:

**NONE (Section A)** of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

**OR**

**SOME (Section B)** or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

- (1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.
- (2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.
- (3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.
- (4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

None

**8** **Texas Business and Commerce Code § 272 Requirements as of 9-1-2017**

Item 16.

**1**

SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES.

**8** **Texas Government Code 2270 & 2271 Verification Form**

**2**

Texas Government Code 2270 & 2271 Verification Form

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2271 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with 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.

Our entity further certifies that it is is not listed on and we do not do business with companies prohibited by Texas Government Code 2270 or that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

I swear and affirm that the above is true and correct.

YES

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**Logos and other company marks**

Item 16.

Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Potential uses of company logo:

- \* Your Vendor Profile Page of TIPS website
- \* Potentially on TIPS website scroll bar for Top Performing Vendors
- \* TIPS Quarterly eNewsletter sent to TIPS Members
- \* Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)

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**Solicitation Deviation/Compliance**

Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?

Yes

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**Solicitation Exceptions/Deviations Explanation**

If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.

No response

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**Agreement Deviation/Compliance**

Does the vendor agree with the language in the Vendor Agreement?

Yes

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**Agreement Exceptions/Deviations Explanation**

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

No response

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### Felony Conviction Notice

Item 16.

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.” Subsection (b) states “a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.” (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.

Select A., B. or C.

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.

B. Firm not owned nor operated by felon; per above

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### If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)
2. The named person's role in the firm, and
3. Details of Conviction(s).

No response

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### Required Confidentiality Claim Form

Required Confidentiality Claim Form

This completed form is required by TIPS. By submitting a response to this solicitation you agree to download from the “Attachments” section, complete according to the instructions on the form, then upload the completed form, with any confidential attachments, if applicable, to the “Response Attachments” section titled “Confidentiality Form” in order to provide to TIPS the completed form titled, “CONFIDENTIALITY CLAIM FORM”. **THIS REQUIRED PROCESS IS THE ONLY WAY TO DEEM PROPOSAL DOCUMENTATION CONFIDENTIAL ANY OTHER CONFIDENTIAL DESIGNATION WILL BE DISREGARDED UNLESS THE DOCUMENT IS IDENTIFIED BY AND ATTACHED TO THE REQUIRED FORM.** By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for an award, until TIPS has an accurate, completed form from you.

Read the form carefully before completing and if you have any questions, email bids@tips-usa.com.



**9**  
**1** **Member Access to Vendor Proposal**

Item 16.

Notwithstanding any other information provided in this solicitation or Vendor designation of certain documentation as confidential or proprietary, Vendor's acceptance of this TIPS Contract constitutes Vendor's consent to the disclosure of Vendor's comprehensive proposal, including any information deemed confidential or proprietary, **to TIPS Members**. The proposing Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or any other party. By submitting this proposal, Vendor certifies the foregoing.

**9**  
**2** **Choice of Law clauses with TIPS Members**

If the vendor is awarded a contract with TIPS under this solicitation, the vendor agrees to make any Choice of Law clauses in any contract or agreement entered into between the awarded vendor and with a TIPS member entity to read as follows: "Choice of law shall be the laws of the state where the customer resides" or words to that effect.

**9**  
**3** **Venue of dispute resolution with a TIPS Member**

In the event of litigation or use of any dispute resolution model when resolving disputes with a TIPS member entity as a result of a transaction between the vendor and TIPS or the TIPS member entity, the Venue for any litigation or other agreed upon model shall be in the state and county where the customer resides unless otherwise agreed by the parties at the time the dispute resolution model is decided by the parties.

**9**  
**4** **Automatic renewal of contracts or agreements with TIPS or a TIPS member entity**

This clause **DOES NOT** prohibit multiyear contracts or agreements with TIPS member entities. Because TIPS and TIPS members are governmental entities subject to laws that control appropriations of funds during their fiscal years for contracts and agreements to provide goods and services, does the Vendor agree to limit any automatic renewal clauses of a contract or agreement executed as a result of this TIPS solicitation award to not longer than "month to month" and at the TIPS contracted rate.

**9**  
**5** **Indemnity Limitation with TIPS Members**

Texas and other states restrict by law or state Constitution the ability of a governmental entity to indemnify others. TIPS requires that any contract entered into between a vendor and TIPS or a TIPS Member as a result of an award under this Solicitation limit the requirement that the Customer indemnify the Vendor by either eliminating any such indemnity requirement clauses in any agreements, contracts or other binding documents **OR** by prefacing all indemnity clauses required of TIPS or the TIPS Member entity with the following: "To the extent permitted by the laws or the Constitution of the state where the customer resides, ".

**Agreement is a required condition to award of a contract resulting from this Solicitation.**

**9**  
**6** **Arbitration Clauses**

Except for certain circumstances, TIPS forbids a mandatory arbitration clause in any contract or agreement entered into between the awarded vendor with TIPS or a TIPS member entity. Does the vendor agree to exclude any arbitration requirement in any contracts or agreement entered into between TIPS or a TIPS member entity through an awarded contract with TIPS?

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**Required Vendor Sales Reporting**

Item 16.

By responding to this Solicitation, you agree to report to TIPS all sales made under any awarded Agreement with TIPS. Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. If awarded, you will be provided access to the Vendor Portal. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at [accounting@tips-usa.com](mailto:accounting@tips-usa.com). The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

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**Upload of Current W-9 Required**

Please note that you are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

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9

**CERTIFICATION REGARDING BOYCOTTING CERTAIN ENERGY COMPANIES (Texas law as of September 1, 2021)**

**By submitting a proposal to this Solicitation, you certify that you agree, when it is applicable, to the following required by Texas law as of September 1, 2021:**

If (a) company is not a sole proprietorship; (b) company has ten (10) or more full-time employees; and (c) this contract has a value of \$100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required. Pursuant to Tex. Gov't Code Ch. 2274 of SB 13 (87<sup>th</sup> session), the company hereby certifies and verifies that the company, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, does not boycott energy companies and will not boycott energy companies during the term of the contract. For purposes of this contract, the term "company" shall mean an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit. The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." See Tex. Gov't Code § 809.001(1).

**CERTIFICATION PROHIBITING DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDU (Texas law as of September 1, 2021)**

Item 16.

By submitting a proposal to this Solicitation, you certify that you agree, when it is applicable, to the following required by Texas law as of September 1, 2021:

If (a) company is not a sole proprietorship; (b) company has at least ten (10) full-time employees; (c) this contract has a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the contract is not excepted under Tex. Gov't Code § 2274.003 of SB 19 (87<sup>th</sup> leg.); and (e) governmental entity has determined that company is not a sole-source provider or governmental entity has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Tex. Gov't Code Ch. 2274 of SB 19 (87<sup>th</sup> session), the company hereby certifies and verifies that the company, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association. For purposes of this contract, "discriminate against a firearm entity or firearm trade association" shall mean, with respect to the entity or association, to: "(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association. See Tex. Gov't Code § 2274.001(3) of SB 19. "Discrimination against a firearm entity or firearm trade association" does not include: "(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association." See Tex. Gov't Code § 2274.001(3) of SB 19.

**CERTIFICATION REGARDING CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE (Texas law as of September 1, 2021)**

By submitting a proposal to this Solicitation, you certify that you agree to the following required by Texas law as of September 1, 2021:

Proposing Company is prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant to the company direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the Proposing Company for product warranty and support purposes. Company, certifies that neither it nor its parent company nor any affiliate of company or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including 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 (3) headquartered in China, Iran, North Korea, Russia, or a designated country. For purposes of this contract, "critical infrastructure" means "a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility." See Tex. Gov't Code § 2274.0101(2) of SB 1226 (87<sup>th</sup> leg.). The company verifies and certifies that company will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

**Acknowledgement**

By submitting this proposal, Vendor certifies that it has read, examined, and understands all portions of this solicitation including but not limited to all attribute questions, attachments, solicitation documents, bid notes, and the Vendor Agreement(s). Vendor certifies that, if found to be necessary by the proposing vendor, vendor has sought the advice of counsel in understanding all portions of the solicitation.

TIPS RFP 221001 Heavy Duty  
Equipment

**ALL  
INFORMATION  
MUST BE  
TYPED AND  
FORM MUST  
BE  
UPLOADED IN  
EXCEL**

REFERENCES

Please provide three (3) references from three different entities, preferably from school districts or other governmental e the last three years. Additional references may be required. DO NOT INCLUDE TIPS EMPLOYEES AS A REFERENCE.

Verify your  
references emails  
are deliverable and  
that they agree to  
provide a reference.

You may provide more than three (3) references.

Entity Name	Contact Person	<b>VALID EMAIL IS REQUIRED</b>	Phone
City of Waco	Victor Venegas	<a href="mailto:victorv@wacotx.gov">victorv@wacotx.gov</a>	254-750-8098
City of Bryan	Bobby Walker	<a href="mailto:rwalker@bryantx.gov">rwalker@bryantx.gov</a>	979-209-5905
City of Temple	Kirk Scopac	<a href="mailto:kscopac@templetx.gov">kscopac@templetx.gov</a>	254-493-2503

**CERTIFICATION BY CORPORATE OFFERER**

**COMPLETE ONLY IF OFFERER IS A CORPORATION,  
THE FOLLOWING CERTIFICATE SHOULD BE EXECUTED AND INCLUDED AS PART OF  
PROPOSAL FORM/PROPOSAL FORM.**

**OFFERER:** Lonestar Freightliner Group LLC  
(Name of Corporation)

James Barrio certify that I am the Secretary of the Corporation  
I, (Name of Corporate Secretary)

named as OFFERER herein above; that

Jason Wachs  
(Name of person who completed proposal document)

who signed the foregoing proposal on behalf of the corporation offerer is the authorized person that is acting as

Sales Executive/Account Manager  
(Title/Position of person signing proposal/offer document within the corporation)

of the said Corporation; that said proposal/offer was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_  
CORPORATE SEAL if available

[Signature]  
SIGNATURE

11/16/2022  
DATE

**Required Confidential Information Status Form**

**Lonestar Freightliner Group LLC**

**Name of company**

**Jason Wade Fleet Sales**

**Printed Name and Title of Authorized Company Officer** declaring below the confidential status of material

**4800 N IH 35**

**Waco**

**TX 76705**

254-752-9735

**Address**

**City**

**State ZIP**

**Phone**

**ALL VENDORS MUST COMPLETE THE ABOVE SECTION**

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), you must attach a copy of all claimed confidential materials to this COMPLETED form, name the combined PDF documents "CONFIDENTIAL", and upload the combined, confidential documents with your proposal submission. If a document is not attached, it will not be considered confidential. The copy uploaded will be the sole indicator of which material in your proposal, if any, you deem confidential in the event TIPS/ESC 8 receives a Public Information Request. If ESC 8 receives a request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For documents deemed confidential by you in this manner, ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law, including Attorney General determination. Notwithstanding any other information provided in this solicitation or Vendor designation of certain documentation as confidential or proprietary, Vendor's acceptance of this TIPS Vendor Agreement constitutes Vendor's consent to the disclosure of Vendor's comprehensive proposal, including any information deemed confidential or proprietary, to TIPS Members. The proposing Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or any other party.

**ALL VENDORS MUST COMPLETE ONE OF THE TWO OPTIONS BELOW**

**OPTION 1:**

I **DO CLAIM** parts of my proposal to be confidential and **DO NOT** desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

IF CLAIMING PARTS OF YOUR PROPOSAL CONFIDENTIAL, YOU MUST ATTACH THE SHEETS TO THIS FORM AND LIST THE NUMBER OF TOTAL PAGES THAT ARE CONFIDENTIAL.

**ATTACHED** ARE COPIES OF \_\_\_\_\_ PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.

Signature \_\_\_\_\_ Date \_\_\_\_\_

OR

**OPTION 2:**

I **DO NOT CLAIM** any of my proposal to be confidential, complete the section below.

**Express Waiver:** I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Signature  \_\_\_\_\_ Date 11-15-2022

## **VENDOR SUPPLEMENTAL INFORMATION**

Item 16.

TIPS permits Vendors to submit supplemental documentation and information (“Vendor Supplemental Information”) with their proposals to display to TIPS Member Customers their qualifications, offerings, and special terms. The following documents are for marketing and informational purposes only. They are not terms of Vendor’s TIPS Contract. If the Vendor Supplemental Information herein contains any warranties, terms, or conditions, the TIPS Member Customer may review and determine whether or not those are applicable and acceptable for any TIPS purchase before proceeding. If the Vendor Supplemental Information contains any licenses or certificates, TIPS encourages the TIPS Member Customer to ensure current accuracy at the time of a TIPS purchase.



## Company Values

We will do what is right

We will do our best

We will treat others the way we would want to be treated

## Vision Statement

A hassle-free, value-added transaction for every customer every time.

## Mission Statement

We will support and take care of each other, so that we are happy to be here and do a good job for our customers, ensuring we are mutually profitable long-term.

# Network Strength with DTNA Dealer & TA Network of 1100+ Locations



## BRANDS & SOLUTIONS



## ALLIANCE PARTS

**10**  
ALLIANCE PARTS STORES

**50+**  
STORES WITHIN DEALERSHIPS

## REMANUFACTURING

**8**  
REMANUFACTURING FACILITIES



## NETWORK PARTNERS



**1,100+**  
NETWORK LOCATIONS

## SUPPLY CHAIN

**11**  
PARTS DISTRIBUTION CENTERS

**735K+**  
ACTIVE PARTS

## SERVICE NETWORK

**5**  
TRAINING CENTERS

**2**  
CALL CENTERS

# Network Strength with DTNA Dealer & TA Network of 1100+ Locations

DTNA Service Network Table View

Outlet Summary (SP)	Outlet Description (SP)	Count	Categories (SP)					Satellites
			*Dual Dealers	FTL Dealers	WST Dealers	Distributor	Other Franchises	
FTL & WST Dealer	FTL, WST Dealer	220						
	FTL, WST, TBB Dealer	60						
	FTL, STL, WST Dealer	26						
	FTL, STL, WST, TBB Dealer	7						
FTL Dealer	FTL Dealer			106				
	FTL, TBB Dealer			22				
	FTL, STL Dealer			10				
	FTL, STL, TBB Dealer			2				
WST Dealer	WST Dealer				83			
	STL, WST Dealer				13			
	WST, TBB Dealer				6			
	STL, WST, TBB Dealer				3			
Distributor	Distributor Branch					125		
	Distributor					16		
Other Franchises	Travel Centers of America						178	
	Petro						74	
	SelecTruck						30	
Satellites	TBB Satellite							62
	Distributor Dealer							9
	FTL Satellite							9
	FTL, WST Satellite							5
	WST Satellite							5
	FTL, STL, WST Satellite							1

- Privately owned and run by partners who are active in the business with a **hands-on** approach
- LTG | TAG owns and operates 24 full-service dealer locations in 9 states: AR, KY, LA, MO, MS, NM, OK, TN and TX in addition to a glider production and TEM facility (Texarkana, TX)
- \$975 million in annual combined revenue
- 1,100 employees

## 2019 Annual Sales Volumes

- 5,700 new trucks
- 1,700 used trucks
- 700 trailers
- 300 glider kits
- 150 yard spotters – includes re-furbs
- 8,550 total units sold

# Lonestar | TAG Combined Footprint

Item 16.



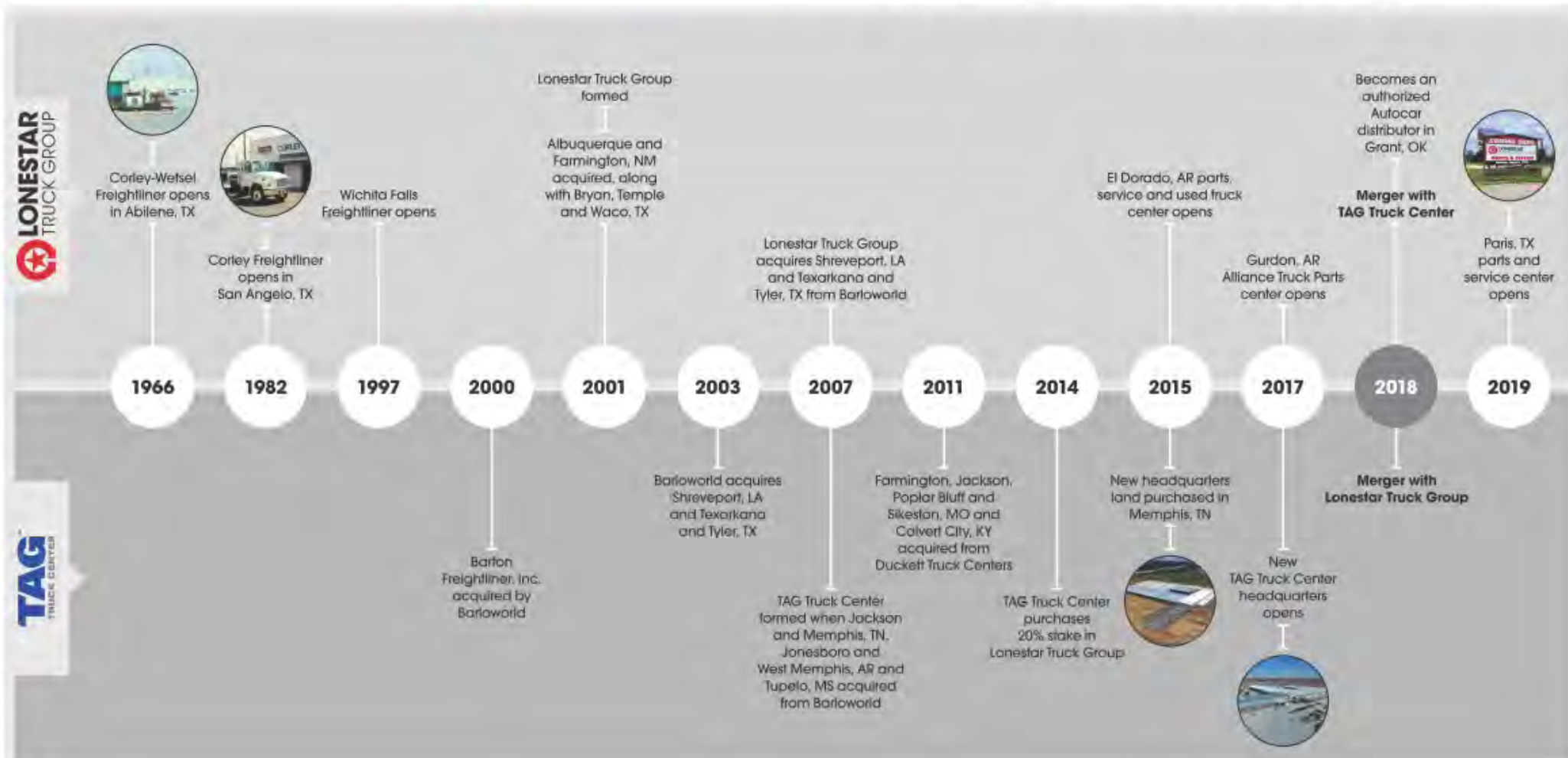
**Daimler Trucks North America (DTNA) currently has over 440 dealership locations across North America.**

Lonestar Truck Group and TAG Truck Centers combined offer:

- 2<sup>nd</sup> largest DTNA dealership group footprint in North America
- 4<sup>th</sup> largest DTNA dealership group in new truck sales
- 4<sup>th</sup> largest DTNA dealership group in parts sales
- 6<sup>th</sup> largest DTNA dealership group in warranty filings/service



# Growing Together to Better Serve Our Customers.



# Our Partners



James Bennie



Clay Corley



Vic Corley



Gary Dodson



Tommy Earl



Jay Simmons



# Our Partners Invest in the Business

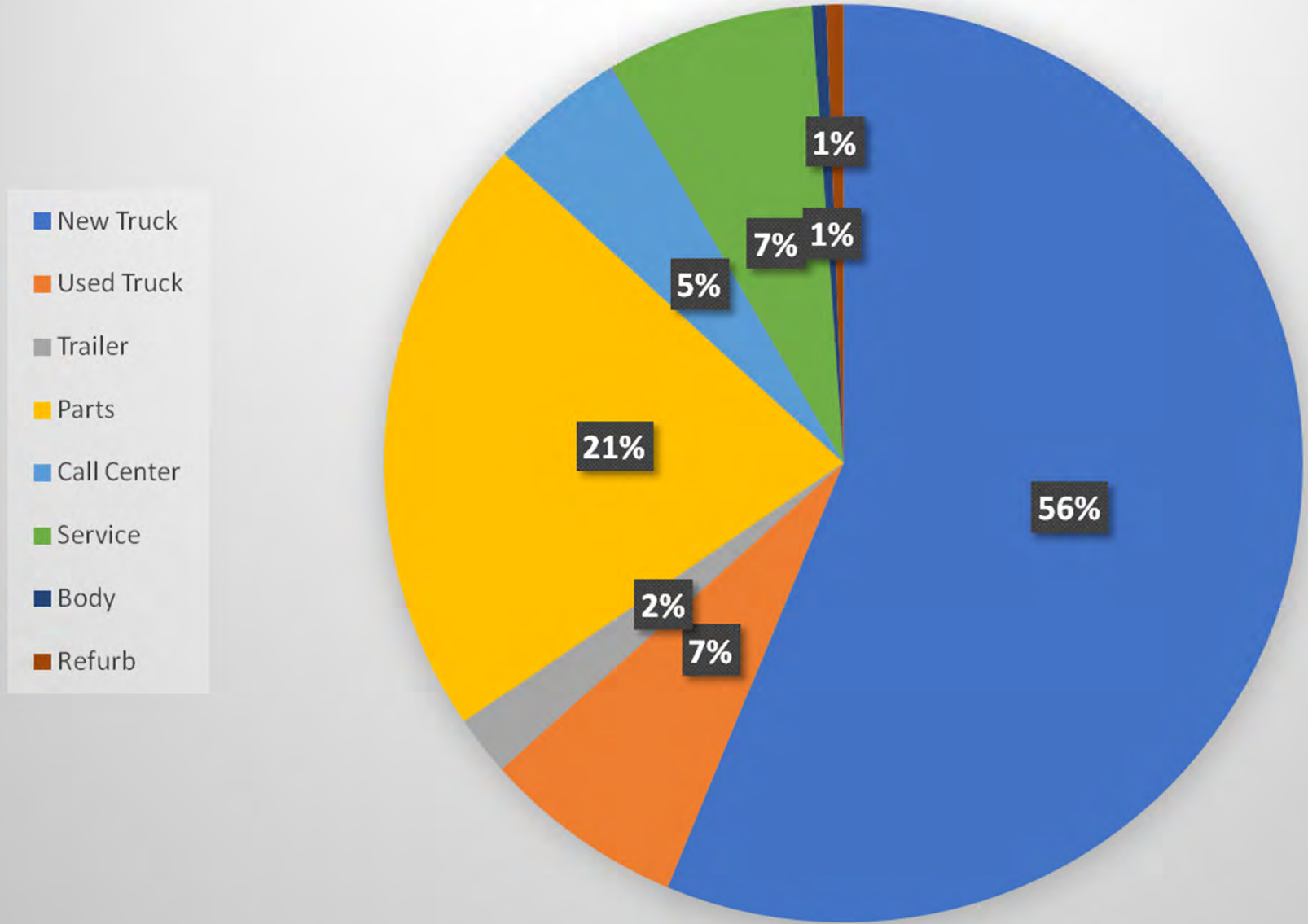
Item 16.

Since 2007, the companies have invested \$76,000,000 in the expansion and improvement of their dealership facilities. The most notable investments are:

• Memphis, TN	\$30,000,000
• Abilene, TX	\$10,500,000
• Texarkana, TX	\$ 8,760,000
• Shreveport, LA	\$ 5,110,000
• Waco, TX	\$ 4,780,000
• Tyler, TX	\$ 4,430,000
• Bryan, TX	\$ 4,150,000
• Temple, TX	\$ 3,260,000
• Other TAG Improvements	\$ 5,000,000

\*2019 and beyond: New locations in Paris, TX, Tupelo, MS and Wichita Falls, TX, additional investments of + \$16,000,000.

## % of Total Sales by Department 2019



# Lonestar | TAG Truck & Bus Brands Item 16.



**DETROIT™**



**FUSO**



# Lonestar | TAG Customer Experience

Item 16.



# Lonestar | TAG Customer Experience

Item 16.



# Lonestar | TAG Trailers OEMs

Item 16.

**Transcraft**<sup>®</sup>  
AUTHORIZED DEALER

**Reitnouer**  
ALUMINUM TRAILERS

**GL GLOBE**  
TRAILERS

**SIDUMP'R**

**manac**

**TIMPTE**

**CPS**

**Eager  
Beaver** Trailers

KNL HOLDINGS LLC  
**Peerless**

**STRICK**

**Viking**  
Specialized  
Trailers, L.L.C.

**Talbert**<sup>®</sup>  
SINCE 1938

**NUTTALL**  
BY: C-ALL MFG. INC.

**ravis**  
BODY & TRAILER, INC.

**LONESTAR**  
TRUCK GROUP

**TAG**  
TRUCK CENTER

270

# Lonestar | TAG: Approved TEM

Item 16.

- We are a certified installer of Galfab roll-offs (Licensed TEM)
- All work is done in-house: single point of contact for our customers
- Units in stock at all LTG | TAG locations



- 330 technicians company-wide & Daimler-certified dealer trainers
- All trained technicians equipped with laptop – DTNA, Cummins, Detroit-suite of Diagnostic Software
- 8 locations with chassis dynamometers (Abilene, Albuquerque, Memphis, Shreveport, Texarkana, Tyler, Waco and glider location)
- Facility improvements (4 within 5 years)
  - Future plans for Express Assessment bays in all locations
- Over \$6 million average per month in service sales
- Over 450 service bays
- Average of 140,000 repair orders annually
- 35 mobile service trucks



## Uptime Management Suite enables quick Service & Communication between dealers & customers

**Express Writeup** enables streamlined service check-in, and starts the Express Assessment and Express Repair process. The focus is on providing quick information to the customer and expedited completion of smaller repairs and service.



**EXPRESS  
WRITEUP**

**Uptime Pro** is a revolutionary application that helps manage service shop flow and provides a strong communications platform for emails, texting and linkage to Service Tracker



**UPTIME<sup>SM</sup>  
PRO**

**TechLane** utilizes big data to jumpstart the technician in the troubleshooting process and create efficiency gains, resulting in faster repairs.



**TECHLANE**

**Service Tracker** is a customer portal that allows for real-time view of the repair status, and streamlines communications with dealers through a web-based and mobile-enabled platform.

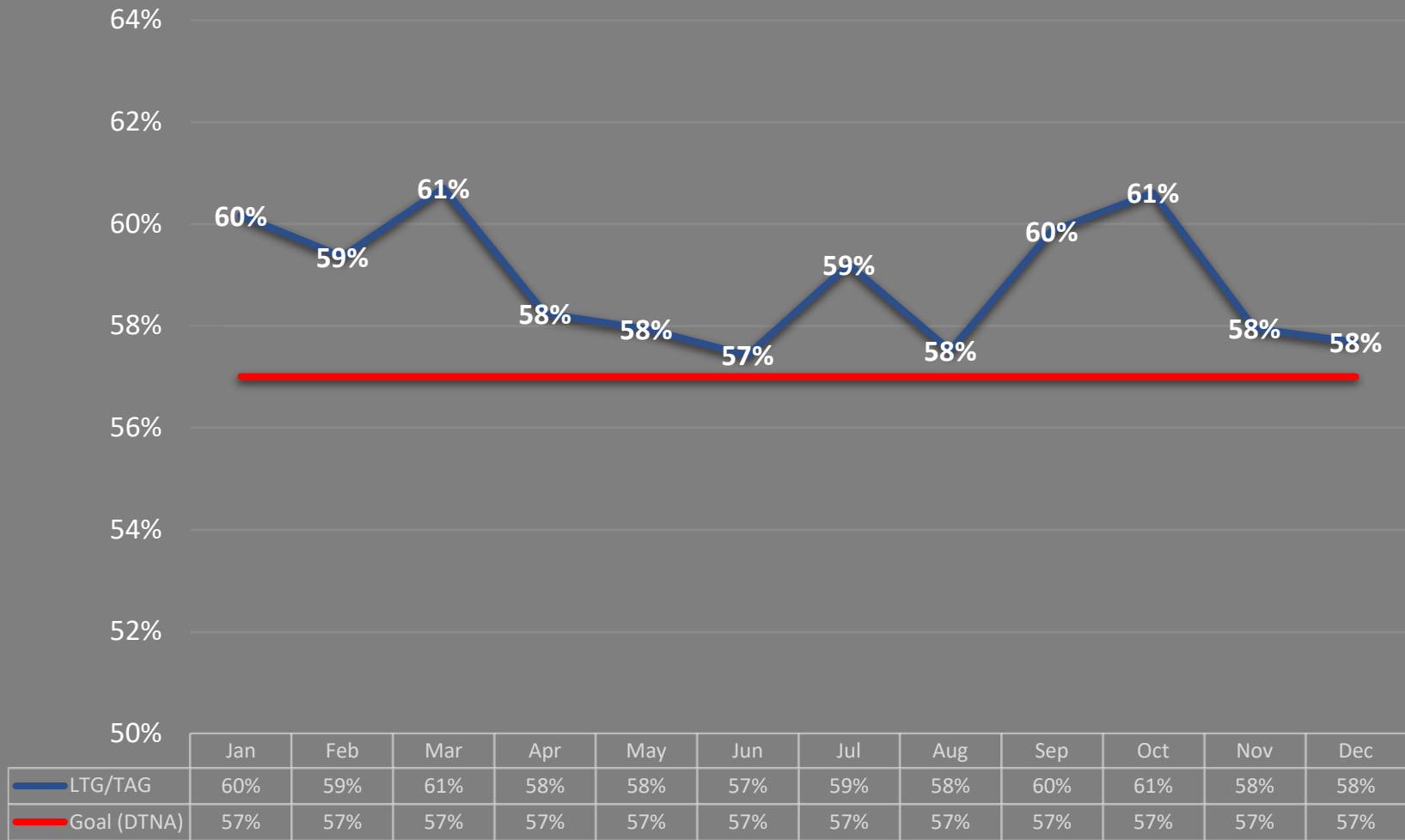


**SERVICE  
TRACKER**

# Lonestar | TAG Service Support

Item 16.

### LTG/TAG 24 Hour Through Put - 2019



\*All Data from DTNA "Uptime Performance" based on filtered data 12 Hours or Less of actual tech time. Definition of Through Put is from Repair Order Creation to Last Tech Punch.

- Over \$29 million in total/combined parts inventory
- \$19.2 million in average monthly parts sales
- Over 190 parts personnel across the group
- Parts delivery fleet of vehicles
- Overnight parts delivery to all of our locations from DTNA PDCs (DDS)
  - \$100 million in parts inventory at 98% fill rate
- Customer “online parts ordering” capability
- Active in RIMPRO with DTNA-OEM managed dealer parts inventory to ensure fill rates and availability are > 98%
- All-makes parts along with all-makes trailer parts

## Elite Support

- Early adopters and strong advocates for Elite Support
- Implemented the Elite Support and Continuous Improvement methodologies as the basis on which the company is operated
- 20 of the 25 stores are Elite Support-certified with the our El Dorado, AR location preparing for its certification



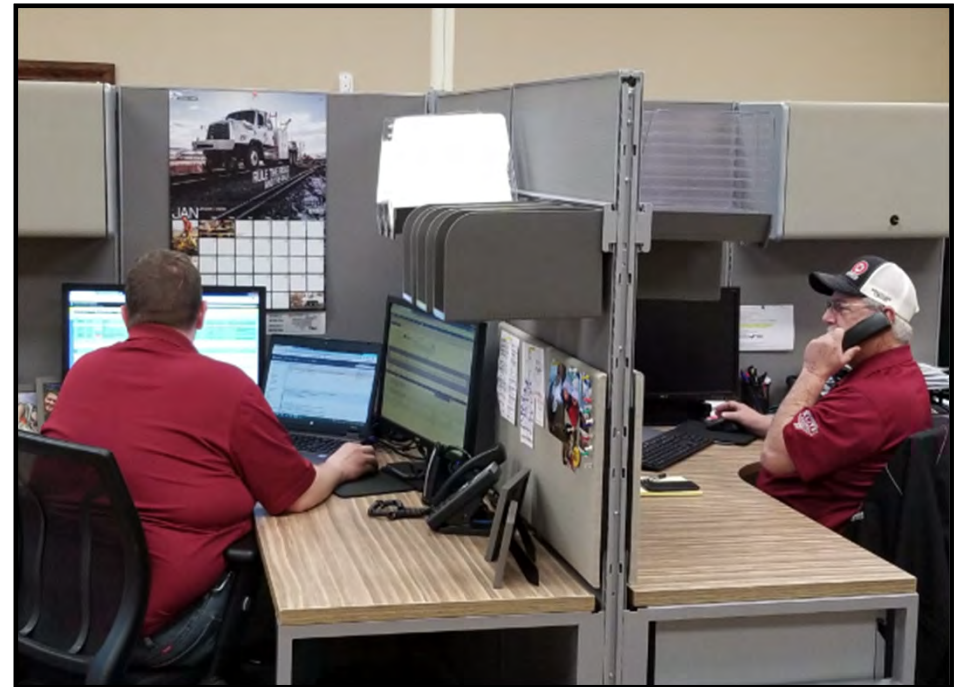
## Continuous Improvement

- Kenney Lewis is the dedicated family CIC & Safety Coordinator for the Group
- Each dealership has an appointed CIC on site
- Operational/safety audits are specifically targeted towards continuous improvement and are conducted regularly at each dealership by the Corporate Parts, Service and Sales Directors

## The Vision:

To save customers time and money while building and maintaining relationships

- One call
- One team
- Dedicated to resolutions and improving uptime
- Customized packages and services for clients



## Customer-Focused Solutions

- Utilize our network connections with other dealers
- 24/7 staff, with over 30 years experience
- Manage breakdowns
- Call and email tracking with case numbers for visibility
- DTNA connectivity to check for warranty, history of repairs, parts availability, wiring schematics – other dealer resources at our fingertips
- Consistent communication with the customer and the repair facility throughout
- Virtual Technician fleet visibility and Detroit Connect assistance/analytics
- Nationwide support
- Invoice resolution
- Freightliner pre-paid maintenance services/scheduling/recordkeeping
- PM tracking/scheduling

# C&W NationalLease

Item 16.

- Founded by Durk Corley in January 1967
- 350 rental and lease trucks/tractors in fleet
- 100 rental and lease trailers in fleet
- Guaranteed maintenance agreements
- Full-service lease options with fuel, washes, tires available
- Long- and short-term rental trucks
- Custom solutions for transportation needs
- NationaLease affiliate
- [www.candwnationalease.com](http://www.candwnationalease.com)

## WE LEASE AND RENT TRUCKS

Full Service Leasing:	Full Service Rental:
■ No Down Payment.	■ Daily, weekly and monthly.
■ Predictable monthly costs.	■ Well specified trucks to meet your needs.
■ Comprehensive Vehicle Maintenance program.	

**Family Owned & Operated**

Contact Us: 1-800-588-3357



# Locations – Central/West Texas

Item 16.

## Bryan, TX



## Temple, TX



## Waco, TX



## Abilene, TX



## San Angelo, TX



## Wichita Falls, TX





# Locations – New Mexico

Item 16.

## Albuquerque, NM



## Farmington, NM



# Locations – East TX, Louisiana, Arkansas

Item 16.

## Texarkana, TX



## Tyler, TX



## Shreveport, LA



## El Dorado, AR



# Locations – TAG Memphis

Item 16.



# Locations – TAG Cont'd

Item 16.

## Sikeston, MO



## Poplar Bluff, MO



## Calvert City, KY



## Farmington, MO



# Locations – TAG Cont'd

Item 16.

## Jackson, TN



## Jonesboro, AR



## Jackson, MO



## Tupelo, MS



# Lonestar Mobile Service/Parts Delivery Fleet

Item 16.



# Memphis Parts Fulfillment Center

Item 16.

- Facility operates independently of primary dealership location in order to better focus on large national customers and their specific needs
- Total facility space of 33,000 sq. ft housing almost \$4,000,000 in total parts inventory
- 4 dedicated Customer Service Representatives with over 70 years of combined industry experience
- 18 employees responsible for receiving, picking and shipping customer orders. Team handles shipping over 500 packages daily.
- 98% fill rate for parts catalog currently managed for large fleet accounts
- Located close to the Memphis FedEx Hub allowing for later shipping times. Any order placed, for an in stock part, by 6:00pm CST will ship the same day.
- Our in-house IT support staff allows for quick turnaround on special projects and has the ability to quickly create custom reports. This includes the opportunity to create customized e-commerce shopping cart solutions.

# Memphis Parts Fulfillment Center

Item 16.



Confidential: Proprietary Information Not for Redistribution



# Thank You!

Follow us on



## **VENDOR SUPPLEMENTAL INFORMATION**

Item 16.

TIPS permits Vendors to submit supplemental documentation and information (“Vendor Supplemental Information”) with their proposals to display to TIPS Member Customers their qualifications, offerings, and special terms. The following documents are for marketing and informational purposes only. They are not terms of Vendor’s TIPS Contract. If the Vendor Supplemental Information herein contains any warranties, terms, or conditions, the TIPS Member Customer may review and determine whether or not those are applicable and acceptable for any TIPS purchase before proceeding. If the Vendor Supplemental Information contains any licenses or certificates, TIPS encourages the TIPS Member Customer to ensure current accuracy at the time of a TIPS purchase.

# COMPETITIVE PROCUREMENT SOLICITATION DOCUMENT



## THE INTERLOCAL PURCHASING SYSTEM (TIPS)

A Cooperative Purchasing Program available for membership by Governmental and other eligible entities in all fifty states.



## TEXAS REGION 8 EDUCATION SERVICE CENTER (Region 8 ESC)

TIPS Lead Agency

### CONTACT INFORMATION:

TIPS/Region 8 ESC  
4845 US Hwy. 271 North  
Pittsburg, Texas 75686  
Toll Free: (866) 839-8477  
Email: bids@tips-usa.com  
Website: www.tips-usa.com

### NOTICE TO PROPOSERS

### PROPOSAL DUE DATE:

**NOVEMBER 17, 2022 AT 3:00 P.M. LOCAL TIME**

ALL PROPOSALS TO BE RECEIVED ELECTRONICALLY, OR OTHERWISE SEALED, BY FOREGOING DATE & TIME.

### LOCATION OF SOLICITATION DOCUMENTS:

Solicitation documents are located at <http://tips.ionwave.net>. If you encounter a problem while accessing the solicitation, please contact TIPS at the contact information provided above for assistance.

### REQUEST FOR PROPOSAL:

This solicitation document is a Request for Proposal as permitted in Texas Education Code § 44.031 for the category:

**RFP 221001 Heavy Duty Equipment**

**NOTICE:** The type of solicitation document is identified directly above. The use of terms such as: “Solicitation”, “Bid”, “Request for Proposal”, “RFP”, “Request for Competitive Sealed Proposal”, “RCSP”, or other specific terms, may be informal terminology and should be construed to legally mean the method of competitive procurement identified directly above with the legal citation.

**PIGGYBACKING NOTICE:**

THIS IDIQ SOLICITATION IS INTENDED FOR THE USE OF REGION 8 ESC, TIPS, TIPS MEMBER ENTITIES (MEMBERS), AND FUTURE MEMBERS TO PIGGYBACK UPON AND UTILIZE AS THEIR OWN SOLICITATION FOR LEGAL PROCUREMENT. SINCE MEMBER ENTITIES PIGGYBACKING ON AN AGREEMENT RESULTING FROM THIS SOLICITATION MAY DO SO AT THEIR OWN DISCRETION/TIMING, THE SCOPE REQUIREMENTS OF THE SOLICITATION MAY CHANGE DURING THE LIFE OF THE RESULTING IDIQ AGREEMENTS AND NO SPECIFIC PURCHASE VOLUME IS GUARANTEED BY TIPS.

**General Information****FINANCING OF TIPS****TIPS Vendor Paid Fee**

The total cost of the TIPS program, in most cases, is primarily funded through an administration fee paid to TIPS by the awarded contractors. The fee is based on actual vendor project sales. Vendor will pay the percentage fee on the amount actually invoiced and paid on TIPS sales by TIPS members. Fees are not assessed to vendors for shipping cost, required bond cost, or any taxes that may be applicable.

TIPS establishes a fee for each solicitation for proposals that is in the best interest of TIPS and its members.

**The fee schedule for agreements awarded under solicitation is 1%.**

**Term of Agreement and Renewals**

The Agreement with TIPS is for approximately three years with an option for renewal for an additional one consecutive year. If TIPS offers the renewal extension year, the Vendor will be notified by email to the primary contact of the awarded Vendor and shall be deemed accepted by the Vendor unless the awarded Vendor notifies TIPS of its objection to the additional term in writing. TIPS may or may not exercise some or all of the available extension(s) provided in the original solicitation beyond the base three-year term. Whether or not to offer some or all of the extension is at the sole discretion of TIPS.

**“Start Date” for Term Calculation Purposes Only:** Regardless of actual award/effective date of Contract, for Agreement “term” calculation purposes only, the Agreement “Start Date” is the last day of the month that “Award Notifications” are anticipated as published in the Solicitation.

**Example:** *In this example, if the anticipated “Award Date” published in the Solicitation is May 22, 2022, but extended negotiations delay award until June 27, 2022, the end date of the resulting initial “three-year” term, (which is subject to an extension(s)) will still be May 31, 2025 for purposes of this example.*

**“Termination Date”:** The scheduled Agreement “termination date” shall be the last day of the month of the month of the original solicitation’s anticipated “Award Date” plus three years.

**Example:** *In this example, if the original term is approximately three years, and the solicitation provides an anticipated award date of May 22, 2022, the expiration date of the original three-year term shall be May 31, 2025 for purposes of this example.*

**Extensions:** Any extensions of the original term shall begin on the next day after the day the original term expires unless otherwise specified.

**Example Following the Previous Example:** *In this example, if TIPS offers a one-year extension, the expiration of the extended term shall be May 31, 2026 unless otherwise specified.*

TIPS may offer to extend Vendor Agreements to the fullest extent the original Solicitation permits.

THIS CLAUSE CONTROLS OVER ANY OTHER TERM IN ANY OTHER PART OF THIS SOLICITATION. TIPS reserves the right to solicit proposals at any time it is in the best interest of TIPS and/or its members.

#### **VALUE OF THE CONTRACT**

The estimated value for the life of the of the contract for all awarded vendors combined is \$2,915,921.00. This estimate is not a guarantee of the minimum or maximum value of the contract because TIPS cannot accurately predict the future needs of our member entities, their budget allocations, or the ongoing needs as they relate to this solicitation.

#### **Termination**

TIPS or the awarded vendor may terminate an award under this solicitation at will for cause or no cause or for convenience. TIPS must provide the vendor with 30 days prior written notice to the awarded vendor at the address provided in the response or as otherwise provided. The Awarded Vendor shall provide TIPS with 90 days prior written notice of termination in order to protect the interests of the TIPS member that may be in negotiation or budget approval process.

#### **Miscellaneous**

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

#### **Vendor Questions**

Questions about the specific solicitation shall be submitted to [bids@tips-usa.com](mailto:bids@tips-usa.com) with the following in the subject line: "221001 Heavy Duty Equipment – Proposing Vendor Question". Questions of a ministerial nature will be answered without an addendum, but questions of a substantive nature that are not addressed in the solicitation or deemed relevant to the process by TIPS will be addressed by properly posted addendum.

**SUBSTANTIVE QUESTIONS WILL BE RECEIVED UNTIL January 12, 2023 AT NOON Local Time.**

#### **Pre-Bid Meeting (Not Mandatory)**

**A Pre-Bid Meeting may be requested by any proposer, if you wish to request a Pre-Bid Meeting, please email [bids@tips-usa.com](mailto:bids@tips-usa.com) by Noon, October 20, 2022.**

**If requested, a Pre-Bid meeting may be scheduled if agreed to by TIPS, in that circumstance, an addendum will be posted and a notifications will be sent through the electronic bidding system to all known interested parties.**

**\*If Requested, TIPS reserves the right to determine if a Pre-Bid Meeting is held.\***

#### ANTICIPATED SCHEDULE OF AWARD OR RELATED EVENT:

**These anticipated dates may change due to number of responses and staff workloads or extension of time for the due date.**

<b>Posting Date</b>	<b>OCTOBER 6, 2022</b>	8:00 A.M. Local Time
<b>Proposal Deadline</b>	<b>NOVEMBER 17, 2022</b>	3:00 P.M. Local Time
<b>Proposal Opening</b>	<b>NOVEMBER 17, 2022</b>	3:00 P.M. Local Time
<b>Proposal Review Begins</b>	<b>NOVEMBER 17, 2022</b>	3:01 P.M. Local Time
<b>Proposals Award</b>	<b>JANUARY 26, 2023</b>	8:30 A.M. Local Time
<b>Award Notifications</b>	<b>JANUARY 26, 2023</b>	12:00 P.M. Local Time

**Negotiating deviations to terms and conditions is very time consuming, so Vendors with deviations are evaluated last, so TIPS does not delay awards to vendors that do not submit deviations.**

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**TIPS agreements are available for use by all public entities, schools, colleges, universities, cities, agencies, counties and other government entities in all fifty states if permitted by the jurisdictions of the governmental entities.**

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## Pricing Models

### Pricing for Line Items or Catalog

It is the intention of TIPS to establish an agreement to furnish and/or deliver all goods and services provided by awarded vendors to its members. Proposers are requested to submit a proposal for offering their complete and total line of available products and services to governmental entities, including school districts.

If a name brand is mentioned in the specifications, proposals on any reputable manufacturer’s regularly produced equipment of such items of a similar nature or similarly used and substantially equivalent will be considered. The list or category of goods or services sought by this solicitation is inclusive and not exclusive. There may be other similarly used items that are sold by the responding vendors that may be included as part of the proposing vendor’s “catalog” (defined below) now or during the life of the agreement that are considered included in this solicitation and subject to the minimum discount proposed. Pricing may also be exclusively line item pricing or, and recommended, in combination with a minimum catalog discount.

**Example:** During the life of the agreement, models change and new products come to market that are in the same category and are added to the vendor’s “catalog” and are available for purchase by users of the agreement. If you fail to propose a minimum discount off your catalog, it may limit the ability to change pricing of catalog items and services during the life of the award.

### Definition of “catalog”

"Catalog" means the available list of tangible personal property or services, in the most current listing, regardless of date, during the life of the contract, that takes the form of a catalog, price list, schedule, shelf price or other form that:

- A. is regularly maintained by the manufacturer or vendor of an item; and

- B. is either published or otherwise available for inspection by a customer during the purchase process;
- C. to which the minimum discount proposed by the proposing vendor may be applied.

### **Adding New or Replacement Goods Items During the Life of the Agreement**

Is easiest when proposing a Minimum Discount off (PREFERRED MODEL) catalog prices for goods or a markup on vendor's cost of a good item. See Pricing sheets 1.

**Pay Careful Attention to This When Completing the Pricing spreadsheets.**

### **Adding New or Replacement Services During the Life of the Agreement**

Is easiest when proposing a Discount off (PREFERRED MODEL) catalog prices for Services because there is no manufacturer or supplier's price in which to apply a markup percentage. See Pricing sheets 2.

**Pay Careful Attention to This When Completing the Pricing spreadsheet.**

### **Explanation:**

#### **Markup on cost**

**Vendors may propose a markup on miscellaneous items that are not ordinarily in their catalog or for which no list or manufacturer's pricing is available. It is NOT recommended proposers use the Markup pricing method EXCLUSIVELY because many members are not allowed to use a bid with a markup pricing method, specifically when using Federal Grant Funds. Using this pricing method may limit the effectiveness of your award.**

If you choose to use the markup pricing method:

When proposing a markup on cost model, the vendor shall be required to provide proof of actual cost to the vendor of the goods sold to verify pricing markup is properly and legally applied for the sale of the goods.

**NEW ITEMS:** TIPS will allow the addition of new goods items to be added to the agreement when they become available to the market through the vendor under the discount off published pricing model or markup on cost model. You must stipulate a discount or markup on catalog price in the appropriate section of the pricing Excel sheet to be eligible for this option. You may stipulate discount off specific brands or lines of goods if you desire. Be thorough and concise. Any items added must be available to all customers, within legal or contractual limitations, if any. (Example: Apple products are not permitted to be sold to the education market without special agreement from Apple but may be sold to other government customers.)

**REPLACEMENT OF DISCONTINUED OR LIMITED AVAILABILITY ITEMS:** When proposing a Line Item pricing model - TIPS will allow replacement items to the original list item if it is no longer manufactured or is available in limited quantities. Limited availability must be documented by a letter from the manufacturer. Vendor may replace it with an item of like kind and quality and the price will remain the same as proposed, except if it is cheaper, vendor shall lower the price accordingly and if it is more expensive due to vendor's actual cost from the manufacturer, it will be priced and the same discount shall

apply as the item it replaces. Vendor shall be required to prove the pricing if the cost is higher than the original core list price to customer.

**Note:** If you propose a minimum Discount off catalog, you avoid this process since you are adding an item to your catalog and list price and the proposed minimum discount off catalog would apply to the new item.

**Shipping cost:**

Pricing presented for goods offered should not include shipping costs from dealer to Member customer. **IF** shipping is included in the price, regardless of the situation, then you simply state no additional cost for shipping or delivery to any customer. Example: if the truck includes delivery but parts do not, then be sure to specify the variations in your pricing. Shipping method is determined by the vendor and the Member/Customer at the time of the quote/purchase by the Member/Customer and satisfactory shipping methods and costs are agreed upon at that time. Shipping should be passed through at actual cost to the TIPS Member.

## **SPECIFICATIONS and PRICING FORMAT (EXCEL SPREADSHEET)**

Proposals on any reputable manufacturers regularly produced goods and services falling within the general categories solicited herein will be considered for award. If a name brand is mentioned, it is only to illustrate type and quality and is not intended to restrict competition. Any list included herein is inclusive and not exclusive. There may be other similarly used items that are sold by the responding vendors that may be included as part of the proposing vendor's "catalog" (Defined above) now or during the life of the contract that are considered included in this RFP. Example: During the life of the contract, models change and new products come to market that are in the same category and are added to the vendor's "catalog" and are available for purchase by users of the contract provided the catalog discount or cost markup proposed is honored by the awarded vendor.

TIPS leaves it to the proposer to determine what goods or services that perform or serve this function and the proposer may list or include anything applicable.

**This solicitation is seeking providers for:**

### **Heavy Duty Equipment**

*Specifications and Pricing*

It is the intention of Region 8 ESC to contract with reliable, high performance vendors to supply heavy duty equipment and related parts and services to public agencies and certain non-profit organizations in the United States. Proposals may include, but not be limited to the sale, rental, and servicing of: tractors, backhoes, trailers, forklifts, compressors, generators, bull dozers, AstroTurf installation and maintenance equipment, cranes, lifts, heavy duty trucks, ditching equipment, farming equipment, plows, shredders, mulchers, any other similar heavy-duty equipment, and any parts or accessories to support these items and any other heavy-duty equipment.

If a price list or catalog is submitted or available as defined herein, then a percentage off catalog is acceptable. If line item pricing is proposed, proposals should include any and all listings of product names, sizes, packaging, quantity, pricing, description of services and any other related information.



Proposals should include all listings of heavy-duty equipment and related parts and services. DO NOT INCLUDE ITEMS THAT ARE NOT CONSIDERED heavy duty equipment and related parts and services. Hourly or other unit pricing for services providing trainings, rental, operation assistance, servicing, repair, or maintenance may be submitted. Accessories to support the heavy-duty equipment should be submitted.

Offerors may provide pricing based on a discount from a manufacturer's price list or catalog, or fixed price, or a combination of both with indefinite quantities. An Electronic Catalog, links to same, and/or availability to access the list prices should accompany the proposal if a discount off catalog is proposed. Multiple percentage discount structure is also acceptable. Please specify where different percentage discounts apply and ensure that those discounts can be honored for the life of the contract. Additional pricing and/or discounts may be included. Each service proposed is to be priced separately with all ineligible items identified. TIPS may award to multiple vendors. See pricing instruction in this document and on the pricing forms 1 and 2.

Offerors may elect to limit their proposals to a single service within any category, or multiple services within any or all categories. Region 8 ESC is seeking service providers that have the depth, breadth and quality of resources necessary to complete various aspects of this contract. In addition, TIPS also requests any relevant value add commodity or service that could be provided under this contract. While this solicitation specifically covers the above-mentioned category, Offerors are encouraged to submit an offering on any and all products or services available that they currently perform in their normal course of business.

Respondent shall perform and provide these products and/or services under the terms of this agreement. The supplier shall assist the end user with making a determination of their individual needs. The following is a list of included (but not limited to) categories.

Proposers may serve a local area only or a broader geographic area at their discretion and should indicate their limitations for a service area.

Proposers may submit all items and goods related to supplying heavy duty equipment and related parts and services that they offer. Proposer should submit all applicable services for all types of heavy-duty equipment and related parts and services.

#### Value Added Pricing

Value added services should be explained in detail. If proposer can offer greater quantities at lower pricing, these "value added" prices should be submitted in this section.

Proposal should list offerings to be considered as part of the category of heavy-duty equipment and related parts and services that can be provided by the Vendor. Servicing of heavy-duty equipment or any related service to support heavy duty quipment may be included in this proposal.

A discount off list price pricing model is ideal as list prices change over the life of the awarded agreement. Possible pricing models are discussed in this document. Any other goods and services that are logically related to this general category may be proposed. TIPS reserves the sole right to determine whether or not proposed goods or services are logically related to this general category.

#### **Additional Services:**

Proposer should list in the Pricing Sheet 2 excel spreadsheet all related services, installation, travel, and hourly fees or other defined unit cost according to category offered on this contract. Offering must be related to this category. No inappropriate offerings will be considered.

The Vendor may furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management and may perform all operations necessary and required for services. All work shall be performed in accordance with the requirements set forth in the resulting contract and each mutually agreed upon work request or purchase order issued by TIPS participating members.

**NOTHING HEREIN IS REQUESTING SERVICES THAT ARE CONSIDERED A PUBLIC WORK/CONSTRUCTION.**

Pricing Sheets 1 and 2 must be downloaded from the “Attachments” section, completed and uploaded to the “Response Attachments” PRICING sections.

Since the list of items a vendor may carry is potentially very long, and items are removed and added to the market frequently, it may be more advantageous to propose a **minimum discount** off your catalog for goods and services. You may offer different discounts for different brands or lines or services of goods if you choose.

**A zero discount off catalog proposal is permitted, but** TIPS encourages vendors to propose the best discount that they feel is necessary to compete with other retailers to provide the greatest benefit to TIPS members. Proposer shall propose a minimum discount off catalog in the eBid system attribute for all non-line items proposed so you will be covered when future items are available in you catalog. By doing this, the pricing is a ceiling and not a floor. You may always lower your price or increase your minimum discount percentage to be more competitive in a particular situation,

You may propose all goods as a line item list if you prefer but the PREFERRED proposal method is a minimum discount off catalog prices. Proposer **may propose, both discount off a catalog AND line item pricing for specific lists of items if you choose to.**

**PRICING FORMAT (EXCEL SPREADSHEETS 1 and 2)**

**DO NOT PROPOSE “PRICE TO BE DETERMINED” or “ON REQUEST”. This method is not lawful to award by TIPS. You must have unit pricing that can be applied to the needs of the customer.**

**Pricing Sheet 1 Excel Sheet**

There are three (3) sections in the Excel sheet #1, Section A, B, and C provided in the solicitation documents, please complete all that are applicable to your proposal. The discount off catalog price is an excellent method if list prices are available and please propose that method in addition to any other method you desire to cover future item or service availability.

**Example:** IF you are providing a line item pricing sheet AND a discount off the rest of your catalog, be sure to provide both the line item prices on the list of items proposed and a minimum discount off the rest of your catalog. If different sections of your catalog have different minimum discounts, please note accordingly.

**Pricing Sheet 2 excel sheet**

List any other services, maintenance agreements, mileage fees, maximum travel costs, etc. with line item pricing AND/OR discount off Catalog price as defined above if services are routinely listed in your catalog and priced therein.

Vendor may provide additional pricing in another format.

**ALL PRICING SHALL BE FIRM AND CALCULABLE AT THE TIME OF SALE DURING THE LIFE OF THE CONTRACT AND MUST CONFORM AND COMPLY WITH THE VENDOR’S PROPOSED PRICING MODEL IN RESPONSE TO**

**THE ORIGINAL SOLICITATION. DO NOT PROPOSE “PRICE TO BE DETERMINED”. If you have questions on this process, email TIPS for clarification.**

Example: Proposed catalog, web, or store price for an item is \$10.00 each and your proposed minimum discount is 5%, then the price is firm and calculable as \$9.50.

Please provide any explanatory information on your pricing proposal you believe is necessary to fully inform TIPS of your intent.

#### **Service Incidental to the Sale of Goods**

Many times, the sale of goods may be accompanied by the installation or set up of said goods. Proposers may submit pricing for the services in the Pricing Sheet 2 spreadsheet or in an attachment.

**Any and All SERVICES may be proposed, but must be priced either as a line item or as a discount off the published Catalog price for said services. You may provide a catalog of services or a link to the available services or you may create a TIPS-specific Catalog list of services with applicable pricing. Please specify or illustrate your chosen method.**

**If LINE ITEM GOODS pricing, and during the life of the award, prices may be increased only commensurate, dollar for dollar as your cost for the item increases. To increase the price of a line item prices good, vendor must submit proof from the manufacturer or distributor that the pricing has increased and by how much.**

**NOTE: FAILURE TO PROPOSE SERVICES SHALL EXCLUDE THEM FROM YOUR OFFERING THROUGH THIS AWARD. PLEASE INCLUDE THEM IN SOME CALCULABLE WAY. YOU MAY PROVIDE A PERCENTAGE DISCOUNT OFF POSTED PRICES OR CATALOG PRICES FOR THE LOCATION OF THE STORE OR IN SOME SPECIFIC MANNER THAT FITS YOU BUSINESS MODEL.**

**When using line item pricing, vendor should provide on pricing template 2 a maximum price increase percentage for annually for renewal years. Complete all excel pricing forms or their equivalents.**

#### **Goods Incidental to the Sale of Services**

Many times, the sale of services may be accompanied by the sale of incidental, directly related goods (ex. Literature, app, or online portal to support consulting services). Proposers may submit pricing for the services in the Pricing Sheet 2 spreadsheet or in an attachment.

**Any and All SERVICES may be proposed, but must be priced either as a line item or as a discount off the published Catalog price for said services. You may provide a catalog of services or a link to the available services or you may create a TIPS-specific Catalog list of services with applicable pricing. Please specify or illustrate your chosen method.**

**If proposing LINE ITEM GOODS pricing, then during the life of the award prices may be increased only commensurate, dollar for dollar as your cost for the item increases. To increase the price of a line item prices good, vendor must submit proof from the manufacturer or distributor that the pricing has increased and by how much.**

**NOTE: FAILURE TO PROPOSE SERVICES SHALL EXCLUDE THEM FROM YOUR OFFERING THROUGH THIS AWARD SO, PLEASE INCLUDE THEM IS SOME CALCULABLE WAY. YOU MAY PROVIDE A PERCENTAGE DISCOUNT OFF**

**POSTED PRICES OR CATALOG PRICES FOR THE LOCATION OF THE STORE OR IN SOME SPECIFIC MANNER THAT FITS YOUR BUSINESS MODEL.**

## **PROPOSAL SCORING AND EVALUATION**

TIPS staff evaluates and scores all responsive proposals. Recommendations for award will be made to the Region 8 Education Service Center Board of Directors. Awards will be ratified or rejected at the monthly stated meeting of the Region 8 ESC Board of Directors or as delegated by the Board of Directors. TIPS will base a recommendation for award on several factors mandated by the Texas Education Code section 44.031. The factors which will be considered and assigned points in each area as follows (100 total points possible).

TIPS utilizes a value approach for awarding agreements under this solicitation and applies the mandated evaluation criteria under Texas Education Code §44.031. TIPS reserves the right to assign any number of point awards or penalties it considers warranted if an offeror stipulates exceptions, exclusions, or limitations of liabilities. TIPS shall reserve the right to reject any or all proposals or any part of any proposal. TIPS is the sole arbiter of scoring.

The following evaluation criteria are mandated for consideration by Texas Education Code § 44.031 (b).

1. **Purchase Price:** (22) point weight. Per prices quoted as related to information within the request for proposals and/or the discount off MSRP or other published list pricing or stated prices of goods or services. Points are awarded based on the prices and or discount, and the reasonableness in the market of the pricing offered. TIPS is the sole arbiter of what constitutes price criterion scoring.
2. **The reputation of the vendor and of the vendor's goods or services;** (3) point weight. References or TIPS staff knowledge and any other available information known to TIPS may be used to score this criterion.
3. **The quality of the vendor's goods or services;** (21.5) point weight. References or TIPS staff knowledge or any other available information known or available through the RFP or otherwise to TIPS may be used to score this criterion.
4. **The total long-term cost to TIPS and its members to acquire the vendor's goods or services;** (10) point weight. Points will be assigned to this criterion based on the Vendor's response to the Attribute entitled "MINIMUM Discount Term." A "YES" answer agreeing to at least offer the Minimum Discount Percentage off list or catalog proposed by Vendor will be awarded the maximum 10 points for this criterion out of the 100 total points and a "NO" answer is awarded 0 points.
5. **Extent to which the Goods or Services meet the Needs:** (21.5) point weight. TIPS evaluators will determine if the proposal provides value to TIPS members and if the goods and/or services offered by the proposer meets the needs outlined in the solicitation. In the judgment of TIPS, points are awarded incrementally 0-21.5 points depending if the proposal meets the needs outlined in the solicitation.
6. **Vendor's Past Relationship:** (10) point weight – No past relationship scores 5 points, a good relationship scores 6 to 10 points, and a poor relationship scores 0 to 4 points.
7. **Impact on the Ability of the District to Comply with Laws and Rules Relating to Historically Underutilized Businesses:** (2) point weight –Points are assigned if, where applicable, the vendor agrees to abide by the federal regulations in the Attribute entitled "Subcontracting with small and minority businesses, women's business enterprises, and labor surplus area firms" and the attribute that immediately follows, if applicable, of this solicitation in the ION Wave bidding system related to underutilized businesses in its subcontracting practices, when applicable. NOTE: Failure to agree to comply with the federal regulations

herein, where applicable, shall make use of federal funds to purchase the goods or services proposed unallowable.

8. **Experience:** 10 point weight - <2 years = 1 points; 2 -3 years = 5 points; 4-5 years = 8 points; >5 years = 10 points
9. **Residency:** 0 point weight. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
  - A. has its principal place of business in this state; or
  - B. employs at least 500 persons in this state.

Federal funds may be utilized by ESC Region 8 or TIPS member entities during the life of this contract, and residency is a prohibited criterion under federal regulation, it has been considered and assigned a weight of 0 points.

**PROPOSERS FALLING BELOW AN 70-POINT THRESHOLD WILL NOT BE CONSIDERED FOR AN AWARD.**

## About TIPS

It is the purpose of this solicitation to establish awarded vendor agreements to satisfy the procurement needs of participating member entities in this particular commodity category. These awarded agreements will enable member entities to purchase on an “as needed” basis from competitively awarded agreements with high performance vendors. Proposers are requested to submit a proposal for offering their line of available products that are commonly purchased by government agencies, cities, counties and educational entities.

- Awards will be made to the successful proposer(s) for the products and/or services. (Unless proposer has submitted inappropriate items for the commodity category. Those items will not be awarded. Example: a software company may not propose to perform construction work).
- TIPS reserves the right to award multiple vendors for each solicitation.
- This proposal is requested for the benefit of the current list of members and other new members as they execute TIPS membership Agreements in the future.
- TIPS reserves the right to extend the proposal deadline for any reason.
- TIPS reserves the right to make changes to this Solicitation by way of one or more posted addenda.

### Benefits of TIPS

- Provide government entities opportunities for greater efficiency and economy in acquiring goods and services through competitively procured vendor agreements.
- Provide comprehensive purchasing practices according the Laws of the State of Texas and Federal Regulation 2 CFR part 200, when appropriate, and is designed to result in competitive agreements that meet a wide variety of needs.
- Provide competitively priced purchasing options for multiple government entities that yields economic benefits usually unobtainable by the individual entity.
- Provide quick and efficient delivery of goods and services by entering into pricing agreements with “high performance” vendors.
- Equalized purchasing power for smaller entities.
- Maintain credibility and confidence in business procedures by maintaining free, full and open competition for purchases and by complying with purchasing laws and ethical business practices.
- Provide document retention for competitive procurement process for all TIPS Awarded Agreements.

### Customer Service

- TIPS staff is available to members for assistance in viewing/contacting awarded vendors for categories to make purchases and agreement decisions.
- TIPS provides a way for government entities to avoid the time and expense of seeking competition for purchases on an agency-by-agency basis.
- TIPS enables vendors to become more efficient and competitive by reducing the number of proposals that require responses to be made to individual entities.

### Purchasing Procedures

- Agreements are established through free, full and open competition as described by the laws of the State of Texas and are available for piggy-back by other government entities anywhere in the United States, subject to each entities' jurisdictional law and regulation. Purchase orders or equivalent are issued by participating governmental entities directly to the Vendor or Vendor assigned dealer. Purchase orders or equivalent are usually sent to the TIPS office where they are reviewed by the TIPS staff and forwarded to the Vendor within one working day. In some instances, the entity may send the purchase orders or equivalent directly to the vendor and report the purchase to TIPS.
- NOTE: It is always the Vendor's responsibility under the TIPS agreement to report all sales under the TIPS Agreement. When a public entity initiates a purchase with a TIPS Awarded Vendor, if the Member inquires verbally or in writing whether the Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether or not the Member is seeking a TIPS purchase. Once verified, the Vendor must include the TIPS Contract Number on all related quotes, invoices, and similar sales documents. It is the duty of the Vendor to submit documentation of all final purchases to TIPS for processing. This may only be done through the TIPS Vendor Portal or by emailing the sales documentation to [TIPSP0@TIPS-USA.com](mailto:TIPSP0@TIPS-USA.com), unless TIPS agrees to an alternative reporting method in writing. Failure to report a TIPS sale may result in termination of Vendor's TIPS Contract(s) and preclusion to responding to future solicitations.
- Vendors deliver goods/services directly to the participating member agency and then invoice the participating member agency. The Vendor receives payment directly from the participating member agency.
- Vendor accepts and understands that when a purchase order or similar purchase document is sent from a customer through TIPS to the Vendor, TIPS is recording the purchase and verifying whether the purchase is within the parameters of the TIPS Contract only. Vendor agrees that TIPS is not a legal party to the purchase order or similar purchase document and TIPS is not responsible for identifying fraud, mistakes, or misrepresentations for the specific order. Vendor agrees that any purchase order or similar purchase document issued from a customer to Vendor, even when processed through TIPS, constitutes a legal contract between the customer and Vendor only. A Vendor that accepts a purchase order or similar purchase document and fulfills an order, even when processed through TIPS, is representing that the vendor has carefully reviewed the purchase order or similar purchase document for legality, authenticity, and accuracy.

### Notice of Confidentiality of Proposed Information

The proposal submitted and all information therein is available to TIPS members. Also, according to the Texas Public Information Act, any documents or information held by TIPS "may" be public information. In the documents for the proposer to complete is a declaration form entitled "CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552" that must be completed by the proposer that designates specified pages as confidential or waives confidentiality of the entire proposal.

## Proposal Instructions

1. Electronically sealed proposals are the preferred and most accurate method and is highly encouraged through our online procurement software, ION Wave.
2. Proposals may be amended by the proposer on the electronic site at any time prior to the due date and time. ION Wave permits you to retract and resubmit your proposal.
3. If an addendum is posted, you are required to login to the ION Wave bidding software and address the addendum. No addendum will be issued within five calendar days of the opening unless it is to extend the opening or address a non-substantive issue. Legal holidays not counted as calendar days are New Year's Day, Martin Luther King Day, Easter, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, Christmas.
4. Proposals may be submitted on any or all sections, related to the category, unless stated otherwise. TIPS reserves the right to reject any or all proposals and to accept any proposal(s) deemed advantageous to the TIPS members and to waive any informality in the proposal process.
5. Deviations to any Terms, Conditions and/or Specifications shall be clearly noted in writing by the contractor and shall be included with the proposal. There are attributes that you must respond to in order to submit a proposal that address deviations.
6. Withdrawal of proposals will not be allowed for a period of 90 days following the opening unless approved by TIPS.
7. Addenda, if required, will be issued by TIPS by email to the proposer's designated contact to all those vendors known to have reviewed the solicitation documents through our electronic bidding software, ION Wave.

### **PROPOSAL FORMAT - PROPOSERS PAY CLOSE ATTENTION TO DETAILS LISTED.**

TIPS reserves the right to waive any informality and/or reject any or all proposals.

All responses should be direct, concise, complete, and unambiguous. With regard to those items that cannot be answered in the affirmative, clearly explain the precise portion to which you disagree and why you disagree. Proposers must propose pricing that is calculable based on the prices presented or discounts proposed as they relate to a published price of the goods or services. Published prices are prices that are provided by a catalog, website, shelf, price list accessible to TIPS and its members at any time during the term of an awarded agreement with the vendor or specifically proposed. Other methods of publishing prices will be considered if proposed but must be calculable.

**Felony Conviction Notice (Required in Texas) -Notification of Criminal History** "A person or business entity that enters into an agreement with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. A school district may terminate an agreement with a person or business entity if the district determines that the person or business entity failed to give notice as required or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the agreement." This notice is not required of a publicly held corporation. Texas Education Code § 44.034.

### **References**

The proposal response should contain a minimum of three references of customers that you have served, ideally that would be considered eligible for membership in TIPS (i.e. K-12 School Districts, College/Universities, and/or

City/County Government Entities, Water or Fire Districts, etc.). In addition to the name of the entity, a contact name, email and phone number shall be included per the instructions on the reference sheet provided. The references document must be downloaded from the “Attachments” section, completed and uploaded to the “Response Attachments” REFERENCES section.

### **Resellers/Dealers**

Vendors with Resellers/Dealers must enter/authorize all Authorized Resellers in the Vendor Portal upon award.

### **Vendor Certifications**

Vendor certifications should include applicable D/M/WBE, HUB and manufacturer certifications for sales and service (if applicable). Certificates must be scanned and uploaded to the “Response Attachments” D/M/WBE, HUB and/or ALL OTHER CERTIFICATES section. Whether or not you are a D/M/WBE, HUB or similar business will have no bearing on the evaluation score, but provides our members the information if it is part of their entities’ policies.

### **Vendor Agreement**

Vendor Agreement must be downloaded from the “Attachments” section, completed and uploaded to the “Response Attachments” VENDOR AGREEMENT section. If proposer has deviations to the agreement language to negotiate with TIPS, there are attributes in the electronic process that address this possibility and you may insert your deviations there.

### **Agreement Signature Form**

Agreement Signature Form must be downloaded from the “Attachments” section, completed, signed, scanned and uploaded to the “Response Attachments” AGREEMENT SIGNATURE FORM section. If proposer has deviations to the agreement language to negotiate with TIPS, the agreement signature page may be submitted unsigned until all terms and conditions are agreed.

### **Warranty (If applicable)**

Warranty documentation should be scanned and uploaded to the “Response Attachments” WARRANTY section.

### **Protest Procedure**

If a contractor/proposer (contractor) desires to protest a process or decision by TIPS, the contractor must follow the following process:

[http://www.tips-usa.com/assets/documents/docs/letters/Protest\\_Procedures\\_for\\_Vendor.pdf](http://www.tips-usa.com/assets/documents/docs/letters/Protest_Procedures_for_Vendor.pdf)

### **Supplementary Catalogs and Information if Applicable**

Supplementary Catalogs and Information documentation should be scanned and uploaded to the “Response Attachments” SUPPLEMENTARY section. You may provide a link to catalogs or pricing that is published for all customers to see when shopping for your goods or services. Links to catalog pricing must be kept current during the term of the awarded agreement. It is the intent of TIPS to award a manufacturer’s complete line of products, when possible.

### **LIMITATIONS OF THE SOLICITATION AND THE USE OF AWARDED AGREEMENTS BY MEMBERS**

**Depending on different entities’ and jurisdictions’ laws and regulations, members may be prohibited from participating in one or more of the TIPS agreements. TIPS has no control over those legal restrictions and does not warrant that a member entity will be able to utilize a TIPS awarded agreement.**



## Terms and Conditions

1. **Exclusivity**- Any award under this solicitation is not exclusive and TIPS reserves the right to multi award or not award. TIPS reserves the right to solicit same or similar categories again for additional awards during the life of an existing agreement with one or more awarded vendors of another solicitation, if TIPS decides it is in the best interest of our members.
2. **Confidentiality of Proposal** - If you believe part of your proposal is confidential and not subject to sunshine laws such as the Public Information Act, there is a form that you must complete to make such a declaration. Read it carefully and fill it out properly.
3. **Best and Final Offer** – There will be NO best and final offer, your proposal will be your final offer for solicitation competition purposes. Vendor may lower prices at any time during agreement period. See pricing section.
4. **Non-Responsive Proposals:** All proposals will be reviewed for responsiveness to the material requirements of the solicitation. A proposal that is not materially responsive shall not be eligible for further consideration for award of the agreement. There may be required specifications for this proposal and desired and other specifications. **IF YOUR PROPOSAL FAILS TO MEET ANY OF THE DESIGNATED REQUIRED SPECIFICATIONS, YOUR PROPOSAL MAY BE DEEMED NON-RESPONSIVE AND WILL NOT BE EVALUATED FURTHER OR CONSIDERED FOR AWARD.**
5. **Deviations and Exceptions:** Deviations or exceptions stipulated as non-negotiable in the response by the proposer may result in disqualification if they are not acceptable to TIPS.
6. **Equal Pricing** – Pricing proposed shall be provided to any TIPS member and regardless of the quantity of product or service purchased from the awarded vendor. Pricing may always be lowered by the vendor if circumstances permit to provide better value to TIPS members and for the vendor to be more competitive in that particular circumstance of sales opportunity. If prices are lowered in a specific circumstance, the same lowered pricing must be offered to all TIPS members if the quantities, timing and all other circumstances are identical.
7. **Estimated Quantities:** Because TIPS cannot accurately anticipate which members will utilize the awarded agreements due to the thousands of members and the different government entity types, TIPS makes no guarantee or commitment of any kind concerning quantities or usage of agreements resulting from this solicitation. This information, if provided, is provided solely as an aid to vendors in preparing proposals only. The successful Vendor(s) discount and pricing schedule shall apply regardless of the total cumulative volume of business under the agreement.
8. **Conditions of Agreement** - The terms and conditions of this solicitation shall control in the order that best serves the TIPS members’ needs and deciding the controlling order is at the sole discretion of TIPS. The terms and conditions of this solicitation shall be incorporated by reference in a resulting agreement unless expressly agreed otherwise by the parties in writing.
9. **Name brands** – If name brands are required to be priced but other products of equal or similar type and quality may also be represented in the pricing and will be considered. TIPS want pricing either in a fixed price or a discount off published or available to TIPS Members catalog price or both if applicable to your proposal. A “catalog” is defined above and includes pricing of goods and /or services.
10. **Evaluation** – TIPS will evaluate the best value by rating the proposals submitted by the vendors. The point score received will be the weighted score which will be used to determine awarded vendors. See Evaluation criteria sheet with applicable point weights in this document. If applicable, extensions of unit

prices shown will be subject to verification by the district. In case of variation between the unit price and the extension, the unit price will be considered to be the proposal.

11. **LIMITATION OF LIABILITY – Waiver:** BY SUBMITTING A PROPOSAL, OFFERER EXPRESSLY AGREES TO WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST BOTH THE INTERLOCAL PURCHASING SYSTEM REGION 8 EDUCATION SERVICE CENTER, ITS DIRECTORS, OFFICERS, ITS TRUSTEES, OR AGENTS ARISING OUT OF OR IN CONNECTION WITH (1) THE ADMINISTRATION, EVALUATION, RECOMMENDATION OF ANY PROPOSAL; (2) ANY REQUIREMENTS UNDER THE SOLICITATION, PROPOSAL PACKAGE, OR RELATED DOCUMENTS; (3) THE REJECTION OF ANY PROPOSAL OR ANY PART OF ANY PROPOSAL; AND/OR (4) THE AWARD OF AN AGREEMENT, IF ANY. NEITHER REGION 8 ESC NOR TIPS SHALL BE RESPONSIBLE OR LIABLE FOR ANY COSTS INCURRED BY PROPOSERS OR THE SELECTED CONTRACTOR IN CONNECTION WITH RESPONDING TO THE SOLICITATION, PREPARING FOR ORAL PRESENTATIONS, PREPARING AND SUBMITTING A PROPOSAL, ENTERING OR NEGOTIATING THE TERMS OF AN AGREEMENT, OR ANY OTHER EXPENSES INCURRED BY A PROPOSER. THE PROPOSER OR SELECTED CONTRACTOR IS WHOLLY RESPONSIBLE FOR ANY SUCH COSTS AND EXPENSES AND SHALL NOT BE REIMBURSED IN ANY MANNER BY REGION 8 ESC OR TIPS.
12. **RESERVATION OF RIGHTS** - TIPS expressly reserves the right to:
- a) Reject or cancel any or all proposals;
  - b) Waive any defect, irregularity or informality in any proposal or solicitation procedure provided the waiver is equally applied to all Offerors and an Offeror is not prejudiced by the waiver as compared to other Offerors;
  - c) Waive as an informality, minor deviations from specifications for goods or services at a lower price than other proposals meeting all aspects of the specifications if it is determined that total cost is lower and the overall function is not impaired;
  - d) Reissue a solicitation;
  - e) Consider and accept an alternate proposal as provided herein when most advantageous to TIPS and its members;
  - f) TIPS has the right to terminate the agreement for cause or no cause for convenience with a thirty-day written notice, unless otherwise agreed in writing in an executed agreement between the parties;
  - g) **This is not an exclusive award and no guaranteed volumes of purchases are guaranteed. TIPS and its members reserve the right to procure any items or services by other means at the sole discretion of TIPS or its members.**

**ADDITIONAL TERMS AND CONDITIONS  
UNDER COOPERATIVE CONTRACT 221001**

**AGREEMENT:** This set of Additional Terms and Conditions is incorporated into TIPS Vendor Agreement – TIP RFP 221001 for Heavy Duty Equipment (the “TIPS Contract”) in its entirety and, upon execution by New Braunfels Utilities, a Texas municipally owned utility and TIPS Member (“NBU”), and Lonestar Freightliner Group, LLC a Texas limited liability company (“Vendor”), constitutes the Parties’ Agreement (“Agreement”). All other terms and conditions of the TIPS Contract, and all documents incorporated therein, not modified or amended by this set of Additional Terms and Conditions shall remain in full force and effect. No change, modification or revision to the Agreement shall be binding unless made in writing and signed by the Parties.

**COMPLETION:** Time is of the essence in the performance of this Agreement. If Vendor fails to effect delivery or performance of the associated goods or services required by NBU in accordance with the requirements of this Agreement, in addition to its other rights and remedies hereunder, NBU shall have the right to terminate this Agreement by notice effective when received by Vendor or after the expiration of five (5) days from the date of mailing of such notice, whichever occurs first. Such termination shall be effective as to goods not yet received by NBU or services not yet rendered, regardless of their transit status.

**PRICES:** Vendor warrants that the prices quoted to NBU in the quote dated November 2, 2023 at the time of sale includes all costs incurred by Vendor for shipment of all goods under this Agreement. In the event of any price reduction between execution of the Agreement and delivery of the goods, NBU shall be entitled to such reduction, which shall be reflected as a deduction on the next invoice or refunded to NBU within 30 days, whichever is sooner.

**SHIPMENT AND DELIVERY:** All goods made the subject hereof are to be suitably prepared and packaged for shipment in accordance with good commercial practice so as to effect safe delivery and freedom from weather or other damage and to meet the carrier’s requirements. All damages to such goods occurring prior to delivery will be charged to Vendor. No charges will be allowed for packing, crating or carriage unless stated in the Agreement. If, in order to comply with NBU’s required delivery date, it becomes necessary for Vendor to ship by a more expensive way than specified in the Agreement any such increased transportation costs shall be paid by Vendor. All deliveries shall be f.o.b. point designated in these Additional Terms and Conditions or as specified in writing by NBU. Cost of all return shipments, for whatever reason returned, shall be borne by Vendor with title and risk of loss passing at NBU’s point of shipment, unless otherwise specified by NBU at the time of return.

**INSPECTION:** NBU shall have a reasonable time after delivery or performance to inspect the goods delivered or the services performed. All such goods or services must conform to the specifications, instructions, drawings and data set forth in the Agreement and Quote. NBU may reject and refuse acceptance of any goods or services which do not so conform. NBU shall notify Vendor of such rejection by either written notice or by the return to Vendor of the rejected goods. Vendor shall be solely responsible for any risk and cost or expenses associated with return of rejected or nonconforming goods.

**REJECTION OF MATERIALS AND WORKMANSHIP:** NBU shall have the right to reject furnished goods and workmanship that are defective or otherwise fail to meet the terms and conditions of the Agreement and require their correction. Rejected goods shall be satisfactorily replaced with proper goods without charge to NBU, and Vendor shall promptly segregate and remove rejected materials from the point designated. If Vendor does not correct defective workmanship or replace the rejected goods within a reasonable time, NBU may do so and charge all costs, damages, fees, and expenses to Vendor including, without limitation actual, consequential and incidental damages.

**SHOP DRAWINGS, SUBMITTALS, QUALITY OF GOODS:** Vendor shall confirm that all materials are in strict accordance with the Agreement and Quote. Where required, prior to shipment, Vendor shall provide shop drawings or submittals sufficient to demonstrate compliance with the Agreement for NBU's review and approval. A failure of NBU during the progress of the work to discover or reject goods not in accordance with the Agreement shall not be deemed an acceptance thereof or a waiver of defects therein. No payment or use of goods provided by Vendor shall be construed as an acceptance of goods which are not strictly in accordance with the Agreement.

**WARRANTIES / GUARANTEES:** Vendor expressly warrants that the items and services covered hereunder shall be free of defects in workmanship and all services shall be performed in a good and workmanlike manner consistent with industry standards ("Services Warranty"). A minimum of a ninety (90)-day product or service guaranty of the manufacturer's standard commercial warranty, whichever is greater, will apply to all goods and services provided under this Agreement. All warranties shall run to NBU, its customers and subsequent owners of goods or services covered hereunder.

Vendor warrants that all goods, including equipment and products, and services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Vendor warrants the equipment, products, and services are suitable for and will perform in accordance with the ordinary use for which they are intended. Vendor's dealers and distributors agree to assist NBU in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the Vendor's warranty will be passed on to NBU.

**INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS NBU AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEY'S FEES, OR OTHER CONSULTANTS' FEES, OF ANY KIND RESULTING FROM VENDOR'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT, FAILURE OF GOODS, OR ACTS RESULTING IN BODILY INJURY OR PROPERTY DAMAGE, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF VENDOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.**

**NO DAMAGES FOR DELAY:** Vendor shall have no right to claim any damages against NBU, including consequential or incidental damages, as a result of delay. Extension of time for Vendor's performance is conditioned upon NBU's approval of an extension of time to the contract or delays claimed by Vendor. Failure of Vendor to make a claim promptly shall be deemed a waiver of the right to a claim for an extension of time for the particular cause.

**TERMINATION:** NBU may terminate this Agreement without cause by providing 30 days' written notice to Vendor. NBU may terminate this Agreement or any part thereof for cause in the event of any default by Vendor, or if Vendor fails to comply with any of the terms and conditions of this Agreement. The Uniform Commercial Code of the State of Texas ("UCC") shall apply to NBU's rights and remedies under commercial transactions. NBU reserves all rights, remedies, and warranties, express and implied, under the UCC. Vendor may not terminate this Agreement unless NBU fails to provide payment for goods and/or associated services expressly accepted by NBU.

**TAXES:** NBU is exempted from all city, state, and federal excise taxes. DO NOT include tax on your invoice. NBU's Federal ID Number is 74-6001783.

**INSURANCE:** Per the TIPS Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the TIPS Contract. Promptly, upon execution of this Agreement and upon future request from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

**PAYMENT:** Invoices will be paid within 30 days after receipt of the goods or completion of required services. Payment for the goods delivered under this Agreement shall not be acceptance of such goods. Goods shall only be deemed accepted when they have actually been counted, inspected, and tested by NBU and found to be in conformance with this Agreement. However, failure to inspect or test by NBU shall not relieve Vendor of any responsibility hereunder.

**REMEDIES:** The rights and remedies reserved to NBU herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other or further rights and remedies provided by law or equity. No waiver of any breach of these provisions shall be deemed to constitute a waiver of any other breach.

**DISPUTE RESOLUTION:** The Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws principles. In the event that a dispute arises between NBU and Vendor, the parties agree to submit said disputes to a court of competent jurisdiction in Comal County, Texas for resolution.

**TEXAS PUBLIC INFORMATION ACT:** Vendor recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations under this Agreement, Vendor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights.

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

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

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

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

**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.

#### **REPRESENTATIONS:**

Prohibition on Contracts with Companies Boycotting Israel. Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with 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. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited. Vendor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section

2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

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

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

Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, Vendor represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in Vendor is not held or controlled by:
  - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code, as amended ("designated country"); or
  - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2274 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

Prohibition on Contracts with Companies Boycotting Energy Companies. Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable

federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

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

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

Executed and effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VENDOR:**  
**LONESTAR FREIGHTLINER GROUP**  
**LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



TIPS CONTRACT PRICING FORM		
LONESTAR FREIGHTLINER GROUP, LLC; DBA LONESTAR TRUCK GI		
2051 Hughes Rd Grapevine TX 76051		
(254) 752-9735 * (800) 299-3250 * Fax (254) 754-4393		
Sales Rep: Chuck Bishop		
11/2/2023	<b>NEW BRAUNFELS UTILITY TIPS QUOTE - CONTRACT # 221001 HEAVY DUTY EQUIPMENT</b>	
	Item Description	List Price
	<b>2025 WESTERN STAR 47X</b>	<b>\$91,626</b>
	<b>PUBLISHED OPTIONS</b>	
	CUM X12 430V HP @ 1900 RPM, 1650 LB/FT @ 1000 RPM, 2000 GOV RPM,VOC	\$15,990
	ALLISON 4500 RDS AUTOMATIC TRANSMISSION WITHOUT PTO PROVISION	\$23,232
	MFS-20-133A 22,000# FL1 71.0 INCH KPI/3.74 INCH DROP SINGLE FRONT AXLE	\$5,500
	23,000# FLAT LEAF FRONT SUSPENSION	\$3,509
	RT-46-164P 46,000# R-SERIES TANDEM REAR AXLE	\$6,444
	DRIVER CONTROLLED TRACTION DIFFERENTIAL - BOTH TANDEM REAR AXLES	\$1,499
	RH OUTBOARD UNDER STEP MOUNTED HORIZONTAL AFTERTREATMENT SYSTEM ASSEMBLY WITH RH B-PILLAR MOUNTED VERTICAL TAILPIPE	\$823
	DR 12V 240 AMP 40-SI BRUSHLESS PAD ALTERNATOR WITH REMOTE BATTERY VOLTAGE SENSE	\$559
	(3) DTNA GENUINE, FLOODED STARTING, MIN 3000CCA, 555RC, THREADED STUD BATTERIES	\$345
	PREMIUM HIGH BACK AIR SUSPENSION DRIVER SEAT WITH 3 CHAMBER AIR LUMBAR, INTEGRATED CUSHION EXTENSION	\$424
	PREMIUM HIGH BACK AIR SUSPENSION PASSENGER SEAT WITH 3 CHAMBER AIR LUMBAR, INTEGRATED CUSHION EXTENSION	\$451
	<b>SUBTOTAL WITH PUBLISHED OPTIONS</b>	<b>\$150,402</b>
	<b>UNPUBLISHED OPTIONS</b>	
	NEWAY ADZ 246 46,000# REAR AIR SUSPENSION	\$7,331
	SPL250 HT XL DANA SPICER MAIN DRIVELINE	\$797
	<b>SUBTOTAL WITH UNPUBLISHED OPTIONS</b>	<b>\$158,530</b>
	<b>SPECIAL GAPVAX BODY</b>	<b>\$475,719</b>
	<b>TOTAL SALES PRICE</b>	<b>\$634,249</b>
	Quantity	1
	<b>FINAL INVOICE DUE</b>	<b>\$634,249</b>



**Meeting Date:** January 25, 2024      **Agenda Type:** Presentation Items

**From:** Ashley Van Booven      **Reviewed by:** Dawn Schriewer  
 Director of Finance      Chief Financial Officer

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

**RECOMMENDED ACTION:** Presentation and Update on the Status of the Amendment to the Memorandum of Agreement (MOU) with the Lower Colorado River Authority (LCRA) Regarding NBU Transmission Assets and Associated Payments

# Amendment to the MOU with LCRA Regarding NBU Transmission Assets and Associated Payments

## NBU Board of Trustees Meeting



January 25, 2024

# Background

NBU owns 19.5 circuit-miles of 138 kV transmission lines, which have been leased to LCRA since 1990.

In December 2021, the NBU Board of Trustees approved an amendment to the Memorandum of Agreement (MOA) with LCRA regarding NBU Transmission Assets and Associated Payments.

- Transmission lease is set to terminate upon final order in LCRA's PUC docket
- Lease payments remain frozen at \$855,666.74, which NBU will continue to receive until the transmission lease terminates

# Parallel Paths Forward

Spencer Fane will file an amended tariff to terminate the transmission lease with LCRA

- Similar to what Bandera Electric Cooperative successfully got approved in 2012
- Other munis/coops will be filing similarly (GVEC, PEC, Bluebonnet, Fayette, and Kerrville)

NewGen is conducting a full TCOS study to take to the PUC in early 2024

- Targeting March 2024 filing
- Will require employee testimony
- Items of Focus:
  - Depreciation
  - General Fund Transfers (GFTs)
  - Export Revenues

# Current Status

- LCRA has filed their full rate case application with the PUC on Nov. 30, 2023, which contemplates dissolution of the NBU lease agreement. LCRA's filing is PUC Docket No. 55867.
- Spencer Fane has filed NBU's amended tariff on December 5, 2023, which will eventually be folded into LCRA's docket and consolidated to be approved as a final order. NBU's filing is PUC Docket No. 55950.
- NBU is continuing to receive lease payments until a final order by the PUC in LCRA's docket. At that time, NBU's TCOS postage stamp rate will increase in order to replace the revenue that was being received through the LCRA lease payments.
- LCRA's TCOS Billing Aggregation Service is unaffected by the lease termination and will continue to be available.

# Next Steps

Item 1.

- The PUC has issued an order for Staff to provide a recommendation in Docket No. 55950.
- NBU will wrap up the depreciation study with NewGen, from which a final report will be issued.
- Those results, along with the audited FY23 numbers, will be incorporated into NewGen's TCOS study.
- NewGen is targeting filing a full rate case for NBU in March 2024.



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**QUESTIONS?**